BASIC
STEWARD
TRAINING

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*The contents of this entire Basic Steward Training Manual is available online at **www.upseu.org***

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SECTION 1

Contact Information

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Meriden, CT 06450
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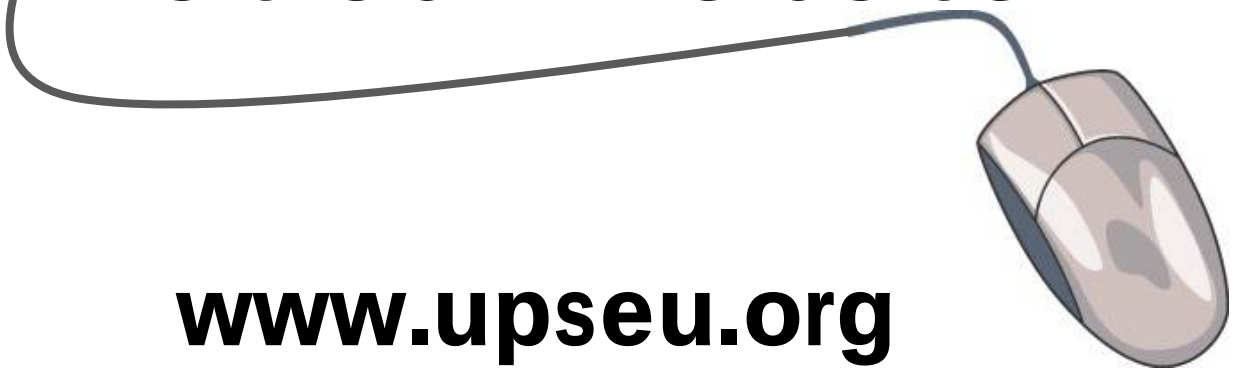
3555 Veterans Highway, Suite H
Ronkonkoma, NY 11779
1-800-833-3688 Phone
631-738-7236 Fax

President: Kevin E. Boyle, Jr.
(Call 1-800-833-3688 Membership Feedback)

Dues/Billing - Headquarters: Maureen G. Johnson

Member Benefits – Headquarters: Terry Riley

Visit our Website



www.upseu.org

Member Resources!

- Hourly Labor Headline Updates
- Toolkit for Stewards
- Important Labor Links
- Professional Issues Section
- Personal Interests Section
- Member Survey
- More Downloadable Forms
- User Friendly
- Scholarship Applications
- Member Benefits

IT'S EASY!

Go to Member Log On and click on Sign Up.

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Connecticut Department of Labor

Go to: www.ctdol.state.ct.us to find the answers!

You are here: DOL Web Site Laws and Legislation

Many of the documents and forms contained on this web site were created using PDF, Word, and Excel software. Viewer software is required to open these documents. Links to this free software is available on our **browser information** page.

LAWS AND LEGISLATION

Order Labor Law Books here! (WORD, 24KB)

- Apprenticeship
- Business
- Individual Development Accounts (IDAs)
- Job Seekers
- Labor Relations
- Mediation & Arbitration
- Unemployment Insurance
- Veterans
- Wage & Workplace Matters
- WARN - Worker Adjustment and Retraining Notification Act
- Worker Safety (CONN-OSHA)
- Other

Labor Relations

- Index of Procedural Orders (1997 to Present)
- Labor Board Decisions
- Labor Relations Notice of Procedural Changes
- **Labor Relations, Connecticut State Board of**
- Municipal Employee Relations Act (MERA)
- School Board/Teacher Negotiation Act (TNA)
- State Employees Relations Act (SERA)
- State Labor Relations Act (SLRA)
- Summaries of Board Decisions - MERA
- Summaries of Board Decisions - SERA
- Summaries of Board Decisions - TNA

CONTACT US

CT Dept. of Labor
200 Folly Brook Blvd.
Wethersfield, CT
06109
(860) 263-6000
dol.webhelp@ct.gov

Wage and Workplace Matters

- Administrative Regulations
- Annual Adjustments To Wage Rates - State Work Contractors
- Contracting Agency Certification (PDF, 88KB)
- Davis-Bacon Act (federal)
- Debarment List (PDF, 16KB)
- Employment and Information Agencies, Private
- Employment Laws Assistance (ELAWS)
- Fair Labor Standards Act (federal)
- FAQs - Employment of Minors
- FAQs - Legal Requirements for Wages, Working Papers, and Job Restrictions
- Family and Medical Leave Act Regulations

(and much more)

http://www.ctdol.state.ct.us/gendocs/legislation.html

SECTION 2

CONTRACT LAW PRINCIPLES

Introduction Nearly all errors in contract interpretation result from a failure to give proper weight to a single cardinal principle: The purpose of contract interpretation is to ascertain the intent of the parties, based on all relevant evidence -- or, at least regarding collective bargaining agreements, to ascertain the intent the parties would have had if they had anticipated the problem that has arisen.

1. According to the Supreme Court, a collective bargaining agreement is "more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." Warrior & Gulf, 363 U.S. 574, 578 (1960), citing Shulman, "Reason, Contract, and Law in Labor Relations," 68 Harv. L. Rev. 999, 1004-05 (1955); Cox, "Reflections Upon Labor Arbitration," 72 Harv. L. Rev. 1482, 1498-99 (1959) ("There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. . . . [T]he collective bargaining process demand[s] a common law of the shop which implements and furnishes the context of the agreement"). The Court continued: "Gaps may be left to be filled in by reference to the practices of the particular industry. . . . Id. at 580.

2. Seemingly clear and unambiguous language will not be followed literally if all the evidence presented indicates that that was not the result intended by the parties. Particular circumstances may show the language to be not so "plain and clear" as it first appears. 3 A. Corbin, Contracts § 542, pp. 100-02, 108-12 (1960). In addition, a past practice that is (1) clear and consistent, (2) repeated over time, and (3) mutually accepted by the parties may actually modify or amend what seems to be clear and unambiguous contractual language. Mittenthal, "Past Practice and the Administration of Collective Bargaining Agreements," 59 Mich. L. Rev. 1017, 1026-30 (1961).

3. To be controlling, a past practice must be (1) clear and consistent, (2) repeated over time, and (3) mutually accepted by the parties. Mittenthal, supra, 59 Mich. L. Rev. at 1018-19. Moreover, a practice that has been established independently of any language in the contract may be terminated by either party's objection to it during the negotiation of a later agreement. Even a practice that has become the definitive interpretation of ambiguous language in a contract may be terminated by mutual agreement of the parties. Id. at 1040-41. Finally, many arbitrators will simply refuse to let past practice modify what they regard as clear and unequivocal language. See, e.g., F. Elkouri & E. Elkouri, How Arbitration Works 454 and cases cited (4th ed. 1985).

4. Although the definition of terms contained in a standard, reliable dictionary often govern the meaning and are at least "an aid" to interpretation, it is always possible to show that the words had a technical meaning peculiar to a particular trade or industry, or that the parties had a mutually agreed understanding contrary to the dictionary definition.

5. The parol evidence rule is subject to several major exceptions, including the use of parol evidence to show (1) there never was a true agreement; (2) fraud or mistake in the formation of the agreement; (3) the meaning of the writing; (4) the existence of a genuine side agreement; and (5) the agreement was modified or replaced by a subsequent agreement. Restatement (Second) of Contracts §§ 213.17 (1981); A. Corbin, Contracts §§ 573-83, pp. 357-475 (1960).

6. In a conflict between general and specific language in an agreement, the specific language will ordinarily control. A specific provision is likely to deal with the issue more directly. It is thus generally a better reflection of the parties' intent concerning the particular problem that has arisen.

7. An agreement should be construed as a whole, with effect given, if possible, to all its words and clauses.

8. The negotiations leading up to a contract can provide vital information about the parties' intended meaning, but it is the intent that is communicated to the other party at the time, not some undisclosed belief about the meaning of the language, which is most important. F. Elkouri & E. Elkouri, How Arbitration Works 357-58 (4th ed. 1985).

9. Although there is some reason to hold the draftsperson responsible for ambiguities in the language used, this is an interpretive rule that is generally applied as a last resort, and in instances where one party has little or no control over the terminology (e.g., insurance contracts, retail sales contracts). In collective bargaining, the negotiators on both sides are likely to be experienced, knowledgeable, and deeply involved in the choice of words. There is thus usually less justification for construing contract language against the drafting party.

10. In applying a labor contract, arbitrators will take relevant public law into account to resolve ambiguities, to sustain the validity of the agreement when two interpretations are possible, and to comply with the parties' submission that the arbitrators consider the law as well as the contract. But if there is a clear conflict between the contract and the law, and no agreement by the parties that the law may be considered, arbitrators are sharply divided.

THE KEY CONTRACT CLAUSES YOU SHOULD KNOW:

RECOGNITION

SENIORITY

GRIEVANCE PROCEDURE

LEAVE PROVISIONS

SECTION 3

WHAT IS A GRIEVANCE?

A Grievance is a violation of a worker's rights on the job. These rights are codified in your collective bargaining agreement. Your employer expects you to perform the duties enumerated in your job description, and your contract defines the conditions under which these duties shall be performed (hours, equipment, safety, etc.) and the compensation the employer shall provide you for performing the duties.

A Grievance arises when either the employer or employee group fails to abide by the terms of the contract. The employer assumes the ultimate responsibility for adherence to the contract, not Foremen or Supervisors. For that reason, Grievances address violations of the collective bargaining agreement by the employer. Grievances are not filed "against fellow employees or supervisors." This is a common misconception. The purpose of Grievance filing is to make the employer aware of a violation and seek a remedy for the violation.

When a violation of a worker's rights occurs, the Steward must be prepared to determine the following:

1. Is it a violation of the contract?
    a) What is the specific Article?
    b) Are there any other applicable Articles?
    c) Are there any Articles which permit the activity?

2. Is it a violation of Federal or State law?
    a) Is there a reference to the statute in the contract?

3. Is it a violation of Past Practice?
    a) Has the practice been repeated over an extended period of time?
    b) Has the practice been accepted explicitly or implicitly by both Management and the Union?
    c) Has either the Union or Management attempted unsuccessfully to bargain over the practice during negotiations?

4. Is it an area of Management's responsibility?
    a) Is it a personality conflict between two fellow employees?
    b) Is it a Management right?

5. Is it a violation of Company Rules?
    a) Is the Employer Rule addressed in the contract?

After determining the answers to each of the preceding questions, the Steward must determine whether or not the violation gives rise to a Grievance. If the violation is specifically addressed in the

contract, is a violation of a statute referenced in the contract, contradicts an established past practice, or violates personnel rules referenced in the contract, it constitutes a Grievance.

Very often, a Grievance may be borderline, where there is no clear answer to the above criteria. In that case, give the benefit of the doubt to the employee.

A Union, represented by its Stewards, has a Duty of Fair Representation (DFR) to its members. Decisions on whether or not to file Grievances should be based upon the above criteria; personalities, relationships, or fear of retaliation or intimidation should play no part in the decision-making process. When in doubt, the Steward should consult with his/her Executive Board or Representative.

If it is determined that the issue does not constitute a Grievance, the Steward has a responsibility to explain to the employee that rationale behind the decision. This decision must be made immediately, so the employee may still exercise his/her right to file a Grievance without interference by the Union (the Steward must advise the employee of this right).

MUNICPAL

EMPLOYEES

RELATIONS

ACT

2007

MUNICIPAL EMPLOYEES RELATIONS ACT
(MERA)

Sec. 7-467. Collective bargaining. Definitions. When used in sections 7-467 to 7-477, inclusive:

(1) "Municipal employer" means any political subdivision of the state, including any town, city, borough, district, district department of health, school board, housing authority or other authority established by law, a private nonprofit corporation which has a valid contract with any town, city, borough or district to extinguish fires and to protect its inhabitants from loss by fire, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees;

(2) "Employee" means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week on a seasonal basis, department heads and persons in such other positions as may be excluded from coverage under sections 7-467 to 7- 477, inclusive, in accordance with subdivision (2) of section 7-471;

(3) "Seasonal basis" means working for a period of not more than one hundred twenty calendar days in any calendar year;

(4) "Department head" means an employee who heads any department in a municipal organization, has substantial supervisory control of a permanent nature over other municipal employees, and is directly accountable to the board of selectmen of a town, city or borough not having a charter or special act form of government, or to the chief executive officer of any other town, city or borough;

(5) "Department" means any major functional division in a municipal organization, notwithstanding the provisions of any charter or special act to the contrary;

(6) "Employee organization" means any lawful association, labor organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment among employees of municipal employers.

(February, 1965, P.A. 159, S. 1; 1969, P.A. 688, S. 5; P.A. 78-375, S. 1; P.A. 83-503; P.A. 85-40; P.A. 90-47, S. 1.)

History: 1969 act included district departments of health in definition of "municipal employer"; P.A. 78-375 excluded department heads from definition of "employee" and deleted reference to persons in supervisory positions; P.A. 83-503 defined "seasonal basis", "department head" and "department", and included part-time employees who do not work on a seasonal basis within the definition of "employee"; P.A. 85-40 redefined "seasonal basis" as work lasting not more than one hundred twenty calendar days rather than as work lasting sixty-five working days; P.A. 90-47 added nonprofit fire- fighting corporations which contract with municipalities to the definition of "municipal employer".

See Sec. 10-153b et seq. re collective bargaining for teachers.

Cited. 154 C. 530, 534. Cited. 162 C. 579. Cited. 171 C. 347. Cited. 171 C. 420, 428. Cited. 171 C. 553, 564. Cited. 175 C. 349, 351, 353, 358, 367. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Exhaustion of administrative remedies discussed. 200 C. 38, 39, 42. Municipal Employees Relations Act cited. Id. Cited. Id., 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549−551, 553, 558, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133. Cited. 237 C. 378, 386.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

Cited. 28 CS 267. A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Cited. 31 CS 212. Municipal Employees Relations Act (section 7-467 et seq.) cited. 36 CS 18, 24. Secs. 7-467 through 7-477 cited. 42 CS 227, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Subdiv. (1):

Cited. 171 C. 345. Cited. 182 C. 93, 106. Cited. 239 C. 32.

Cited. 43 CS 340, 343.

Subdiv. (2):

Cited. 182 C. 93, 109. Cited. 196 C. 192, 200. Cited. 210 C. 549, 551. Cited. 225 C. 297−299, 301, 303, 305.

Subdiv. (3):

Cited. 171 C. 345. Cited. 225 C. 297−299, 301−303, 305.

Cited. 39 CS 1, 2, 5.

Subdiv. (4):

Cited. 210 C. 549, 553.

Subdiv. (6):

Cited. 221 C. 244, 251.

Sec. 7-467a. Qualification of employee organization. No employee organization, as defined in section 7-467, shall be eligible to petition for exclusive recognition or to participate in a recognition election under section 7-471 unless it has been in existence for not fewer than six months.

(1967, P.A. 491, S. 1.)

Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited.

215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Secs. 7-467 through 7-477 cited. 42 CS 227, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-468. Rights of employees and representatives. Duty of fair representation. (a) Employees shall have, and shall be protected in the exercise of, the right of self- organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion.

(b) When an employee organization has been designated by the State Board of Labor Relations as the representative of the majority of the employees in an appropriate unit, or has been recognized by the chief executive officer of a municipal employer as the representative of the majority of employees in an appropriate unit, that employee organization shall be recognized by the municipal employer as the exclusive bargaining agent for the employees of such unit.

(c) When an employee organization has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, it shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(d) When an employee organization has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, it shall have a duty of fair representation to the members of that unit.

(e) An individual employee at any time may present a grievance to his employer and have the grievance adjusted, without intervention of an employee organization, provided the adjustment shall not be inconsistent with the terms of a collective bargaining agreement then in effect. The employee organization certified or recognized as the exclusive representative shall be given prompt notice of the adjustment.

(February, 1965, P.A. 159, S. 2; 1967, P.A. 491, S. 2; P.A. 93-426, S. 4.)

History: 1967 act amended Subsec. (b) to specify that recognition of employee representative be made by chief executive officer; P.A. 93-426 inserted new Subsec. (d) to impose a duty of fair representation on an employee organization which represents municipal employees and redesignated existing Subsec. (d) as (e).

Cited. 171 C. 347. Cited. 171 C. 553, 564. Cited. 175 C. 349, 351, 353, 354, 358, 365−367, 369. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C.

421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 91, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Cited. 222 C. 233, 247. Cited. 224 C. 666, 667. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 8 CA 57, 60. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Cited. 31 CS 15, 18, 19. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Subsec. (a):

Cited. 171 C. 349, 353. Essentially same language as NLRA; judicial interpretation frequently accorded federal act is of great assistance and persuasive force in interpretation of our own acts. 175 C. 349, 365−367. Cited. 221 C. 244, 251. Cited. 225 C. 297, 298.

Cited. 8 CA 57, 60. Cited. 16 CA 232, 238.

Subsec. (b):

Cited. 39 CS 1, 5.

Subsec. (c):

Cited. 201 C. 685, 693.

Cited. 39 CS 1, 5.

Subsec. (d):

Cited. 239 C. 168.

Cited. 8 CA 57, 60.

Sec. 7-469. Duty to bargain collectively. The municipal employer and such employee organization as has been designated as exclusive representative of employees in an appropriate unit, through appropriate officials or their representatives, shall have the duty to bargain collectively. This duty extends to the obligation to bargain collectively as set forth in subsection (c) of section 7-470.

(February, 1965, P.A. 159, S. 3.)

Cited. 162 C. 579. Collective bargaining is a constitutional right. 164 C. 348. Cited. 171 C. 347. Cited. Id., 553, 559, 564. Cited. 175 C. 349, 351, 353, 358, 362. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. Id., 623, 626. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 588. Cited. Id., 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562. Cited. Id., 597, 601. Municipal Employees Relations Act (MERA) cited. 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Cited. 224 C. 666, 667. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited.

225 C. 297−303, 305. Cited. 232 C. 57, 59, 60, 63. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Cited. 43 CS 340, 342, 355. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. Id., 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-470. Prohibited acts of employers and employee organizations. (a) Municipal employers or their representatives or agents are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in section 7- 468; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under sections 7-467 to 7-477, inclusive; (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit; (5) refusing to discuss grievances with the representatives of an employee organization designated as the exclusive representative in an appropriate unit in accordance with the provisions of said sections; (6) refusing to comply with a grievance settlement, or arbitration settlement, or a valid award or decision of an arbitration panel or arbitrator rendered in accordance with the provisions of section 7-472.

(b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing (A) employees in the exercise of the rights guaranteed in subsection (a) of section 7-468, and (B) a municipal employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (2) refusing to bargain collectively in good faith with a municipal employer, if it has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit; (3) breaching their duty of fair representation pursuant to section 7-468; (4) refusing to comply with a grievance settlement, or arbitration settlement, or a valid award or decision of an arbitration panel or arbitrator rendered in accordance with the provisions of section 7-472.

(c) For the purposes of said sections, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

(February, 1965, P.A. 159, S. 4; P.A. 75-189, S. 1, 2; P.A. 93-426, S. 5.)

History: P.A. 75-189 amended Subsecs. (a) and (b) to prohibit refusing to comply terms of settlements, awards and decisions; P.A. 93-426 inserted new Subdiv. (3) in Subsec. (b) to prohibit an employee organization

which represents municipal employees from breaching its duty of fair representation to its members and redesignated existing Subdiv. (3) as (4).

Cited. 154 C. 530, 535. Plaintiff union's appeal from defendant labor relations board properly dismissed by superior court where there was no evidence that municipality engaged in unfair labor practices claimed in union's complaint. 159 C. 46. Cited. 160 C. 285, 293. Cited. 171 C. 345. Cited. Id., 347, 564. Cited. 175 C. 349, 351, 353, 358, 362, 366, 369. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301, 302. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act

(MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237. Cited. 33 CA 541, 545.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. The clause in a contract between a municipality and its firemen which gives the firemen parity with police is a restraint upon and interference with the police union's ability to negotiate with the municipality. 31 CS 15, 22. Residency requirement for municipal employees was condition of employment and therefore a mandatory subject of collective bargaining, and employer's unilateral change of such condition of employment was prohibited act. Failure of union to demand bargaining prior to enactment of ordinance did not constitute a waiver of its right to bargain. 36 CS 18−33. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Subsec. (a):

(1) Labor board cannot compel either party, directly or indirectly, to agree to any contractual position but it can require that employees bargain in good faith. 160 C. 285, 293. Cited. 171 C. 349. (4) See 160 C. 285, 293, above. (4) Cited. 171 C. 349, 352. (4) Unilateral change of pension benefits by employer did not constitute refusal to bargain where union had notice of change and opportunity to negotiate the issue. 173 C. 210, 214. Cited. Id., 210, 211, 214. (1) Cited. 175 C. 349, 369. (6) Cited. 206 C. 449, 451. (4) Cited. 210 C. 597, 601. Subdiv. (1) cited. 217 C. 110, 127. Subdiv. (4) cited. 232 C. 57, 59, 60.

Cited. 8 CA 57, 58, 60. (1) Cited. Id., 57, 59. (3) Cited. Id. Subdiv. (6) cited. 33 CA 541, 544, 546.

(4) Cited. 39 CS 338, 342. Subdiv. (4) cited. 42 CS 227, 230, 232, 234, 237, 238, 240. Subdiv. (4) cited. 43 CS 340, 342, 343.

Subsec. (b):

(1)(A) Cited. 171 C. 349.

(2) Cited. 40 CS 365, 373. (3) Cited. Id.

Subsec. (c):

Collective bargaining must be taken at reasonable time relative to town's budget-making process. 160 C. 285, 293. Cited. 162 C. 579. Cited. 171 C. 352, 353. Cited. Id., 553. "Conditions of employment" includes whether

person shall continue in employment. 171 C. 553, 559, 560. Cited. 201 C. 577, 589. Cited. 210 C. 597, 601. Cited. 212 C. 294, 301. Cited. 216 C. 253, 261. Cited. 221 C. 244, 251. Cited. 224 C. 666, 667. Cited. 232 C. 57, 63.

Cited. 36 CS 18, 24, 28. Cited. 43 CS 340, 355.

Sec. 7-471. Powers of State Board of Labor Relations. The State Board of Labor Relations shall have the following power and authority in relation to collective bargaining in municipal employment:

(1) Whenever, in accordance with such regulations as may be prescribed by the board, a petition has been filed (A) by an employee or group of employees or any employee organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining by an employee organization as exclusive representative, or (ii) assert that the employee organization which has been certified or is currently being recognized by their municipal employer as the bargaining representative is no longer the representative of a majority of employees in the unit; (B) by a municipal employer alleging that one or more employee organizations have presented to him a claim to be recognized as the representative of a majority of employees in an appropriate unit; or (C) by either an employee organization or a municipal employer in accordance with subdivision (4) of this section, the board shall refer the petition to its agent who shall investigate the petition and issue a direction of election and conduct a secret ballot election to determine whether and by which employee organization the employees desire to be represented if he has reasonable cause to believe that a question of representation exists, or issue a recommendation to dismiss the petition if he finds that there is not such reasonable cause, or refer the petition to the board for a hearing without having conducted an election or issuing a recommendation of dismissal, in which event the board shall conduct an appropriate hearing upon due notice. The agent shall report his action to the board. The board shall issue an order confirming the agent's direction of election and certifying the results of the election, or issue an order confirming the agent's recommendation for dismissal, or order a further investigation, or provide for an appropriate hearing upon due notice. Before taking any of the aforesaid actions, the board shall provide the parties with an opportunity to file briefs on the questions at issue and shall fully consider any such briefs filed. After a hearing, the board shall order any of the aforesaid actions on the petition or shall, upon good cause, order any other suitable method to determine whether and by which employee organization the employees desire to be represented. The board shall certify the results. No election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve-month period a valid election has been held. No election shall be directed by the board during the term of a written collective bargaining agreement, except for good cause. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. An employee organization which receives a majority of votes cast in an election confirmed or ordered by the board shall be designated by the board as exclusive representative of the employees in the unit.

(2) The board shall have the power to determine whether a position is covered by sections 7-467 to 7-477, inclusive, in the event of a dispute between the municipal employer and an employee organization. In determining whether a position is supervisory the board shall consider, among other criteria, whether the principal functions of the position are characterized by not fewer than two of the following: (A) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (B) performing such duties as are distinct and dissimilar from those performed by the employees

supervised; (C) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (D) establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. The above criteria for supervisory positions shall not necessarily apply to police or fire departments.

(3) The board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by sections 7-467 to 7-477, inclusive, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof, provided no unit shall include both supervisory and nonsupervisory employees except there shall be a single unit for each fire department consisting of the uniformed and investigatory employees of each such fire department and a single unit for each police department consisting of the uniformed and investigatory employees of each such police department. No existing units shall be altered or modified to conform to this provision. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, provided employees who are members of a profession may be included in a unit which includes nonprofessional employees if an employee organization has been designated by the board or has been recognized by the municipal employer as the exclusive representative of such unit and a majority of the employees in such profession vote for inclusion in such unit, in which event all of the employees in such profession shall be included in such unit. The term "professional employee" means: (A) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (B) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of subparagraph (A) and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subparagraph (A) hereof.

(4) An employee organization or a municipal employer may file a petition with the board seeking a clarification or modification of an existing unit. The power of the board to make such clarifications and modifications shall be limited to those times when a petition for clarification or modification is filed by either an employee organization or a municipal employer. No petition seeking a clarification or modification of an existing unit shall be considered to be timely by the board during the term of a written collective bargaining agreement, except that a petition for clarification or modification filed by an employee organization concerning either (1) a newly created position or (2) any employee who is not represented by an employee organization, may be filed at any time.

(5) Whenever a question arises as to whether a practice prohibited by sections 7- 467 to 7-477, inclusive, has been committed by a municipal employer or employee organization, the board shall consider that question in accordance with the following procedure: (A) When a complaint has been made to the board that a

prohibited practice has been or is being committed, the board shall refer such complaint to its agent. Upon receiving a report from the agent, the board may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. When a hearing is ordered, the board shall set the time and place for the hearing, which time and place may be changed by the board at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the board. The municipal employer, the employee organization and the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the board may limit. Such municipal employer, such employee organization and such person shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of the board any person may be allowed to intervene in such proceeding. In any hearing the board shall not be bound by the technical rules of evidence prevailing in the courts. A transcript of the testimony taken at any hearing before the board shall be filed with the board. (B) If, upon all the testimony, the board determines that a prohibited practice has been or is being committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of sections 7-467 to 7-477, inclusive, including but not limited to: (i) Withdrawal of certification of an employee organization established or assisted by any action defined in said sections as a prohibited practice, (ii) reinstatement of an employee discriminated against in violation of said sections with or without back pay, or (iii) if either party is found to have refused to bargain collectively in good faith, ordering arbitration and directing the party found to have refused to bargain to pay the full costs of arbitration under section 7-473c, resulting from the negotiations in which the refusal to bargain occurred. (C) If, upon all of the testimony, the board determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint. (D) For the purposes of hearings and enforcement of orders under sections 7-467 to 7-477, inclusive, the board shall have the same power and authority as it has in sections 31-107, 31-108 and 31-109, and the municipal employer and the employee organization shall have the right of appeal as provided therein. (E) If, by the thirtieth day following the date on which a complaint citing a violation of section 7-470 was made to the board, said board has not determined whether a prohibited practice has been or is being committed and if the violation is of an ongoing nature, said board may issue and cause to be served on the party committing the act or practice cited in such complaint an order requiring such party to cease and desist from such act or practice until said board has made its determination.

(February, 1965, P.A. 159, S. 5; 1967, P.A. 491, S. 3, 4; P.A. 78-375, S. 2; P.A. 79-313; P.A. 81-29, S. 3; P.A. 91-255, S. 2; P.A. 92-170, S. 16, 26.)

History: 1967 act amended Subdiv. (2) to require that at least two of the criteria enumerating characteristics of supervisory positions apply in determining exclusion from coverage and amended Subdiv. (3) to clarify that "single unit" refers to fire department and police department units rather than to uniformed and investigatory units within each and to set forth conditions in which professional and nonprofessional employees may be in same unit; P.A. 78-375 deleted reference to "supervisory" positions in Subdiv. (2) and amended Subdiv. (3) to prohibit units from including both supervisory and nonsupervisory employees except in police and fire departments and to exempt existing units from conformity with provision re supervisory and nonsupervisory employees; P.A. 79-313 added Subpara. (E) under Subdiv. (4) re cease and desist orders; P.A. 81-29 transferred certain powers of board to its agent re petitions concerning the election of representatives but rested final

action with the board; P.A. 91-255 added Subpara. (C) re petitions filed by employee organizations or municipal employers to Subdiv. (1), added new Subdiv. (4) re petitions seeking clarification or modification of existing units and redesignated existing Subdiv. (4) as Subdiv. (5); P.A. 92-170 amended Subdiv. (5) to replace references to fact finding with arbitration, effective May 26, 1992, and applicable to arbitration proceedings commencing on or after that date.

There is no direct appeal from decision of board determining a bargaining unit and directing an election. National Labor Relations Act compared. 154 C. 530. Appeals to supreme court under this section shall be taken and prosecuted in same manner as other appeals to supreme court. 159 C. 46. Cited. 171 C. 347, 351. Cited. 171 C. 553, 564. Cited. 175 C. 349, 351, 353, 358−361.

One employee does not constitute an appropriate bargaining unit for purposes of the Municipal Employees Relations Act. 175 C. 349, 355, 359. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Cited. 232 C. 57, 60. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237. It is within board's discretion to award costs and expenses to the employer. 49 CA 513.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Cited. 31 CS 15, 21, 22. Cited. 31 CS 212. Cited. 36 CS 18, 22. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. cited. 42 CS 227−229, 235. Cited. 43 CS 340, 345. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. Id., 470, 473, 481, 482, 487, 496−501, 504.

Subdiv. (1):

Section 1-1(f) is directory not mandatory, does not "require" singular and plural forms to be interchangeable and therefore where statute sets forth "a substantial number of employees" "employees" cannot be construed as singular. 175 C. 349, 360, 361.

One year rule does not apply to designations by employer recognition agreements. Union's status must be recognized for a reasonable period. 39 CS 338, 339, 341, 343−345.

Subdiv. (2):

Cited. 200 C. 38, 42. Cited. 225 C. 297, 300.

Subdiv. (3):

Cited. 171 C. 351. There can be no community of interest where there is only a single employee. 175 C. 349, 358, 359.

Subdiv. (4):

Cited. 159 C. 46. Cited. 171 C. 344, 355. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 200 C. 38, 42. Subpara. (B) cited. 210 C. 597, 608. Cited. 232 C. 57, 59, 63.

Cited. 33 CA 541, 543.

Cited. 39 CS 338, 342. Cited. 40 CS 365, 373. Subpara. (E) cited. 42 CS 227, 230, 238.

Subdiv. (5):
Cited. 232 C. 57, 60, 63.
Subpara. (D) cited. 43 CS 340, 345. Cited. Id., 340, 345, 351.

Sec. 7-471a. Supervisory employees not required to form employees association. Nothing in sections 7-467 and 7-471 shall require any employees in a supervisory position to form an employees association.

(P.A. 78-375, S. 3.)

Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421–426. Cited. Id., 421, 422. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250–252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297–303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131–133.
Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.
Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496–501, 504.

Sec. 7-472. Mediation by State Board of Mediation and Arbitration. (a) The services of the State Board of Mediation and Arbitration shall be available to municipal employers and employee organizations for purposes of mediation of grievances or impasses in contract or contract reopener negotiations and for purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement and, if such service is requested by both the municipal employer and the employee organization except as provided in section 7-473c for purposes of arbitration of impasses in contract or contract reopener negotiations. Whenever any impasse in contract or contract reopener negotiations is submitted to arbitration, the decision of the arbitration panel or arbitrator shall be rendered no later than twenty days prior to the final date by which time the budget-appropriating authority of the municipality is required to adopt its budget or forty days after the close of the arbitration hearing, whichever is later, provided that in no case except when such arbitration service is requested or mandated after the final budget adoption date shall such decision be rendered later than five days prior to such final budget adoption date. Nothing contained herein shall prevent any agreement from being entered into in accordance with the provisions of subsection (e) of section 7-474.

(b) Nothing in this section is intended to prevent the use of other arbitration tribunals in the resolution of disputes over the interpretation or application of the terms of written agreements between municipal employers and employee organizations.

(February, 1965, P.A. 159, S. 6; 1967, P.A. 491, S. 5; P.A. 75-570, S. 5; P.A. 82-37, S. 1; P.A. 93-17, S. 5, 6.)

History: 1967 act substituted "impasses in contract negotiations" for "contract disputes" in mediation provision and empowered board to arbitrate such impasses upon request of both parties, setting forth the

arbitration procedure with time constraints on decision, etc., in Subsec. (a); P.A. 75-570 added exception to provision allowing arbitration of contract impasses, changed requirement that decision be rendered no later than ten days after hearing to forty days and added exception to final deadline of five days before budget adoption date for cases in which arbitration not instituted until after final deadline; P.A. 82-37 applied provisions of Subsec. (a) to "contract reopener" negotiations; P.A. 93-17 amended Subsec. (a) to delete obsolete reference to Subsecs. (h) to (k), inclusive, of Sec. 7-474, effective April 21, 1993.

Cited. 159 C. 49. Cited. 171 C. 347. Cited. Id., 353. Cited. Id., 553, 564. State board of mediation and arbitration may not arbitrate grievances except as they apply to disputes over interpretation or application of terms of a written agreement, or, by agreement, in cases of impasse in contract negotiations. 171 C. 613, 617−620. Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Cited. 217 C. 110, 118. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237. Cited. 33 CA 541, 542.
A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-473. Petition to State Board of Mediation and Arbitration for fact finding. Fact finder's report and appearance before parties. Procedure for acceptance or rejection of report. Section 7-473 is repealed.

(February, 1965, P.A. 159, S. 7; P.A. 75-173, S. 1; 75-570, S. 3; P.A. 82-37, S. 2; P.A. 83-86; P.A. 92-170, S. 24, 26.)

Sec. 7-473a. Notice of expiration date of collective bargaining agreement. Notice of newly certified or recognized municipal employee organization. Filing; form. A notice of the expiration date of any collective bargaining agreement between a municipal employer and a municipal employee organization shall be filed by such employer with the State Board of Mediation and Arbitration within thirty days of the approval of such agreement. The State Board of Labor Relations shall notify the State Board of Mediation and Arbitration whenever a municipal employee organization has been certified or recognized, in accordance with section 7-471, as the bargaining representative for a group of municipal employees. When a bargaining representative is recognized in accordance with subsection (b) of section 7-468, either the newly certified or recognized employee organization or the municipal employer shall notify the State Board of Mediation and Arbitration of such recognition. The newly certified or recognized municipal employee organization and the municipal employer shall commence negotiations concerning the terms of an original collective bargaining agreement

within thirty days of certification or recognition. The State Board of Mediation and Arbitration shall prescribe the form and content of the notice of the expiration date and the notice of the certification or recognition date.

(P.A. 75-570, S. 1; P.A. 93-17, S. 1, 6.)

History: P.A. 93-17 added provisions re notice of newly certified and recognized municipal employee organizations and provisions requiring such organizations to begin negotiations concerning original collective bargaining agreements no later than thirty days after certification or recognition, effective April 21, 1993.

Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421–426. Cited. Id., 421, 422. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250–252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297–303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131–133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496–501, 504.

Sec. 7-473b. Mandatory timetable for negotiations. Appointment of mediator. (a) The negotiations between a municipal employer and a municipal employee organization shall commence at least one hundred twenty days prior to the expiration date of any current collective bargaining agreement subject to the provisions of sections 7-467 to 7-477, inclusive.

(b) If, within fifty days of the commencement of negotiations concerning the terms of a current collective bargaining agreement, or within eighty days of the certification or recognition of a newly certified or recognized municipal employee organization required to commence negotiations pursuant to section 7-473a, a collective bargaining agreement has not been approved, or either the municipal employer or the municipal employee organization has not requested the mediation services of the State Board of Mediation and Arbitration, said board shall appoint a mediator in accordance with the provisions of section 31-97.

(c) Either the municipal employer or the employee organization may request the mediation services of said board at any earlier time than that established in subsection (b) of this section, provided the mediation services are requested in accordance with the provisions of section 7-472.

(P.A. 75-570, S. 2; P.A. 84-242, S. 1; P.A. 92-170, S. 17, 26; P.A. 93-17, S. 2, 6.)

History: P.A. 84-242 amended Subsec. (c) to provide that the parties may jointly waive the fact finding requirement and thereafter be subject to mandatory binding arbitration; P.A. 92-170 deleted former Subsecs. (c) and (d) re timetables and procedures for fact-finding, relettering former Subsec. (e) accordingly and removing all references to fact-finding, effective May 26, 1992, and applicable to arbitration proceedings commencing after

that date; P.A. 93-17 amended Subsec. (b) to require state board of mediation and arbitration to impose mediation on a newly certified or recognized municipal employee organization and a municipal employer if the parties fail to approve an original collective bargaining agreement within eighty days of the organization's certification or recognition, effective April 21, 1993.

Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. Id., 623, 626. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. Id., 685, 693. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Subsec. (d):

Cited. 215 C. 277, 282.

Sec. 7-473c. Neutral Arbitrator Selection Committee. Panel of neutral arbitrators. Mandatory binding arbitration; procedure; apportionment of costs. Rejection of award by legislative body of the municipal employer. Second arbitration format.

(a) The Labor Commissioner shall appoint a Neutral Arbitrator Selection Committee consisting of ten members, five of whom shall represent the interests of employees and employee organizations and five of whom shall represent the interests of municipal employers, provided one of the members representing the interests of municipal employers shall be a representative of the Connecticut Conference of Municipalities. The members of the selection committee shall serve for a term of four years. Arbitrators may be removed for good cause. The selection committee shall appoint a panel of neutral arbitrators consisting of not less than twenty impartial persons representing the interests of the public in general to serve as provided in this section. Each member of the panel shall be a resident of the state and shall be selected by a unanimous vote of the selection committee. The members of the panel shall serve for a term of two years.

(b) (1) If neither the municipal employer nor the municipal employee organization has requested the arbitration services of the State Board of Mediation and Arbitration (A) within one hundred eighty days after the certification or recognition of a newly certified or recognized municipal employee organization required to commence negotiations pursuant to section 7-473a, or (B) within thirty days after the expiration of the current collective bargaining agreement, or within thirty days after the specified date for implementation of reopener

provisions in an existing collective bargaining agreement, or within thirty days after the date the parties to an existing collective bargaining agreement commence negotiations to revise said agreement on any matter affecting wages, hours, and other conditions of employment, said board shall notify the municipal employer and municipal employee organization that one hundred eighty days have passed since the certification or recognition of the newly certified or recognized municipal employee organization, or that thirty days have passed since the specified date for implementation of reopener provisions in an existing agreement, or the date the parties commenced negotiations to revise an existing agreement on any matter affecting wages, hours and other conditions of employment or the expiration of such collective bargaining agreement and that binding and final arbitration is now imposed on them, provided written notification of such imposition shall be sent by registered mail or certified mail, return receipt requested, to each party.

(2) Within ten days of receipt of the written notification required pursuant to subdivision (1) of this subsection, the chief executive officer of the municipal employer and the executive head of the municipal employee organization each shall select one member of the arbitration panel. Within five days of their appointment, the two members of the arbitration panel shall select a third member, who shall be an impartial representative of the interests of the public in general and who shall be selected from the panel of neutral arbitrators appointed pursuant to subsection (a) of this section. Such third member shall be the chairperson of the panel.

(3) In the event that the municipal employer or the municipal employee organization have not selected their respective members of the arbitration panel or the two members of the panel have not selected the third member, the State Board of Mediation and Arbitration shall appoint such members as are needed to complete the panel, provided (A) the member or members so appointed are residents of this state, and (B) the selection of the third member of the panel by the State Board of Mediation and Arbitration shall be made at random from among the members of the panel of neutral arbitrators appointed pursuant to subsection (a) of this section.

(c) Within ten days of appointment of the chairperson, the arbitration panel shall, by call of its chairperson, hold a hearing within the municipality involved. At least five days prior to such hearing, a written notice of the time and place of such hearing shall be sent to the municipal employer, the municipal employee organization and the other members of the panel. The chairperson of the panel shall preside over such hearing. Any member of the panel shall have the power to take testimony, to administer oaths and to summon, by subpoena, any person whose testimony may be pertinent to the matters before said panel, together with any records or other documents relating to such matters. In the case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the panel, shall have jurisdiction to order such person to appear before the panel to produce evidence or to give testimony touching the matter under investigation or in question, and any failure to obey such order may be punished by said court as a contempt thereof.

(d) (1) The hearing may, at the discretion of the panel, be continued and shall be concluded within twenty days after its commencement. Not less than two days prior to the commencement of the hearing, each party shall file with the chairperson of the panel, and deliver to the other party, a proposed collective bargaining agreement, in numbered paragraphs, which such party is willing to execute and cost data for all provisions of such proposed agreement. At the commencement of the hearing each party shall file with the panel a reply setting forth (A) those paragraphs of the proposed agreement of the other party which it is willing to accept, and (B) those

paragraphs of the proposed agreement of the other party which it is unwilling to accept, together with any alternative contract language which such party would accept in lieu of those paragraphs of the proposed agreement of the other party which it is unwilling to accept. At any time prior to the issuance of a decision by the panel, the parties may jointly file with the panel stipulations setting forth the agreement provisions which both parties have agreed to accept.

(2) Within five days after the conclusion of the taking of testimony, the panel shall forward to each party an arbitration statement, approved by a majority vote of the panel, setting forth all agreement provisions agreed upon by both parties in the proposed agreements and the replies, and in the stipulations, and stating, in numbered paragraphs, those issues which are unresolved.

(3) Within ten days after the conclusion of the taking of testimony, the parties shall file with the secretary of the State Board of Mediation and Arbitration five copies of their statements of last best offer setting forth, in numbered paragraphs corresponding to the statement of unresolved issues contained in the arbitration statement, the final agreement provisions proposed by such party. Immediately upon receipt of both statement of last best offer or upon the expiration of the time for filing such statements of last best offer, whichever is sooner, said secretary shall distribute a copy of each such statement of last best offer to the opposing party.

(4) Within seven days after the distribution of the statements of last best offer or within seven days of the expiration of the time for filing the statements of last best offer, whichever is sooner, the parties may file with the secretary of the State Board of Mediation and Arbitration five copies of their briefs on the unresolved issues. Immediately upon receipt of both briefs or upon the expiration of the time for filing such briefs, whichever is sooner, said secretary shall distribute a copy of each such brief to the opposing party.

(5) Within five days after the distribution of the briefs on the unresolved issues or within five days after the last day for filing such briefs, whichever is sooner, each party may file with said secretary five copies of a reply brief, responding to the briefs on the unresolved issues. Immediately upon receipt of the reply briefs or upon the expiration of the time for filing such reply briefs, whichever is sooner, said secretary shall simultaneously distribute a copy of each such reply brief to the opposing party.

(6) Within twenty days after the last day for filing such reply briefs, the panel shall issue, upon majority vote, and file with the State Board of Mediation and Arbitration its decision on all unresolved issues set forth in the arbitration statement, and said secretary shall immediately and simultaneously distribute a copy thereof to each party. The panel shall treat each unresolved issue set forth in the arbitration statement as a separate question to be decided by it. In deciding each such question, the panel agreement shall accept the final provision relating to such unresolved issue as contained in the statement of last best offer of one party or the other. As part of the arbitration decision, each member shall state the specific reasons and standards used in making a choice on each unresolved issue.

(7) The parties may jointly file with the panel stipulations modifying, deferring or waiving any or all provisions of this subsection.

(8) If the day for filing any document required or permitted to be filed under this subsection falls on a day which is not a business day of the State Board of Mediation and Arbitration then the time for such filing shall be extended to the next business day of such board.

(9) In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of other demands on the financial capability of the municipal employer. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; (B) the interests and welfare of the employee group; (C) changes in the cost of living; (D) the existing conditions of employment of the employee group and those of similar groups; and (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits.

(10) The decision of the panel and the resolved issues shall be final and binding upon the municipal employer and the municipal employee organization except as provided in subdivision (12) of this subsection and, if such award is not rejected by the legislative body pursuant to said subdivision, except that a motion to vacate or modify such decision may be made in accordance with sections 52-418 and 52-419.

(11) In regard to all proceedings undertaken pursuant to this subsection the secretary of the State Board of Mediation and Arbitration shall serve as staff to the arbitration panel.

(12) Within twenty-five days of the receipt of an arbitration award issued pursuant to this section, the legislative body of the municipal employer may reject the award of the arbitrators or single arbitrator by a two-thirds majority vote of the members of such legislative body present at a regular or special meeting called and convened for such purpose.

(13) Within ten days after such rejection, the legislative body or its authorized representative shall be required to state, in writing, the reasons for such vote and shall submit such written statement to the State Board of Mediation and Arbitration and the municipal employee organization. Within ten days after receipt of such notice, the municipal employee organization shall prepare a written response to such rejection and shall submit it to the legislative body and the State Board of Mediation and Arbitration.

(14) Within ten days after receipt of such rejection notice, the State Board of Mediation and Arbitration shall select a review panel of three arbitrators or, if the parties agree, a single arbitrator who are residents of Connecticut and labor relations arbitrators approved by the American Arbitration Association and not members of the panel who issued the rejected award. Such arbitrators or single arbitrator shall review the decision on each such rejected issue. The review conducted pursuant to this subdivision shall be limited to the record and briefs of the hearing pursuant to subsection (c) of this section, the written explanation of the reasons for the vote and a written response by either party. In conducting such review, the arbitrators or single arbitrator shall be limited to consideration of the criteria set forth in subdivision (9) of this subsection. Such review shall be completed within twenty days of the appointment of the arbitrators or single arbitrator. The arbitrators or single arbitrator shall accept the last best offer of either of the parties.

(15) Within five days after the completion of such review the arbitrators or single arbitrator shall render a decision with respect to each rejected issue which shall be final and binding upon the municipal employer and

the employee organization except that a motion to vacate or modify such award may be made in accordance with sections 52- 418 and 52-419. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

(e) The cost of the arbitration panel shall be distributed among the parties in the following manner: (1) The municipal employer shall pay the costs of the arbitrator appointed by it, (2) the municipal employee organization shall pay the costs of the arbitrator appointed by it, (3) the municipal employer and the municipal employee organization shall equally divide and pay the cost of the chairperson, and (4) the costs of any arbitrator appointed by the State Board of Mediation and Arbitration shall be paid by the party in whose absence the board appointed.

(f) A municipal employer and a municipal employee organization may, at any time, file with the State Board of Mediation and Arbitration a joint stipulation modifying, deferring or waiving any or all of the provisions of this section, or modifying, deferring or waiving any or all of the provisions of a previously filed stipulation, and any such stipulation shall be controlling over the provisions of this section or of any previously filed stipulation.

(g) No party may submit for binding arbitration pursuant to this section any issue or proposal which was not presented during the negotiation process, unless the submittal of such additional issue or proposal is agreed to by the parties.

(P.A. 75-570, S. 7; P.A. 77-117; P.A. 82-37, S. 3; P.A. 84-242, S. 2; P.A. 85-18, S. 1; 85-31, S. 1; P.A. 87-11; 87-100, S. 1; P.A. 92-84, S. 1, 7; 92-170, S. 18, 26; May Sp. Sess. P.A. 92-11, S. 53, 70; P.A. 93-17, S. 3, 6; P.A. 99-270, S. 1.)

Sec. 7-474. Negotiations and agreements between municipality and employee representatives. Federal approval. Elective binding arbitration; procedure; apportionment of costs. (a) Except as hereinafter provided, when an employee organization has been designated, in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, the chief executive officer, whether elected or appointed, or his designated representative or representatives, shall represent the municipal employer in collective bargaining with such employee organization.

(b) Any agreement reached by the negotiators shall be reduced to writing. Except where the legislative body is the town meeting, a request for funds necessary to implement such written agreement and for approval of any provisions of the agreement which are in conflict with any charter, special act, ordinance, rule or regulation adopted by the municipal employer or its agents, such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen or any general statute providing

for the method or manner of covering or removing employees from coverage under the Connecticut municipal employees' retirement system or under the Policemen and Firemen Survivors' Benefit Fund shall be submitted by the bargaining representative of the municipality within fourteen days of the date on which such agreement is reached to the legislative body which may approve or reject such request as a whole by a majority vote of those present and voting on the matter; but, if rejected, the matter shall be returned to the parties for further bargaining. Failure by the bargaining representative of the municipality to submit such request to the legislative body within such fourteen-day period shall be considered to be a prohibited practice committed by the municipal employer. Such request shall be considered approved if the legislative body fails to vote to approve or reject such request within thirty days of the end of the fourteen-day period for submission to said body. Where the legislative body is the town meeting, approval of the agreement by a majority of the selectmen shall make the agreement valid and binding upon the town and the board of finance shall appropriate or provide whatever funds are necessary to comply with such collective bargaining agreement.

(c) Notwithstanding any provision of any general statute, charter, special act or ordinance to the contrary, the budget-appropriating authority of any municipal employer shall appropriate whatever funds are required to comply with a collective bargaining agreement, provided the request called for in subsection (b) of this section has been approved by the legislative body of such municipal employer, or with a collective bargaining agreement approved as the result of an arbitration decision rendered in an impasse of contract negotiations under section 7-472, or rendered in accordance with the provisions of section 7-473c.

(d) If the municipal employer is a district, school board, housing authority or other authority established by law, or is a private nonprofit corporation which has a valid contract with any town, city, borough or district to extinguish fires and to protect its inhabitants from loss by fire, which by statute, charter, special act or ordinance has sole and exclusive control over the appointment of and the wages, hours and conditions of employment of its employees, such district, school board, housing authority, other authority or corporation, or its designated representatives, shall represent such municipal employer in collective bargaining and shall have the authority to enter into collective bargaining agreements with the employee organization which is the exclusive representative of such employees, and such agreements shall be binding on the parties thereto, provided, where any provisions of any such agreement require federal approval, such provisions shall be binding upon receipt of such approval, and no such agreement or any part thereof shall require approval of the legislative body of the municipality.

(e) No provision of any general statute, charter, special act or ordinance shall prevent negotiations between a municipal employer and an employee organization, which has been designated or recognized as the exclusive representative of employees in an appropriate unit, from continuing after the final date for making or setting the budget of such municipal employer. An agreement between a municipal employer and an employee organization shall be valid and in force under its terms when entered into in accordance with the provisions of sections 7-467 to 7-477, inclusive, and signed by the chief executive officer or administrator as a ministerial act. Such terms may make any such agreement effective on a date prior to the date on which such agreement is entered. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between the municipal employer and an employee organization provided by said sections shall be the exclusive method for making a valid agreement for municipal employees represented by an employee

organization, and any provisions in any general statute, charter or special act to the contrary shall not apply to such an agreement.

(f) Where there is a conflict between any agreement reached by a municipal employer and an employee organization and approved in accordance with the provisions of sections 7-467 to 7-477, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any charter, special act, ordinance, rules or regulations adopted by the municipal employer or its agents such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen, or any general statute providing for the method or manner of covering or removing employees from coverage under the Connecticut municipal employees' retirement system or under the Policemen and Firemen Survivors' Benefit Fund, the terms of such agreement shall prevail; provided, if participation of any employees in said system or said fund is effected by such agreement, the effective date of participation in said system or said fund, notwithstanding any contrary provision in such agreement, shall be the first day of the third month following the month in which a certified copy of such agreement is received by the Retirement Commission, or such later date as may be specified in the agreement.

(g) Nothing herein shall diminish the authority and power of any municipal civil service commission, personnel board, personnel agency or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the initial appointments from such lists and any provision of any municipal charter concerning political activity of municipal employees shall not be subject to collective bargaining, provided once the procedures for the promotional process have been established by the municipality, any changes to the process proposed by the municipality concerning the following issues shall be subject to collective bargaining: (1) The necessary qualifications for taking a promotional examination; (2) the relative weight to be attached to each method of examination; and (3) the use and determination of monitors for written, oral and performance examinations. In no event shall the content of any promotional examination be subject to collective bargaining.

(February, 1965, P.A. 159, S. 8; 1967, P.A. 491, S. 6−10; 708; 1969, P.A. 174; 1971, P.A. 532, S. 1, 2; P.A. 75-35; 75- 173, S. 2; 75-570, S. 4, 6; P.A. 82-212, S. 1; P.A. 85-18, S. 2; 85-31, S. 2; P.A. 87-100, S. 2; P.A. 90-47, S. 2; P.A. 92- 170, S. 19, 20, 26.)

History: 1967 acts amended Subsec. (b) by adding provision re conflict between agreement and any general statute concerning covering or removing coverage under municipal employees retirement system, by requiring submission of request for funds or approval of conflicting provisions be made within fourteen days of reaching agreement and by establishing failure to make submission within specified time as prohibited practice and setting forth terms re approval or rejection, amended Subsec. (d) by declaring binding nature of agreements made by districts, school boards, etc., amended Subsec. (e) by allowing bargaining to continue after budget deadline and by allowing retroactive effective dates for terms of agreement and amended Subsec. (f) to include conflicts with statutes concerning municipal employees retirement system and further amended Subsec. (b) to provide for cases where legislative body is town meeting; 1969 act amended Subsec. (f) to clarify effective date

of provisions in agreements which affect participation of employees in municipal employees' retirement system; 1971 act amended Subsecs. (b) and (f) by adding provision re conflict between agreement and coverage or noncoverage under policemen and firemen survivors' benefit fund; P.A. 75-35 added to Subsec. (d) provision re agreement terms which require federal approval; P.A. 75-173 and 75-570 amended Subsec. (c) to include agreements approved as result of arbitration decision or as result of failure to reject fact finder's report; P.A. 75-570 also added Subsecs. (h) to (k) re arbitration proceedings after rejection of fact finder's report; P.A. 82-212 added proviso in Subsec. (g) specifying types of proposed changes to promotional process which shall be subject to collective bargaining and declared "initial" appointments and content of promotional examinations to be not subject to collective bargaining; P.A. 85-18 amended Subdiv. (2) of Subsec. (j) to establish a more specific and extensive list of factors to be considered by the arbitration panel, including prior negotiations, public interest, employee interests, cost of living changes, existing conditions of employment of the employee group and prevailing conditions in the labor market; P.A. 85-31 amended Subsec. (j) to require each panel member to state the reasons and standards used in making his arbitration decision; P.A. 87-100 added Subsec. (l) which limited the presentation of new issues to binding arbitration; P.A. 90-47 amended Subsec. (d) to include nonprofit fire-fighting corporations as representatives for collective bargaining; P.A. 92-170 amended Subsec. (c) to remove references to fact-finding and removed Subsecs. (h) to (l), inclusive, concerning fact-finding, effective May 26, 1992, and applicable to arbitration proceedings commencing on or after that date, and obsolete reference in Subsec. (c) to "or subsections (h) to (k), inclusive, of this section" was deleted editorially.

Cited. 171 C. 347. Cited. Id., 553, 562, 564. Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. Id., 685, 693. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Cited. 217 C. 490, 492. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Cited. 234 C. 123−125, 131−134. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. Id.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

Cited. 28 CS 267, 268. Subsections (f) and (g) not in conflict, since merit examination appointments not subject to collective bargaining agreements. 30 CS 259. A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Subsections (f) and (g) provide that the provisions of a municipal charter concerning political activity shall override the substantive and procedural provisions of any collective bargaining agreement on that subject. 35 CS 645, 651, 652. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235−237. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Subsec. (b):

Cited. 205 C. 116, 119. Cited. 234 C. 123, 133, 134, 137. Cited. 239 C. 32.
Cited. 3 CA 1, 6.

Subsec. (d):

Cited. 182 C. 93, 94, 106, 109, 110. Right of a board under statute to act as exclusive negotiator in bargaining collectively with its employees is not impaired by subsequent subsections of Sec. 7-474. Id., 93, 110. Cited. 200 C. 38, 41. Cited. 205 C. 116, 119. Cited. 221 C. 244, 251.

Subsec. (e):

Cited. 234 C. 51, 65.

Subsec. (f):

Cited. 182 C. 93, 106, 108−110. Subsection determines the effect of a validly negotiated agreement and does not purport to prescribe the conditions of valid negotiation. Id., 93, 110. Cited. 185 C. 88, 96. Cited. 206 C. 563, 646.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237, 238.

Cited. 31 CS 125. Cited 35 CS 645, 651, 658. Cited. 36 CS 637, 638, 641. Cited. 42 CS 227, 235.

Subsec. (g):

Subsection does not address other sources of limitation on powers of local civil service commissions. 182 C. 93, 110. Cited. 206 C. 643, 646, 647. Cited. 215 C. 14, 23, 24. Collective bargaining is limited to changes in the promotional examination process. Decision on application of preexisting qualifications is not subject to collective bargaining. 234 C. 35−37, 40−51.

Cited. 7 CA 105, 109, 110. Cited. 11 CA 37, 41. Cited. 22 CA 402, 405. Cited. 32 CA 280, 285, 286. Cited. Id., 289, 292.

Appeal from dismissal of municipal employees for political activities proscribed by city charter properly brought to public employees appeal board. This statute excludes such charter provisions from collective bargaining; dismissal cannot be construed as a grievance required to be subject to binding arbitration as prescribed in the collective bargaining agreement. 35 CS 645, 651, 652. Cited. 39 CS 1, 5.

Subsec. (h):

Cited. 196 C. 623−625.

Subsec. (i):

Cited. 196 C. 623−625.

Subsec. (j):

Cited. 196 C. 623−625.

Sec. 7-475. Strikes prohibited. Nothing in sections 7-467 to 7-477, inclusive, shall constitute a grant of the right to strike to employees of any municipal employer and such strikes are prohibited. In the event an agreement expires before a new agreement has been approved by the municipal employer and the employee organization, the terms of the expired agreement shall remain in effect until such time as a new agreement is reached and approved in accordance with section 7-474. Nothing in this section shall affect the rights and duties of the municipal employer and the employee organization under sections 7-468 to 7-470, inclusive, during the period of time such expired agreement remains in effect.

(February, 1965, P.A. 159, S. 9; P.A. 75-81.)

History: P.A. 75-81 added provisions re continuance of previous agreement terms after their expiration and until new agreement made.

Cited. 171 C. 347. Cited. Id., 553, 564. Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421,

422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. Id., 623, 635. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Cited. 217 C. 490, 492. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Duty to bargain collectively and in good faith takes on important dimension in public sector because of denial of right to strike. 36 CS 18, 25. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-476. Existing bargaining unit not altered during term of agreement. Nothing in sections 7-467 to 7-477, inclusive, is intended to require that the composition of an existing bargaining unit be altered during the term of an existing agreement.

(February, 1965, P.A. 159, S. 10.)

Cited. 171 C. 347. Cited. Id., 553, 564. Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250− 252. Municipal Employees Relations Act (MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 305. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-477. Payroll deductions of union dues authorized. Municipal employers and employee organizations are authorized to negotiate provisions in a collective bargaining agreement calling for the payroll deduction of employee organization dues and initiation fees.

(February, 1965, P.A. 159, S. 11.)

Cited. 171 C. 347. Cited. Id., 553, 564. Cited. 175 C. 349, 351, 353, 358. Standing to test constitutionality of binding arbitration provisions of Municipal Employees Relations Act discussed. 181 C. 421−426. Cited. Id., 421, 422. Cited. 182 C. 93, 106−109. Cited. 185 C. 88, 92. Municipal Employees Relations Act cited. 196 C. 192, 200. Cited. 200 C. 38, 39, 42, 43. Cited. 201 C. 577, 589, 592. Cited. Id., 685, 693. Cited. 204 C. 746, 756. Municipal Employees Relations Act cited. 205 C. 116, 118, 119. Municipal Employees Relations Act (MERA) cited. 210 C. 549, 551, 553, 562; 212 C. 294, 298, 301. Sec. 7-467 et seq. cited. Id. Cited. 215 C. 14, 17, 30. Municipal Employees Relations Act (MERA) cited. 221 C. 244, 246, 247, 250−252. Municipal Employees Relations Act

(MERA) (Sec. 7-467 et seq.) cited. 225 C. 297−303, 365. Municipal Employees Relations Act (MERA) Sec. 7-467 et seq. cited. 234 C. 123, 124, 131−133.

Cited. 3 CA 1, 6. Cited. 16 CA 232, 237.

A public announcement of the plaintiff's intention to file a prohibited practice complaint against a union is protected by the Municipal Employees Relations Act when the complaint is actually filed at a later date. 31 CS 7. Secs. 7-467 through 7-477 cited; Sec. 7-468 et seq. also cited. 42 CS 227, 228, 235. Sec. 7-467 et seq. Municipal Employees Relations Act (MERA) cited. 43 CS 470, 473, 481, 482, 487, 496−501, 504.

Sec. 7-478a. Municipalities participating in interlocal agreements deemed a municipal employer subject to collective bargaining.

(a) Two or more municipal employers participating in an interlocal agreement pursuant to sections 7-339a to 7- 339l, inclusive, shall constitute a municipal employer as defined in section 7-467.

(b) Each employee organization, as defined in said section 7-467, of the municipal employers constituting a municipal employer under this section shall retain representation rights for collective bargaining. If two or more employee organizations have representation rights, the employee organizations shall act in coalition for all collective bargaining purposes.

(c) When a municipal employer is constituted under this section the collective bargaining agreement of each employee organization with representation rights shall remain in effect. A decision by a municipal employer to enter into or implement an interlocal agreement under sections 7-339a to 7-339l, inclusive, shall not be a subject of collective bargaining but the impact of such agreement upon wages, hours and other conditions of employment, shall be a subject of collective bargaining.

Sec. 7-478b. Collective bargaining agreement provision re closing of nonmunicipal offices on Martin Luther King Day.

(a) Each municipality shall include a requirement in any collective bargaining agreement executed on or after April 26, 2000, that all nonessential municipal offices shall be closed on any day designated as Martin Luther King Day pursuant to section 1-4.

(b) Any municipality that did not observe the Martin Luther King Day legal holiday on January 17, 2000, by closing all nonessential municipal offices shall close all such nonessential municipal offices on any day designated as Martin Luther King Day pursuant to section 1-4.

Sec. 7-478c. Reopening of certain collective bargaining agreements for compensation or exchange of benefits for observance of Martin Luther King Day. Notwithstanding the provisions of the general statutes, each municipal employer and each employee organization in a municipality that is required to close all nonessential municipal offices in observance of Martin Luther King Day pursuant to subsection (b) of section 7-478b shall reopen each collective bargaining agreement approved in accordance with the provisions of sections 7-467 to 7-477, inclusive, for the sole purpose of negotiating compensation or exchange of benefits, if any, for the bargaining unit members covered by such agreement for observance of Martin Luther King Day.

Sec. 7-478d. Duties of State Board of Mediation and Arbitration if no resolution. Notwithstanding the provisions of section 7-473c, if any such municipal employer and any such employee organization are unable to resolve the compensation or exchange of benefits issue after reopening the agreement pursuant to section 7-478c by May 31, 2000, the parties shall submit the issue to the State Board of Mediation and Arbitration, and said board shall make every effort to resolve the issue through mediation not later than June 30, 2000.

Sec. 7-478e. Mandatory binding arbitration for issues re observance of Martin Luther King Day. Panel of neutral arbitrators. Procedure. Criteria for decision. Apportionment of costs.

Notwithstanding the provisions of section 7-473c:

(1) If the parties are unable to resolve the compensation or exchange of benefits issue pursuant to section 7-478d by June 30, 2000, the parties shall submit the issue to an arbitration panel for resolution through binding arbitration pursuant to this section not later than July 15, 2000.

(2) If neither the municipal employer nor the municipal employee organization has submitted the issue to an arbitration panel for resolution through binding arbitration pursuant to this section by July 15, 2000, said board shall notify the municipal employer and municipal employee organization that binding and final arbitration is now imposed on them, and the arbitration panel selected pursuant to this section shall resolve the issue through binding arbitration not later than September 30, 2000. Written notification of such imposition shall be sent by registered mail or certified mail, return receipt requested, to each party.

(3) Within two days of receipt of such notification, the chief executive officer of the municipal employer and the executive head of the municipal employee organization each shall select one member of the arbitration panel. Within two days of their appointment, the two members of the arbitration panel shall select a third member, who shall be an impartial representative of the interest of the public in general and who shall be selected from the panel of neutral arbitrators appointed pursuant to subsection (a) of section 7-473c. Such third member shall be the chairman of the panel. In the event the municipal employer or the municipal employee organization have not selected their respective members of the arbitration panel or the two members of the panel have not selected the third member, the State Board of Mediation and Arbitration shall appoint such members as are needed to complete the panel, provided (A) the member or members so appointed are residents of this state, and (B) the selection of the third member of the panel by the State Board of Mediation and Arbitration shall be made at random from among the members of the panel of neutral arbitrators appointed pursuant to subsection (a) of section 7-473c.

(4) The panel shall, within two days, by the call of its chairman, hold a hearing within the municipality involved. The chairman of the panel shall preside over such hearing. Any member of the panel shall have the power to take testimony, to administer oaths and to summon, by subpoena, any person whose testimony may be pertinent to the matters before said panel, together with any records or other documents relating to such matters. In the case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the panel, shall have jurisdiction to order such person to appear before the panel to produce evidence or to give testimony touching the matter under investigation or in question, and any failure to obey such order may be punished by said court as a contempt thereof.

(5) The panel shall conclude the hearing within fifteen days after its commencement. Within ten days after the hearing, the panel shall issue, upon majority vote, and file with the State Board of Mediation and Arbitration its decision which shall immediately and simultaneously distribute a copy thereof to each party. In making its decision, the panel shall accept the last best offer of either of the parties. As part of the arbitration decision, each member shall state the specific reasons and standards in making a choice on each unresolved issue. In arriving at its decision, the panel shall be limited to the consideration of the criteria set forth in subdivision (2) of subsection (d) of section 7-473c. The decision of the panel shall be final and binding upon the municipal employer and the municipal employee organization except as provided in section 7-478f and, if such award is not rejected by the legislative body pursuant to section 7-478f, except that a motion to vacate or modify such decision may be made in accordance with sections 52-418 and 52-419.

(6) In regard to all proceedings undertaken pursuant to this section the secretary of the State Board of Mediation and Arbitration shall serve as staff to the arbitration panel.

(7) The cost of the arbitration panel shall be distributed among the parties in the following manner: (A) The municipal employer shall pay the costs of the arbitrator appointed by it, (B) the municipal employee organization shall pay the costs of the arbitrator appointed by it, (C) the municipal employer and the municipal employee organization shall equally divide and pay the cost of the chairman, and (D) the costs of any arbitrator appointed by the State Board of Mediation and Arbitration shall be paid by the party in whose absence the board appointed.

Sec. 7-478f. Rejection of award by legislative body. Second arbitration format.

Notwithstanding the provisions of section 7-473c:

(1) Not later than October 30, 2000, the legislative body of the municipal employer may reject the award of the arbitrators or single arbitrator issued pursuant to section 7- 478e by a two-thirds majority vote of the members of such legislative body present at a regular or special meeting called and convened for such purpose.

(2) Not later than November 10, 2000, the legislative body or its authorized representative shall be required to state, in writing, the reasons for such vote and shall submit such written statement to the State Board of Mediation and Arbitration and the municipal employee organization. Not later than November 20, 2000, the municipal employee organization shall prepare a written response to such rejection and shall submit it to the legislative body and the State Board of Mediation and Arbitration.

(3) Not later than November 20, 2000, the State Board of Mediation and Arbitration shall select a review panel of three arbitrators or, if the parties agree, a single arbitrator who are residents of Connecticut and labor relations arbitrators approved by the American Arbitration Association and not members of the panel who issued the rejected award. Such arbitrators or single arbitrator shall review the decision on each such rejected issue. The review conducted pursuant to this subdivision shall be limited to the record of the hearing pursuant to section 7-478e, the written explanation of the reasons for the vote and a written response by either party. In conducting such review, the arbitrators or single arbitrator shall be limited to consideration of the criteria set

forth in subdivision (2) of subsection (d) of section 7-473c. Such review shall be completed not later than December 10, 2000.

(4) Not later than December 15, 2000, after the completion of such review, the arbitrators or single arbitrator shall render a written decision with respect to each rejected issue which shall be final and binding upon the municipal employer and the employee organization except that a motion to vacate or modify such award may be made in accordance with sections 52-418 and 52-419. The arbitrators or single arbitrator shall accept the last best offer of either of the parties. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

Municipal Employee Relations Act (MERA)
(CONN. GEN. STAT. § 7-467, et seq.)

Last Updated: April 15, 2010

http://www.ctdol.state.ct.us/csblr/mera7-467.htm

A. The Municipal Employee Relations Act was enacted in 1965 and covers employees of local government with the exception of certified teachers and administrators. MERA governs the collective bargaining relationship between municipal employers and employee organizations representing municipal employees. It prohibits certain practices by employers and employee organizations. It provides procedures for filing, investigation and adjudication of election petitions and prohibited practice complaints. MERA prohibits strikes. Originally, MERA provided for mediation and advisory fact-finding to resolve impasses in collective bargaining. In 1975, the legislature amended the statute to provide for compulsory mediation and arbitration of unresolved issues.

B. Statutes (PDF, 255KB)

C. Regulations

D. Forms

E. Frequently Filed Complaints

1. **Unilateral Change**

A fundamental principle of collective bargaining law is that before an employer may make changes in conditions of employment, it must first bargain with the union representing its employees. A unilateral change in a condition of employment that affects a mandatory subject of bargaining is considered to be an unlawful refusal to bargain.

Some of these cases focus on the question of whether an employer's decision affects wages, hours and other conditions of employment and is, thus, a mandatory subject of bargaining.

In contrast, the concept of managerial prerogative does not require an employer to bargain about decisions which "lie at the core of entrepreneurial control" even though the decision may have an indirect effect on wages, hours and other conditions of employment. The tension between these two concepts is heightened in the public sector where state statutes and local charter provisions vest various public bodies with broad powers to control departments under their jurisdiction.

Several recent decisions involving allegations of unlawful unilateral change are City of Bristol, Decision No. 3734 (1999); East Hartford Housing Authority, Decision No. 3733 (1999); City of Hartford, Decision No. 3716 (1999); Norwalk Third Taxing District, Decision No. 3695 (1999).

2. **Subcontracting**

Much of the litigation that falls under the unilateral change doctrine concerns the issue of subcontracting bargaining unit work. Cases under this heading not only encompass situations where the employer decides to subcontract the work to a private company, but also involve situations where the employer reassigns the work to other non-bargaining unit employees. The decision to subcontract or transfer bargaining unit work to non-bargaining unit employees has historically been considered a mandatory subject of bargaining. In City of New Britain, Decision No. 3290 (1995), the Board reviewed all of its major decisions on the subject and applied a new method of analysis. In order for a union to make out a prima facie case, it must establish that: (1) the work in question is bargaining unit work; (2) the subcontracting/transfer of the work varies significantly from what was customary under past established practice; and (3) there is a demonstrable adverse impact upon the unit. If the Union establishes the above, the employer will be able to present defenses which include: (1) a contract clause permitting the subcontracting; (2) the subcontracting is de minimis; and (3) an emergency exists. Finally, the Board recognized that, although this analysis is based largely on private sector labor law precedent, there are differences in the public sector that may dictate a different result. Therefore, the Labor Board indicated that it will consider public policy arguments raised by either party.

The subcontracting decisions issued by the Labor Board concerning MERA relying on City of New Britain, Decision No. 3290 (1995) are: Groton Board of Education, Decision No. 3466 (1997); City of Torrington, Decision No. 3663 (1999); Town of Windsor, Decision No. 3671 (1999); East Haven Board of Education, Decision No. 3698 (1999); City of Waterbury, Decision No. 3711 (1999); and City of Bridgeport, Decision No. 3720 (1999).

3. **Duty to Supply Information**

The duty to bargain in good faith extends to all labor management relations during the term of an agreement. An important aspect of this duty is the duty to furnish information. The obligation to bargain in good faith includes the obligation of both labor and management to provide relevant information that is necessary and relevant to the collective bargaining relationship. Wage or related economic information is presumptively relevant. In circumstances where a party claims information to be confidential, the Labor Board will apply a balancing approach which is adopted from the National Labor Relations Board case law.

Several decisions issued pursuant to MERA concerning the duty to provide information are: City of Bridgeport, Decision No. 3127 (1993)(applied the balancing test set forth in Pennsylvania Power and Light, 301 NLRB 138 (1991) concerning allegedly confidential information); Town of Stonington, Decision No. 3146 (1993)(Union's duty to provide information to employer); Town of West Hartford, Decision No. 3525 (1997); City of Waterbury, Decision No. 3566 (1998).

4. **Discrimination for Union Activities**

It is a prohibited practice for an employer to take adverse action against an employee as a method of retaliation for engaging in protected concerted activities. Thus, an employer may not discriminate against an employee for joining a union, engaging in an organizational campaign, filing grievances or other protected concerted activity.

In order for certain conduct to be protected, it must be concerted in form and purpose and must be for the mutual aid and protection of the employees or bargaining unit involved.

Recent cases concerning discrimination are: Town of Wallingford, Decision No. 3662 (1999); Town of Groton, Decision No. 3623 (1998); Town of East Haddam, Decision No. 3619 (1998); Town of Bloomfield, Decision No. 3440 (1996).

5. **Duty of Fair Representation**

A union has a duty to fairly represent its members throughout its collective bargaining activities. This duty is expressed affirmatively in §7-467 of MERA. It is a prohibited practice for a union to fail in its duty of fair representation. Under MERA individual employees may file complaints alleging that the union has failed in this duty.

The Labor Board's standard for evaluating duty of fair representation allegations is based on the United States Supreme Court decision in Vaca v. Sipes, 386 U.S. 171 (1967) in which the Court stated that a breach of the duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith. The duty of fair representation standard has been discussed in recent cases in Norwalk Board of Education and Local 1042, Decision No. 3586 (1998), aff'd Local 1042, AFSCME, Council 4, AFL-CIO v. Connecticut State Board of Labor Relations, Dkt No. CV 99 0493379s (June 1, 1999, McWeeny, J.); Rudolph D'Ambrosio, Decision No. 3611 (1998); Waterbury Firefighters Association, Local 1339 v. State Board of Labor Relations, Dkt. No. CV 970570953 (May 6, 1998) reversing City of Waterbury, Decision No. 3496 (1997).

6. **Contract Repudiation**

Although the mere breach of a collective bargaining agreement is not a prohibited practice, a repudiation of the contract may constitute a refusal to bargain in good faith. The repudiation doctrine is premised upon the principle that the duty to bargain in good faith is not limited to the negotiation of a collective bargaining agreement, but extends to the obligation to carry out the terms of a contract in good faith. The Board has found three ways in which contract repudiation is found. The first is where the respondent party has taken an action based upon an interpretation which is asserted in subjective bad faith. The second is where the responding party has taken an action based upon an interpretation of the contract which is wholly frivolous and implausible. The third type of repudiation is found where the respondent either admits or does not

challenge the complainant's interpretation of the contract, but seeks to defend its action on some collateral ground which does not rest upon an interpretation of the contract, e.g., financial hardship.

The repudiation doctrine was discussed recently by the Board in City of Bridgeport, Decision No. 3667 (1999); Town of Wolcott, Decision No. 3640 (1998); City of Hartford, Decision No. 3595 (1998); Town of Killingly, Decision No. 3526 (1997); New Haven Board of Education, Decision No. 3356 (1996), aff'd AFSCME, Council 4, Local 287 v. State Board of Labor Relations, 49 Conn. App. 513 (1998).

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SECTION 4

STEWARD'S CHECKLIST FOR HANDLING GRIEVANCES

I. GET THE FACTS

- Listen carefully to the grievant.
- Take good notes.
- Get the 4 W's (who, what, where, when) by asking specific questions of the grievant.
- Find out why the grievance occurred.
- DETERMINE THE REMEDY DESIRED.

II. PREPARE THE GRIEVANCE

- Check rules and policies (contract, seniority agreements, department policies, other laws appropriate to your unit).
- Check grievability.
- Check policy and practices.
- Check previous grievance settlements for precedent.
- Check the experience of others in similar cases.
- Seek advice if necessary (other Stewards, Chief Steward, Staff Representative)
- EXPLAIN THE CASE TO THE GRIEVANT.

III. PRESENTING THE GRIEVANCE

- Outline what you will present and practice what you will say.
- Remember, the Supervisor and Steward are equals.
- Don't get sidetracked or angry.
- Get the Supervisor to answer why. Anticipate Supervisor's argument.
- Set a definite time for an answer from the Supervisor.
- Make sure everyone understands the desired remedy.

IV. FOLLOW UP

- Review Supervisor's answer.
- Make decisions to appeal to next step within time limits.

V. WATCH THE CALENDAR

- Keep the grievance timely.

VI. KNOW YOUR CONTRACT

- Read your contract thoroughly.

VII. KEEP THE GRIEVANT INFORMED

STANDARD GRIEVANCE AND DISCIPLINARY PROCEDURES FOR UPSEU MEMBERS

1. Read your contract at least once. Concentrate on the language, which protects your rights, not just the economic benefits.

2. Pay special attention to your grievance procedure and discipline procedure language.

3. Remember, the grievance procedure is the primary mechanism used to protect your rights.

4. FOLLOW ALL TIME REQUIREMENTS OF THE GRIEVANCE PROCEDURE.

5. Failure to file a grievance or appeal in a timely manner will result in your grievance automatically being lost regardless of its merits.

6. Consult with your Union Steward and or Local President. He/She will have standard language in the event a grievance must be reduced to writing. They will also be trained in the proper handling of a grievance and can assist you in protecting your rights.

7. Take adequate personal notes concerning the events giving rise to the grievance or discipline. Note time, location, persons involved and witnesses, if any. Also, state to the best of your ability, pertinent statements made at the time.

8. In on-going situations, it is necessary to keep what amounts to a diary of continuing events. <u>These notes could prove crucial to winning or losing your case.</u> Review the rules and regulations to be sure they are properly quoted.

9. Cooperate with you Steward or Union Representative in processing your complaint or defending you in disciplinary hearings. If necessary, sign authorization forms to review and receive copies of your records.

10. You have a right to receive copies of any and all charges made against you.

STRUCTURE OF A GRIEVANCE

STEP #1: STATEMENT OF THE PROBLEM

- ✓ WHAT happened?
- ✓ WHEN did it happen?
- ✓ WHERE did it happen?
- ✓ WHO is involved?

STEP #2: WHY IS IT A GRIEVANCE?

Is Management violating:

- ✓ The contract, work rules, existing policy, past practices, safety, legal rights, etc.
- ✓ Is there discriminatory treatment?

Make it short and to the point. Be specific.

STEP #3: REMEDY

What must Management do to correct the problem?

- ✓ Decrease work load
- ✓ Grant overtime
- ✓ Reduce suspension
- ✓ Restore benefits
- ✓ Reassign
- ✓ Transfer or promote
- ✓ Improve salary, etc.

THE FIVE W's

(Essential Information for Filing a Grievance)

Who: Who was involved in the grievance?
List name, department, job classification, shift.
Include the name of the management representatives involved.

What: What is the grievant's story?
Management position?
The reports of witnesses?
Collect all the facts you can, always looking for "hard" facts but accepting and weighing "soft" facts and different versions.

When: When did the incident or condition occur?
Give dates and times as accurately as possible.

Where: Where did the grievance take place?
Give the exact location, department, area, etc.

Why: Why is this a grievance?
What has been violated?
The contract?
Federal, state, municipal laws?
Past practice?
Workers' rights?
Previous ruling or awards?

And last, but not least,

How: How does the state remedy the grievance/complaint?
What adjustments are necessary to correct the situation?
How can you return the aggrieved worker to the same condition had the violation not occurred?

GRIEVANCE HANDLING SUGGESTIONS

1. Be a good listener. Listen with patient interest even when you think the aggrieved worker is wrong. Do not reject anyone's statement until it has been examined.

2. Get the facts first. You can develop the theory after you have all the facts. Be sure to check past grievance files, notes from Labor/Management meetings, negotiations notes, and past practices. You must know **who, what, when, where and why.**

3. Use a positive, friendly approach. A timid or defensive attitude is a confession of weakness. Use your own common sense to decide what facts you need to get, and then get them all. Make sure you get the negative information as well as the positive. Surprises at any step are deadly. You need to have your rebuttal ready.

4. Management is legally obligated to give you the information you need to process your grievance. Make sure you ask them for it; make sure they give it to you.

5. Be sure to contact witnesses early. Get signed statements from them, if possible. They may forget the facts, quit their job, fall prey to management pressure, or be on vacation by the time the grievance is heard.

6. When presenting your grievance, always have a written outline of the points you plan to make. Use charts, diagrams, and graphs if they can help to illustrate your point.

7. Be calm. Shouting and pounding on the desk has never settled anything.

8. Avoid personalities. It is not who is right, it is what is right that counts.

9. When you must disagree with what the supervisor says, do so with dignity. Remember that you and the supervisor are going to have to work together and settle other issues in the future. Remember, you are seeking agreement – not conquest.

10. Keep an open mind.

11. Listen to management's position at the lower levels of the grievance procedure in order to learn their case and their facts. Push them to disclose their facts. You can then research the information to see if they are true, and how you can rebut them. Remember that management has rights too, and that both the workers and management must live up to the terms of the Agreement.

12. Don't get upset and make empty threats that both you and the supervisor know you can't carry out. If you and the supervisor can't come to an agreement, there are further steps to be followed, including arbitration.

13. Appeal to management's self-interest. You are asking for justice and not favors – and you are expected to be fair, as you expect management to be.

14. Don't horse-trade on grievances. That is, don't give up one grievance case in order to get a favorable decision on another.

15. Stick to the point in your discussion with the supervisor and don't get sidetracked.

16. Don't take up grievances that don't exist.

17. Explain and show to the grievant when and why you think it is time to drop the grievance, if you do.

18. Remember, you can settle grievances at any time. Your job is to bring about the best settlement possible, not to keep bringing grievances to higher and higher steps.

19. Keep written records of grievances.

20. Study your contract.

21. Arbitration is a risk. Think carefully of all the possible outcomes before you decide you want to file.

UPSEU SHOP STEWARD RESPONSIBILITIES

- **Welcome** new employees and introduce them to UPSEU.
- **Recruit** new UPSEU members at the worksite.
- **Hold** regular worksite meetings.
- **Talk** to members one-on-one about issues UPSEU is working on.
- **Coordinate** worksite events.
- **Invite** members to become involved in UPSEU.
- **Enforce** the union contract.
- **Educate** members about their rights under the contract and UPSEU benefits.
- **Determine** how worksite problems can be handled.
- **Investigate** and prepare grievances.
- **Present** grievances to management using all steps of the grievance process.
- **Defend** members in cases of adverse actions.
- **Keep** your UPSEU representative and union officers apprised of issues and grievances at your worksite.
- **Maintain** complete and accurate records of grievances and complaints at the worksite.
- **Mobilize** members around grievances and other workplace issues.
- **Perform** health and safety inspections of the worksite.
- **Identify** and alert UPSEU to instances of contracting out of union work.
- **Act** as the main communication link between members and the union.
- **Maintain** UPSEU bulletin boards.
- **Distribute** union literature.
- **Recruit** members for UPSEU.

THE STATUTORY DUTY TO PROVIDE INFORMATION CONCERNING GRIEVANCES

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Sponsored by the American Arbitration Association

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Introduction

Meaningful collective bargaining requires informed discussion. This is so for both negotiating collective bargaining agreements and processing grievances. Without access to relevant facts that bear on a labor dispute, collective bargaining would be reduced to an exercise in unsubstantiated insistence on the parties' respective positions. Agreements would be determined entirely by mindless economic muscle. Far more grievances would be processed unnecessarily to arbitration and arbitration hearings would become combat by ambush.

To ensure that relations between labor and management are pursued in an informed and intelligent manner, labor relations statutes mandate the exchange of information between the parties. Both federal and state labor relations statutes require such an exchange as part of the duty to negotiate in good faith. Refusal to provide information, which the applicable labor relations statute requires to be provided, constitutes an unfair labor practice and the labor relations board administering the statute will impose sanctions against the offending party. For collective bargaining to function as it was intended and to avoid the sanctions of a labor relations board, it is vital that the duty to provide information be understood and complied with.

This paper does the following:

a) Identifies the federal and state statutory bases for the duty to provide information.

b) Discusses the policy reasons for and the requirements of the duty to provide information under federal and state decisional law, with particular emphasis upon when the duty exists and the type of information that must be provided concerning grievances or potential grievances.

c) Summarizes the eight Connecticut State Board of Labor Relations (CSBLR) decisions (and one Connecticut Supreme Court decision) concerning refusal to provide information.

Statutory Authorities

As was noted in the foregoing introduction, the duty to provide information arises from the statutory duty to bargain in good faith. Nowhere in any of the labor relations' statutes is the obligation to provide information expressly stated. Thus, if one simply were to read the language of these statutes, there would be no clue that a legal obligation to provide information even exists. Nevertheless, as is clear from Section III of this paper, the duty to provide information long has been found to exist by inference.

A. The National Labor Relations Act (NLRA)

This is the federal statute which establishes the primary legal framework for collective bargaining between private employers and labor unions.[1] The NLRA has existed in one form or another since 1935, and, with certain limited exceptions that will not be discussed in this paper, applies to private employers whose business affects interstate commerce.[2]

Section 8(d) of the NLRA sets forth the duty to bargain in good faith in the following language:

…to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising hereunder, and the execution of a written contract incorporating any agreement reached if requested by either party…

Section 8(a)(5) of the NLRA states that it is an unfair labor practice for an employer to refuse to bargain in good faith over the wages, hours and other terms and conditions of employment of employees in a bargaining unit represented by a labor union. Section 8(b)(3) of the NLRA states that it similarly is an unfair labor practice for a labor union which is the exclusive bargaining representative to refuse to bargain in good faith with the employer. These three sections of the NLRA serve as the statutory basis for the duty to provide information and establish that it is an unfair labor practice to refuse to provide information which falls within the ambit of that duty.

B. Connecticut Private Sector Labor Relations Act

A few private employers are too small to be covered by the NLRA. Since 1945, in Connecticut, such employers have been subject to the private sector Connecticut State Labor Relations Act.[3] That act creates a duty to bargain similar to that in Section 8(d) of the NLRA. However, there is no provision for unfair labor practices which may be committed by unions. In other words, unions cannot be found to have committed unfair labor practices under this act.[4] With respect to employers, the legal obligation to provide information is part of the duty to bargain and violation of the duty constitutes an unfair labor practice just as under the NLRA. The Connecticut State Board of Labor Relations is charged with enforcing this duty.[5]

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[1] 29 U.S.C. Sec. 151-169.
[2] Under the guidelines of the National Labor Relations Board, most employers not otherwise exempt from the NLRA are considered to be engaged in business which affects interstate commerce.
[3] Conn. Gen. Stat. Sections 31-101-116.
[4] The same was true of the NLRA from 1935 until enactment of the Taft-Hartley Act amendments in 1948.
[5] Conn. Gen. Stat. Section 31-102 and 31-107.

C. Connecticut Public Sector Labor Relations Acts

The NLRA does not cover public employers or labor organizations representing public employees. Connecticut has enacted three public sector labor relations statutes to fill this void. Each of these statutes is comprehensive and modeled closely after the NLRA.[6] The Connecticut State Board of Labor Relations is charged with administering these statutes.

The Connecticut public sector labor relations statutes are: the Municipal Employee Relations Act (the MERA),[7] the State Employee Relations Act (the SERA),[8] and the School Board-Teacher Negotiations Act (the TNA).[9] The MERA covers municipal employers and labor organizations that represent municipal employees, except certified educators employed by boards of education. The SERA covers the executive and judicial branch employers of Connecticut state government and labor unions representing employees of these branches (the legislative branch is not subject to the Act). The TNA covers local and regional boards of education and labor organizations representing certified teachers and middle level administrators employed by such boards.

Under all three of these public sector bargaining statutes, the duty to bargain is defined with language that closely parallels Section 8(d) of the NLRA. In fact, the judicial interpretations consistently accorded to the NLRA are considered persuasive precedent for interpreting these statutes.[10] The duty to provide information similarly is implied in the duty to bargain and it is an unfair labor practice[11] for either employers or unions to violate that duty.

D. Freedom of Information Acts

The use of Freedom of Information Acts (FOIA) by employers or unions to obtain information useful to negotiations or grievance processing is not a focus of this paper. However, the existence of FOIA statutes should be noted briefly because, at times, they have been used by parties to serve such a function.

There is both a Federal Freedom of Information Act[12] and a Connecticut State Freedom of Information Act.[13] The purpose of the federal FOIA is to provide the public with legal access to meetings held and records maintained by the federal government. The purpose of the Connecticut FOIA is the same, but it applies to meetings held and records maintained by Connecticut state and local government.

The federal FOIA has sometimes been used by employers or labor unions to obtain from federal agencies (including the NLRB) information maintained by the agency about the other party by the agency.

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[6] For some differences between the NLRA and the Connecticut public sector statutes, see Foy and Moskowitz, Connecticut Labor Relations Law: Recent Developments in an Evolving Identity 17 Conn. L. Rev. No. 2 (Winter 1985) pp. 249-306.
[7] Conn. Gen. Stat. Sections 7-460-479.
[8] Conn. Gen. Stat. Sections 5-270-280.
[9] Conn. Gen. Stat. Sections 10-153a-156d.
[10] See cases cited at Not 13 on p.252 of Foy and Moskowitz.
[11] The Connecticut public sector labor relations statutes actually use the phrase "prohibited practices"; however, they will be called unfair labor practices for purposes of consistency within this paper.
[12] 5 U.S.C. Section 552
[13] Conn. Gen. Stat. Sections 1-18a-21k.

The Connecticut FOIA has been used primarily by labor unions to obtain information from state and local governmental employers. Sometimes the information sought would not have been subject to disclosure under the applicable labor relations statute. In other instances, a public employer's duty to provide information to a labor union under the applicable labor relations statute is more far reaching than the duty to provide information under the Connecticut FOIA. It can be expected that labor unions will continue to pick and choose whether to seek information under the Connecticut FOIA or the applicable labor relations statute depending upon which statute provides a greater likelihood of obtaining the desired information. As a general matter, it is more likely that a labor union will have greater success under the labor relations statutes' duty to provide information when the desired information is contained in employee personnel or similar files.[14]

[14] See Joseph I. Lieberman, Attorney General CSBLR Decision No. 2250 (February 26, 1987) at pp.74-97.

The Development and Purpose of the Duty to Provide Information

A. Decisions Under The National Labor Relations Act

An excellent and concise description of the nature of the duty to provide information is contained in The Developing Labor Law[15]:

…intertwined with the duty to bargain in good faith, is a duty on the part of the employer to supply the union, upon request, with sufficient information to enable it to understand and intelligently discuss the issues raised in bargaining. Although the duty is reciprocal, most of the required information, by its nature, must flow from the employer to the union; hence most of the case law concerns employer recalcitrance in supplying information requested by unions, either in the collective bargaining process or in the administration of the collective agreement.

The employer's duty to furnish information is based upon the premise that without such information the union would be unable to perform its duties properly as bargaining agent. Thus, information must be furnished to the union for purposes of representing employees in negotiations for a future contract and also for policing the administration of an existing contract. The employer's refusal to supply information is as much a violation of the duty to bargain as if it had failed to meet and confer with the union in good faith.

Morris at p. 610

For many years, the NLRB, with support from some federal courts, found the duty to provide information implied in the NLRA's duty to bargain in good faith.[16] It was not until 1956 that the United States Supreme Court approved the NLRB's reasoning in NLRB v. Truitt Mfg. Co. 351 US 149, 38 LRRM 2042 (1956).

Truitt was a contract negotiation case. The employer had asserted during bargaining that it could not afford the union's proposal for a particular wage increase. The union asked to see the employer's books to determine the legitimacy of the "Company's position that they were unable to give any more money." The company told the union that its request "…is not pertinent to this discussion and the company declines to give you such information; [y]ou have no legal right to such." Although the Court agreed with the NLRB's finding that the employer's refusal to provide the requested information constituted a violation of the duty to bargain in good faith and an unfair labor practice, the Court sought to limit its ruling by stating:

We do not hold, however, that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employees are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.

(cited omitted) 38LRRM at 2044

In dissenting from the majority's decision in Truitt, Justice Frankfurter criticized the majority decision because he believed the NLRB had created a per se rule that an employer violates its duty to bargain in good faith whenever it raises inability to pay as a reason for rejecting a proposed wage increase and then

[15] C.J. Morris The Developing Labor Law 2nd Ed. (BNA, 1983).

[16] See e.g. Labor Board v. Jacobs Mfg. 196 F. 2d 680, 30 LRRM 2098 (2nd Cir. 1952); NLRB v. Whiten Machine Works 217 F.2d 593, 35 LRRM 2215 (4th Cir. 1954).

refuses to open its books upon request by the union. In fact, the NLRB and some federal circuit courts of appeal did follow such a per se rule in the wake of Truitt.[17] Subsequently, since 1967, when the United States Supreme Court decided Acme Industrial, infra,[18] this per se approach became more uniform, with the NLRB and the federal courts more consistently finding that the duty to provide information exists whenever requested information is relevant to an issue in negotiations.[19] Wage and wage related information is considered presumptively relevant and necessary for the union to perform its function as bargaining representative, although the presumption can be rebutted. Other types of information are considered relevant if their relevance can be demonstrated by the requesting party.[20] A refusal to provide relevant requested information constitutes an unfair labor practice. Some of the types of information which have been found relevant and which have been required to be disclosed have included: information concerning job changes, seniority lists, employees' ages, equipment types and specifications, names and addresses of customers; race, sex, names and addresses of job applicants; subcontracting information, scoring methods for promotional exams, etc.[21]

In 1967 the United States Supreme Court, for the first time, addressed the legal obligation to provide information in the context of grievances. That case was NLRB v. Acme Industrial Co. 385 U.S. 432, 64 LRRM 2069 (1967). Because it remains the leading case on the subject, it warrants detailed discussion in this paper and full understanding by those whose business it is to handle the processing of grievances.

The facts of the case were these. The Union and the Company had a collective bargaining contract prohibiting the subcontracting of work normally performed by employees, if the subcontracting would cause the layoff or prevent the recall of employees who normally performed the subcontracted work. The contract also provided that if equipment was moved to another of the Company's plants, employees who would be subject to reduction in classification or layoff were entitled to transfer to the new location with full rights and seniority, unless the new location was covered by an existing collective bargaining agreement. The contract also contained a grievance procedure with binding arbitration as the final step. The union learned that the Company was removing machinery from the plant and the union's representatives asked the Company about this. The Company responded that the removal of the machinery constituted no violation of the contract and therefore, it would answer no questions concerning the removal. The union then filed several grievances alleging violation of the above-described sections of the contract. The union also made a written request for detailed information concerning the removal of the machinery.[22] The Company responded that it had no obligation to

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[17] See e.g. Curtiss-Wright Corporation v NLRB 347 F2d 61, 59 LRRM 2433 (3rd Cir. 1965).

[18] As it discussed later in this paper, Acme Industrial involved a request for information concerning grievances rather than information concerning proposals for contract negotiations. However, in Acme Industrial the Supreme Court cited NLRB v. Truitt and broadly described the duty recognized in Truitt as follows: "There can be no question of the general obligation of an employer to provide information that is needed to the bargaining representative for the proper performance of its duties. NLRB v. Truitt Mfg. Co., 351 US 149, 38 LRRM 2042." Acme Industrial at 64 LRRM 2070.

[19] See generally Morris at pp. 612-614 and 621-623 and cases cited therein.

[20] Id.

[21] Morris at pp., 623-629 and cases cited therein.

[22] The union requested answers to the following questions "at the earliest possible date":

1. The approximate dates when each piece of equipment was moved out of the plant.
2. The place to which each piece of equipment was moved and whether such place is a facility which is operated or controlled by the Company.
3. The number of machines or equipment that was moved out of the plant.
4. What was the reason or purpose of moving the equipment out of the plant?
5. Is this equipment used for production elsewhere?

64 LRRM at 2070

provide the requested information, because no layoffs or reductions in job classification had occurred within the five-day period to the grievances being filed.[23] The union filed a charge with the NLRB alleging that the Company's refusal to provide the requested information constituted a violation of the Company's duty to bargain in good faith and an unfair labor practice.

The Company's defense to the charge was that it had not violated the contract by merely moving machinery from the plant, and, because the grievances were without merit, the union was not entitled to the requested information. The Company argued further that because the contractual grievance procedure culminated in binding arbitration, the NLRB was required to defer to the judgment of an arbitrator on the question of whether the grievances were meritorious.

The NLRB found that the requested information was "necessary in order to enable the union, to evaluate intelligently the grievances." In reaching its conclusion, the NLRB found that the grievances need not be meritorious for the duty to provide information to exist. The NLRB found that the Company had violated its duty to bargain in good faith by refusing to provide the requested information. The federal Court of Appeals for the Seventh Circuit reversed the NLRB's decision; the NLRB then appealed to the United States Supreme Court.

The Supreme Court agreed with the NLRB. The discussion of the Court bears repeating and careful reading:

> …the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement. The only real issue in this case, therefore, is whether the Board must await an arbitrator's determination of the relevancy of the requested information before it can enforce the union's statutory rights under Section 8(a)(5).
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> * * *
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> …when [The NLRB] ordered the employer to furnish the requested information to the union, the Board was not making a binding construction of the labor contract. It was only acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. This discovery-type standard decided nothing about the merits of the union's contractual claims. When the respondent furnishes the requested information, it may appear that no subcontracting or work transfer has occurred, and, accordingly, that the grievances filed are without merit. On the other hand, even if it appears that such activities have taken place, an arbitrator might uphold the respondent's contention that no breach of the agreement occurred because no employees were laid off or reduced in grade within five days prior to the filing of any grievance. Such conclusions would clearly not be precluded by the Board's threshold determination concerning the potential relevance of the requested information. Thus, the assertion of jurisdiction by the Board in this case in no way threatens the power which the parties have given the arbitrator to make binding interpretations of the labor agreement.

[23] The contract provided that grievances be filed within five days from the date when a violation of the contract occurred.

Far from intruding upon the preserve of the arbitrator, the Board's action was in aid of the arbitral process. Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened. Yet, that is precisely what the respondent's restrictive view would require. It would force the union to take a grievance all the way through to arbitration without providing the opportunity to evaluate the merits of the claim. The expense of arbitration might be placed upon the union only for it to learn that the machines had been relegated to the junk heap. Nothing in federal labor law requires such a result.

(footnotes omitted) 64 LRRM at 2070-2072

Since Acme Industrial, the wide breadth of the legal obligation to provide information concerning a grievance or a potentially grievable matter has been firmly established. The most significant aspect of the Acme Industrial case was the Supreme Court's approval of the discovery-type relevance standard for determining whether requested information concerning a grievance or potential grievance must be provided. Under such a standard, the requested information need only be probably relevant to a claim or potential claim of contract violation.[24]

As stated by the Supreme Court in Acme Industrial, one reason for the broad scope of the legal obligation to provide information in the context of grievance disputes is so the union may intelligently evaluate whether a grievance is meritorious and should be pursued. Additionally, implicit in the court's decision is recognition of the reason why modern discovery rules were adopted in the first place. This is the policy that trials should not be an exercise in ambush warfare. Rather, the modern approach to litigation is that both parties should be fully apprised of the evidence to be produced prior to the trial's taking place.[25] This approach melds well with grievance/arbitration procedures, wherein it is expected that there will be a full discussion and exchange of information in the steps preceding arbitration.[26]

As a general matter, the following are the major elements of the duty to provide information concerning a grievance or potential grievance under the NLRA:

1. The duty to provide the information does not arise until the party seeking the information has made a request or demand for the information.[27]

2. As discussed above, the information must be probably relevant to a pending grievance or potential grievance, without regard to whether the grievance or potential grievance is meritorious.[28]

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[24] The Second Circuit Court of Appeals, which covers Connecticut, had stated even before Acme Industrial that under a discovery-type relevance standard "…the information must be disclosed unless it plainly appears irrelevant" and "[a]ny less lenient rule in labor disputes would greatly hamper the bargaining process, for it is virtually impossible to tell in advance whether the requested data will be relevant." NLRB v. Yawmans and Erbe Mfg. Co., 187 F2D 947, 949; 27 LRRM 2524 (2nd Cir. 1951).

[25] See generally James and Hazard Civil Procedure 2nd Ed. (1977) at pp.176-179.

[26] See generally Elkouri and Elkouri How Arbitration Works 3rd Ed. (BNA 1973) at pp. 106-114.

[27] See e.g. Westinghouse Elec. Supply Co. v. NLRB 196 F 2d. 1012, 30 LRRM 2169 (3rd Cir. 1952).

[28] However, the party making the request must at least have a good faith (i.e. honest) belief that the grievance might be shown to be meritorious once the information is provided and evaluated. Additionally, the actual purpose for requesting the

3. Once a good faith demand or request has been made, the information must be made available reasonably promptly, provided it exists.[29]

4. The manner and form in which the information must be provided must be suitable for informed consideration by the requesting party. However, if the party providing the information allows the requesting party full access to the pertinent records and cooperates in answering questions, the information need not be provided in a more organized form than that in which the party having the information maintains its own records of the information.[30]

5. There are some very limited areas of confidential information exempt from the duty to provide information.

These include:

a) The results of individually identifiable employee psychological aptitude tests;[31]

b) The names and addresses of strike replacement workers, if there is a likelihood of violence or harassment against such persons;[32]

c) Information which is in the possession of the employer, but which is the property of another company which has refused to permit the employer to disseminate it, (provided the employer has tried in good faith to obtain permission to release the information and the employer has offered to provide the information on a case by case basis);[33]

d) Trade secret information, but only if the employer's need to keep the information secret outweighs the union's need to have access to the information;[34]

e) Individually identifiable employee medical records;[35]

6. A party may waive its right to receive information, but only if the waiver is express and by "clear and unmistakable" language.[36]

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information must be to evaluate the merits of a dispute and may not be for the purpose of harassing the other party in order to gain concessions through pressure created by the nuisance of responding to information requests.

[29] See e.g. NLRB v. Feed and Supply Center, Inc. 294 Fed 2nd 650, 48 LRRM 2993 (9th Cir 1961).

[30] See e.g. Fafnir Bearing Co. v. NLRB 262 Fed 2d 716, 62 LRRM 2415 (2d Cir 1966).

[31] Detroit Edison Co. v. NLRB 440 US 301, 100 LRRM 2728 (1979).

[32] See e.g. Webster Outdoor Advertising Co. 160 NLRB 1781, 61 LRRM 1589 (1968).

[33] Quaker Oats Co. NLRB Gen. Counsel Advice Memo No. 4-CA-13849, 114 LRRM 1277 (1983).

[34] Minnesota Mining and Mfg. Co., 261 NLRB 27, 109 LRRM 1345 (1982).

[35] Oil Workers Local 6-418 v. NLRB 711 F2d 348, 113 LRRM 3163 (Dist. Of Columbia Civ. 1983).

[36] Timken Roller Bearing Co. v. NLRB 325 F2d. 746, 54 LRRM 2785 (6th Cir. 1963).

B. Decisions Under the Connecticut Labor Relations Statutes

Since 1979, the Connecticut State Board of Labor Relations has issued eight decisions addressing the legal obligation of an employer to provide information. Each of these decisions involved requests made by a labor union to an employer. Most concerned requests for information which the union believed relevant to a grievance or potential grievance.

The CSBLR's first decision was City of Milford Decision No. 1803 (August 31, 1979). This case arose under the MERA and relied upon the persuasive precedent of federal decisions (especially court decisions) under the NLRA. In choosing among the various federal circuit courts of appeals decisions upon which to base its decision, the CSBLR selected those which expressed the most expansive view of the duty to provide information. In doing so, the CSBLR signaled that its philosophy would militate toward a broad view of the duty to provide information.

The facts of Milford were as follows. The collective bargaining agreement set forth hourly rates for twelve labor grades and each job position in the bargaining unit was assigned one of these labor grades. The assignment of positions to labor grades historically had been done by the employer's civil service commission. The commission used a point system containing eleven (11) factors pertaining to skill, effort, responsibility and job conditions and for each factor assigned the number of points to be accorded to each position. The sum of the points determined the labor grade for the position. The number of points assigned to factors for individual positions had not previously been made public or given to the union. Apparently, the union historically had negotiated only the salaries to be assigned the various labor grades and not the assignment to positions of labor grades. In the negotiations for the existing contract, the union had made a proposal to jointly study the existing labor grade structure, which study would result in recommendations for change. However, the union had withdrawn that proposal from the table before the negotiations concluded. Subsequently, during the term of the contract, the union requested the following information from the city:

> All bargaining unit job titles and job descriptions, with the corresponding breakdown showing the points assigned to factor degrees and range for grades,
>
> (i.e.) SKILL,
>
> 1. Education
> 2. Experience
> 3. Initiative and Ingenuity
>
> EFFORT,
>
> 4. Physical Demand
> 5. Mental or Visual Demand
>
> RESPONSIBILITY,
>
> 6. Equipment or Process
> 7. Material or Product
> 8. Safety of Others
> 9. Work of Others

JOB CONDITIONS,

10. Working Conditions

> As you are aware, Section 7-468 of MERA states that it is incumbent for our organization to represent and act for our members on all questions of wages, hours, and other conditions of employment.
>
> This is our intention and in order to continue to meet the criteria set forth in the law; the aforementioned is needed as it plays an important role in the wages, hours, and conditions of employment; for our people.
>
> Milford at p. 2

The city refused to provide the requested information. The union filed an unfair labor practice complaint with the CSBLR alleging refusal to bargain in good faith.

Before the CSBLR the City argued that the union had failed to establish the relevance of the requested information. The City pointed out that no collective bargaining negotiations were ongoing or about to begin, there was no grievance pending and the union had not alleged any potential grievance to which the information might be relevant. The CSBLR rejected the City's arguments. The CSBLR found that the requested information was "wage related" and therefore was presumptively relevant and the City had failed to rebut the presumption. The CSBLR relied heavily upon San Diego Newspaper Guild v. NLRB 548 F.2d 863 (9th Cir. 1977) and Curtis Wright Corp., Wright Aeron. Div. v. NLRB 347 F.2d 61 (3rd Cir. 1965). Quoting in part from the Curtis Wright Corp decision, the CSBLR stated the following:

In Curtis Wright, the union sought data relating to job descriptions, functions, rates of pay, etc., of administrative and confidential employees not in the bargaining unit because it suspected that bargaining unit work was being assigned to them. There was no pending grievance and negotiations were not in progress. The union claimed that the requested information would aid it administering and policing the contract. In ordering disclosure of the information, the court said:

> Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance to it, unless effective employer rebuttal of it comes forth…
>
> 347 F.2d at 69.
>
> * * *
>
> Since the data sought here clearly relate to the wage structure of employees in the bargaining unit, they are presumptively relevant to the performance by the Union of its statutory obligation to police and administer the Contract, and this is so even though there is no presently pending grievance on the matter and though negotiations are not in progress.
>
> The City has made no "effective rebuttal" of this presumption of relevance.
>
> Milford at p. 5

The City also argued that because the union had withdrawn its proposal for a joint study of the labor grade classification system during the earlier negotiations, the union had waived any right it might have had to the requested information. The CSBLR rejected this argument, reasoning as follows:

> This withdrawal, it is urged, traded off the right to wage information in the bargaining process, or constituted a waiver of that right. This argument must fail. It is based on the assumption that the Union's right to the information sought depended on the setting up of the procedure contemplated in the proposal. But this assumption is erroneous. The Union's right imposes to bargain about wages and to administer and police a contract setting wages; it existed without regard to the creation or non-creation of the proposed joint committee. The Contract may, as the City implies, vest the initial task of computing the basis of wage rates in the commission, but that by no means puts the commission's computation beyond the challenge of grievances or beyond the Union's duty to examine and police those computations. Under these circumstances the withdrawal of the proposal carried no implication that the Union was trading off or waiving a right that was in no way dependent on the abandoned proposal.
>
> Milford at p. 5

The CSBLR ordered the City to provide the requested information. By the reasoning set forth in its decision, the CSBLR plainly established that it would take an expansive view of an employer's legal obligation to provide requested wage or wage related data to a union.

The second decision issued by the CSBLR addressing the obligation to provide information concerned a request for data that was not wage related. This was West Hartford Board of Education Decision No. 1826 (November 6, 1979). The case arose under the TNA. The pertinent facts of the case were as follows. The School Board and the teacher's union had a collective bargaining contract in effect which contained a grievance procedure that broadly defined grievances as including disputes involving alleged violations of the contract and/or "any action taken or refused by administrative personnel which an employee feels is unfair to him."[37] The contract also contained a provision stating that seniority within the school system and relative performance were the prime factors in making staff reductions. The School Board had for many years appointed some teachers on an annual basis to a position which entailed extra responsibility and compensation beyond the teachers' regular teaching duties. These positions were known as coordinating teachers. The School Board decided that it was going to reduce the number of such positions from twenty seven (27) to twenty two (22) beginning with the following school year. Incumbent coordinating teachers and teachers who did not currently hold that position were invited to apply for the twenty two (22) coordinating teacher positions that would exist for the following school year. All applicants were evaluated by a process that included performance evaluations done by each applicant's building principal and by administrators in the School Board's central office. When the coordinating teacher appointments were made, five (5) incumbents who had applied were denied appointment. The union filed a grievance on behalf of the five. The union claimed that the reduction in the number of coordinating teacher positions constituted a staff reduction within the meaning of the contract and that the School Board had failed in determining who would remain a coordinating teacher. After filing the grievance, the union requested copies of the evaluations that were submitted by building principals and central office administrators concerning applicants. The School Board provided blank copies of the forms that had been used for these evaluations, but refused to provide the actual completed evaluations. In fact, the completed evaluations had been destroyed within a few days after the decisions

[37] Disputes of the latter sort were subject to advisory rather than binding arbitration.

were made on which applicants to appoint. The union filed a complaint with the CSBLR alleging refusal to bargain in good faith.

The CSBLR found that the requested performance evaluations were not presumptively relevant, because they did not contain wage related data. Therefore, the union had the duty to show that the performance evaluations were relevant under the discovery-type standard set forth by the United States Supreme Court in NLRB v. Acme Industrial, supra. In this regard, the CSBLR stated:

In one respect the present case is stronger than Milford. Here there was a pending grievance and the information sought pertained to the issues raised by that grievance. The grievance invoked a section of the Contract which made length of service in the system and relative performance "prime factors to be considered equally in making staff reductions." The data requested pertained to the way in which Respondent had evaluated "relative performance." The relevance of such data to the grievance is apparent; in determining whether performance and seniority were "considered equally" one must know the kind of consideration that was given to performance. Even if the information sought was not presumptively relevant, [38] then, the specific facts of this case show relevance. Moreover WHEA, in performing its duty of conscientious representation of bargaining unit members, was required to appraise the grievance and explore the possibility of seeking to expand its basis, and under this particular Contract a grievance may be filed "over any action taken or refused by administrative personnel which employee feels is unfair to him" though such a grievance may not be the subject of binding arbitration.

On the record before us the relevance of the information sought was beyond question.

West Hartford Board at p. 4

The CSBLR also rejected the School Board's argument that the information in question was exempt from disclosure to the union on the basis of confidentiality. Finally, the CSBLR held that the destruction of the performance evaluations did not relieve the School Board from providing the union with the contents of those documents. On this score, the CSBLR ordered the School Board to provide the information to the union "in the best way possible with the means at hand (including the recollection of those cognizant of the contents of the destroyed documents)."

The School Board appealed the CSBLR's decision to the Superior Court, which affirmed the CSBLR's decision.[39] The School Board then appealed to the Connecticut Supreme Court. In the Supreme Court, the School Board pressed its arguments that the information in question was confidential. Specifically, the School Board argued (1) that because the information in question was exempt from disclosure under the Connecticut FOIA, the information also must be considered exempt from the TNA's duty to provide information, and (2) that, under the United States Supreme Court's then recent decision in Detroit Edison Company v. NLRB 440 US 301, 100 LRRM 2728 (1979) holding that personally identifiable employee psychological aptitude test scores were confidential and exempt from the NLRA's duty to provide information, the employee performance evaluations here in question should similarly be exempt under the Connecticut TNA.

[38] Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it unless effective employer rebuttal of it comes forth…" Curtis Wright Corp. v. NLRB, supra, 347 F. 2d at 69.

[39] West Hartford Board of Education v. Connecticut State Board of Labor Relations No. 239195 Superior Court, Hartford/New Britain J.D. (December 3, 1980) Barall, J.

Both of these arguments were rejected by the Connecticut Supreme Court. The Court held that: (1) the CSBLR had properly adopted and applied the Acme Industrial discovery-type relevance standard, (2) the provisions of the Connecticut FOIA are immaterial because the duty to provide information under labor relations statutes is an independent statutory duty; and (3) performance evaluations do not implicate the same type of personal privacy considerations that exist with psychological aptitude test scores. However, in what this writer believes to have been an excess of caution by the Connecticut Supreme Court (since the School Board never alleged that the performance evaluations contained any information concerning the psychological competence of the applicants), the Court order that the CSBLR's order be modified to exclude from disclosure "information bearing upon the basic competence of the applicants for psychological factors." West Hartford Board of Education v. Connecticut State Board of Labor Relations 190 Conn. 235, at 244 (1983).

The third decision by the CSBLR involving the duty to provide information was one of only two cases to date in which it permitted non-disclosure of requested information. This was State of Connecticut (Corrections) Decision No. 2155 (September 14, 1982). This case arose under the SERA. The employer had a written test scheduled for a non-bargaining unit position vacancy. Selection of a bargaining unit member for the position would have constituted a promotion. Several bargaining unit members applied and took the test. Thereafter, before the test results were announced, an internal personnel department review concluded that the test failed to comply with certain pre-existing validity standards. The union requested copies of the validity standards, all documentation used to arrive at the conclusion that the test did not meet those standards and a copy of the test scores. The employer refused and the union filed an unfair labor practice complaint with the CSBLR.

The CSBLR dismissed the Union's complaint, because, although the requested information was relevant to a dispute between the parties, the subject of promotion to positions outside the bargaining unit does not constitute a mandatory subject of bargaining, no provision in the existing collective bargaining contract gave bargaining unit employees any right to be considered for such positions, and, indeed, the Union did not contend that there was any such provision in the contract.

The fourth CSBLR decision addressing the duty to provide information was Stamford Board of Education Decision No. 2304 (April 18, 1984). This case arose under the TNA. The parties had a collective bargaining contract that contained a layoff procedure establishing a complicated set of criteria for bumping and order of layoff. The School Board was faced with a budget cut requiring as many as seventy-nine (79) layoffs. Over a period of several months the personnel department attempted to apply the contractual criteria which required tracking of the complex series of bumping moves that were occurring together with changes in the staffing pattern from requests for leaves of absence and resignations. The union requested access to the day-to-day worksheets used by the personnel department to make layoff and transfer decisions. The School Board refused to provide these worksheets and instead offered to provide the district-wide seniority list, layoff notices, verbal updating of changes and minutes of School Board meetings which identified all transfers and resignations. The central issue in the case was the form in which information should be provided to the union. Because of the complicated nature of the layoff procedure, because effective policing of the layoff procedure required timely access to information, because the School Board actually had the requested information and because the contract entitle the union to be an observer in the layoff process, the CSBLR held that the requested information was both relevant and necessary in order for the union to properly police the contractual layoff procedure. In this regard the CSBLR stated in pertinent part:

The only requested items which were not provided to the Association were the worksheets formulated by the personnel department to keep track of changes in the above-described information throughout the layoff process. These worksheets were essentially a tally of how the factual variables relevant to the layoff process existed at any given time and how they changed as new information became available. There is no doubt that the information contained within the worksheets was relevant to the application of Article 15 to the layoff process. It is true that it would have been possible, although difficult, for the Association to have created its own worksheets parallel to those formulated by the personnel department by using raw unassembled information described above which the personnel department itself was using to create its own worksheets. The real question is whether in light of the fact that the Association could have created documents of its own similar to the worksheets in question, the School Board should nevertheless be required to provide the Association access to its own worksheets. This is a question which concerns the form in which information must be provided. The basic limitation as to the form in which an employer must provide requested relevant information is that the employer need not furnish information in a more organized form than that in which it keeps its own records. NLRB v. Tex-Tan, Inc., 318 F. 2d 472, 53 LRRM 2295 (5th Cir. 1963); Fafnir Bearing Co. v. NLRB, 362 F. 2d 716, 62 LRRM 2415 (end Cir. 1966). In the present case, the Association is not asking that the School Board create the worksheets; rather it is saying that the School Board should have provided the worksheets which were already being created. We believe this request to be within the limits of the Association's rights to information. At the hearing and in its brief, the School Board emphasized the time constraints on and the complexities of the layoff decision-making process as making that process extremely difficult (see Tr. Pp 46, 51-53). It seems to us that those same constraints and complexities were equally a burden to the Association in policing the layoff process. In light of that, it strongly appears to us that daily access to the current status of the worksheets would have greatly aided the Association in the effective fulfillment of its own responsibility.[40]

Stamford Board of Education at p. 7

The fifth CSBLR decision addressing the duty to provide information was City of Hartford (Fire) Decision No. 2463 (March 18, 1986). This case arose under the MERA. In this case, the parties were engaged in negotiations for a successor collective bargaining agreement and both had proposals to change the existing sick leave benefit. The past frequency and pattern of sick leave usage by the bargaining unit was clearly relevant to the proposals made by both parties. The requested information was contained on individual file cards and would have required as mush as three seven day weeks for one person working full time to assemble. The City refused to provide the information. The union offered to provide the manpower to assemble the requested information. The City continued its refusal, claiming that confidential information was contained on the cards. The union filed a complaint with the CSBLR, which, reasoning as follows, found that the City had committed an unfair labor practice by refusing to provide the requested information:

The limitation concerning the form in which an employer is required to provide requested relevant information is simply that "the employer need not furnish information in a more organized form than that in which it keeps its own records." See e.g. Stamford Board of Ed., supra, and cases cited therein. As the record in the present case plainly shows, the Union was willing to accept that limitation in this case. The Union would have accepted photocopies of the cards. Also, the Union offered to provide the

[40] Article 15, section (A) (5) provides that the Association is entitled to observers "in the lay-off…process and …in the determination of transfers and assignments that may result form such layoffs…" This strongly implies a separate contractual right of access to data such as the worksheets here in question. However, we do not rest our decision on this provision of the Contract. Our decision is based solely on the School Board's statutory obligations to provide information.

manpower to cull through the cards and extract the information (see Finding 18, supra). There was no request, let alone insistence by the Union that the City reorganize the information held in its files.

The City's arguments about confidentiality are also without merit. In the first place, the Union expressed its willingness to have the names of employees masked on each card. However, this was wholly unnecessary because from what was shown in the record presented there was nothing on the cards that could have been withheld from the Union on the basis of confidentiality.

City of Hartford (Fire) at Page 6

The sixth CSBLR decision addressing the duty to provide information also involved the City of Hartford; this was City of Hartford Professional Employees) Decision No. 2500 (June 10, 1986). This case arose under the MERA. The union requested a wide scale reevaluation report done by City consultants on the positions in the bargaining unit. The City refused to supply the information, claiming that it had never "officially" accepted the consultant report and therefore it was irrelevant to any purpose of the union. However, the record showed that the City had relied on parts of the consultant report at various times to grant or deny employee requests for salary reclassification. The collective bargaining contract between the parties provided for arbitration of disputes over salary reclassification. The Union filed an unfair labor practice complaint with the CSBLR. After agreeing with the Union that the requested information was relevant to the Union's role as bargaining representative, particularly with respect to reclassification disputes, the CSBLR rejected argument by the City that it would be unduly burdensome to provide the information and that the information should be considered confidential:

As the city points out, there is precedent for the principle that a party may be absolved of the responsibility to supply information where to do so may be unduly burdensome. NLRB v. Tex Tan, Inc., 318 F 2d 472, 53 LRRM 2295 (CA 9 1963); Stamford Board of Ed., supra. However, the arguments and testimony failed to convince us that there is anything unduly burdensome here. The fact that the report is in several segments is "disorganized" and must be compiled does not rise to the level of making it "unduly burdensome" to supply. At most there are file cabinets, not rooms, full of material. Nor has the City demonstrated to us that there is any real harm in its release. We also doubt that its release will squelch the creativity of those who are revising it, assuming arguendo, that that would be a factor appropriate to our consideration in this case. The report will necessarily be received by the Association for what it is—a document used in several instances, not officially adopted, and in the process of revision.

Accordingly, we order that the City provide access to the entire Hallcrest-Craver report and copies of any and all promotions requested by the Association. Since the 1983-1984 requests for information apparently there have been revisions in the Hallcrest-Craver study. Because it is counter-productive to bargaining and grievance processing to supply information that could be misleading due to subsequent changes, we order that the City supply the Hallcrest-Craver Report and any revisions or updates. The revisions should be appropriately identified.

The seventh CSBLR decision addressing the duty to provide information was City of Stamford (Police) Decision No. 2644 (March 11, 1988). This case arose under the MERA. This decision contains a comprehensive discussion of the CSBLR's case law on the duty to provide information and concluded that the City's refusal to furnish the union with a wide range of information concerning insurance costs and benefits, retiree medical benefit costs and pension costs violated the Act. However, the CSBLR found that a "phone book" size compendium of coverage and reimbursement guidelines and procedures

in the possession of the City, but owned by the insurance carrier (Travelers), did not have to be provided. The CSBLR reasoned as follows:

As a starting point we note that the general character of this information brings it within the "presumption" of relevancy. Insurance benefits are most certainly another form of economic remuneration and as such are at the core of the employer-employee relationship, and a form of "wage and related information" we have referred to as "presumptively relevant." We find ample support for our conclusions in the NLRB case law. The focus of the Association's argument seems to be that the "blue book" (to which it had access) was inadequate for assessing whether payments of benefits for specific procedures were sufficient and for evaluating the best way to correct inadequacies. Its argument seems directed particularly at the claimed scarcity of information concerning surgical procedures, with the implication that it was entitle to the Travelers' "phone book" size directory of reimbursement. We have little trouble concluding that the failure of the City to provide that directory was not a violation of the Act. The directory is clearly not the City's property and given Travelers' restrictions it cannot be provided in toto. In this context and in the absence of evidence that the Association ever pinpointed any particular data it sought from that directory or in any way became sufficiently specific to enable the City to provide data, we conclude the City did not illegally refuse to supply that information. For example, the Association never asked the City to provide another representative list of typical procedures to supplement what does strike us as a rather sparse listing in the "blue book." Neither did it ever specify its own representative list of procedures for which the City and Travelers readily could have supplied reimbursement figures. In sum we conclude the City has not breached its duty to supply information with respect to Item 1, since the "blue book" does supply much detailed information about the insurance benefits, because the City did not have the ability to provide the entire directory of surgical payments, and because the Association had not requested more specific data.

(citations omitted) City of Stamford Police at pp. 9 and 10.

The CSBLR's eighth and most recent decision addressing the duty to provide information was Farmington Board of Education Decision No. 2627 (March 25, 1988). This case arose under the TNA. In that case, the School Board had partially complied with a union request for information clearly relevant to the question of whether certain employees were being improperly excluded from the bargaining unit by the School Board and whether or not these employees were receiving the salaries and benefits provided for bargaining unit members under the existing collective bargaining contract. There was no new law established concerning the duty to provide information beyond the CSBLR's earlier decisions. However, for the first time in a duty to provide information case, the CSBLR awarded attorneys' fees and related costs to the union as part of the remedy, because the defenses raised by the School Board were frivolous and presented non-debatable issues.

II. Conclusion

The statutory duty to provide information relevant to grievance disputes remains a source of complaints to both the NLRB and the CSBLR. The basic rule with regard to wage and wage related information continues to be that such information is presumptively relevant and must be provided regardless of whether there is a pending grievance or a specifically identifiable potential grievance. The responding party will be able to rebut the presumption of relevancy in few cases involving requests for such information. Information that is not presumptively relevant must be provided if it is arguably relevant to a pending grievance or potential grievance. The above rules on relevancy are clear and

parties schooled in the case law developed under the applicable statutes should have little difficulty in quickly resolving such questions without resort to a labor relations board.

Questions of form will be troublesome on occasion. However, the basic rule that the responding party provide relevant requested information in the form in which it maintains its own records should resolve most disputes on this subject.

Finally, questions of confidentiality no doubt will continue to be a source of conflict. The United States Supreme Court made clear in Detroit Edison, supra that only in rare situations should confidentiality be accepted as a reason for refusal to provide relevant information. However, there have been some NLRB and court cases since Detroit Edison that have permitted confidentiality defenses in limited circumstances beyond the question of employee psychological aptitude test scores (which was the issue in Detroit Edison). But still there remains strong reluctance on the part of the NLRB, CSLRB and the courts to permit confidentiality defenses in all but the most compelling cases.

SECTION 5

UPSEU
SUGGESTED STANDARD GRIEVANCE LANGUAGE

DISCIPLINE GRIEVANCES

VERBAL WARNING

GRIEVANCE: that the application of a verbal warning against my work record is without just cause.

REMEDY REQUESTED: that the verbal warning be stricken from my work record.

EMPLOYEE MEMORANDUM (WRITTEN WARNING)

GRIEVANCE: that the application of an Employee Memorandum against my work record is without just cause.

REMEDY REQUESTED: that the Employee Memorandum be stricken from my work record.

SUSPENSION GRIEVANCE

GRIEVANCE: that I was suspended without just cause on (date) _____.

REMEDY REQUESTED: that this suspension be stricken from my record, and I be made whole for any loss.

TERMINATION GRIEVANCE

GRIEVANCE: that I was terminated without just cause on (date) _____.

REMEDY REQUESTED: that I be reinstated with full seniority rights to my job and be made whole for any and all losses.

DISCRIMINATION/HARASSMENT GRIEVANCES *

HARASSMENT, WORKING CONDITIONS

GRIEVANCE: that I am being subjected to unjust and undue harassment by my supervisor.

REMEDY REQUESTED: that the supervisor be instructed to immediately cease and desist this practice and that I am apologized to for said harassment.

WORKING CONDITIONS
(Discrimination for race, religion, sex, age, etc.)

GRIEVANCE: that I am being discriminated against by supervision.

REMEDY REQUESTED: that this discrimination cease and desist immediately and that supervision apologizes to me for said discrimination.

HARASSMENT GRIEVANCE (SURVEILLANCE)

GRIEVANCE: that_____'s undue surveillance, and harassment causes a hardship to me, and my work.

REMEDY REQUESTED: that the _____ cease this undue surveillance and harassment.

DISCRIMINATION OF UNION ACTIVISTS

GRIEVANCE: that I am being discriminated against by members of supervision because I engage in activities which are protected by the Municipal Employee Relations Act, as amended in the contract.

REMEDY REQUESTED: that this discrimination cease and desist immediately and that all members of supervision be reinstructed not to discriminate against union officials and members for participating in activities which are protected by the Municipal Employees Relations Act, as amended in the contract.

*** These may also be an unfair labor practice or civil rights case.**

OVERTIME

OVERTIME RECORDS

GRIEVANCE: that the overtime records _____ are not being maintained properly.

REMEDY REQUESTED: that overtime records be corrected and that supervision be instructed in proper overtime record procedures.

OVERTIME GRIEVANCE

GRIEVANCE: that the Town is in violation of the contract by depriving me of overtime work by the utilization of personnel not regularly employed on my job.

REMEDY REQUESTED: that this practice be discontinued and that I receive an equal distribution of overtime and be made whole for any and all losses.

OVERTIME GRIEVANCE

GRIEVANCE: that I am not receiving an equal distribution of overtime.

REMEDY REQUESTED: that I receive an equal distribution of overtime and be made whole for any and all losses.

FORCED OVERTIME GRIEVANCE

GRIEVANCE: that I am being subjected to an unfair policy; one which makes overtime mandatory, in effect forced labor against my will.

REMEDY REQUESTED: Henceforth, any and all overtime will be issued on a strictly voluntary basis.

LEAVE DENIED

VACATION/SICK/PERSONAL LEAVE DENIED

GRIEVANCE: that I was denied sick/personal leave/vacation without just cause.

REMEDY REQUESTED: that my request for leave be immediately approved and that I be made whole for any and all losses.

HOLIDAY PAY GRIEVANCE

GRIEVANCE: that I was denied Holiday pay for _____.
(Date)

REMEDY REQUESTED: that I receive Holiday pay for _____.
(Date)

VACATION GRIEVANCE

GRIEVANCE: that I am being forced to take a vacation on (date)_____, after making plans for a vacation scheduled by _____ on (date) _____.

REMEDY REQUESTED: that _____ scheduled my vacation from (date) _____ to (date) _____.

WORK PERFORMANCE, MISCLASS AND PROMOTION/DEMOTION GRIEVANCE

JOB ASSIGNMENTS

GRIEVANCE: that I have not been given the full opportunity to increase my skills and job knowledge within my department.

REMEDY REQUESTED: that I be given the opportunity to gain experience and increase skills and job knowledge within my department.

SCHOOLS – ADVANCEMENT OPPORTUNITY

GRIEVANCE: that I was not given the opportunity to attend _____ school.

REMEDY REQUESTED: that I be given the opportunity to attend _____ School.

MISCLASSIFICATION

GRIEVANCE: that I am misclassified inasmuch as I have been performing the essential duties of _____.

REMEDY REQUESTED: that I be immediately classified in _____ and be paid the proper rate of that classification retroactively.

TRANSFER DENIED

GRIEVANCE: that my request for a transfer to _____, was unjustly denied.

REMEDY REQUESTED: that I be given my transfer as requested immediately.

UNJUST TRANSFER/OR LOANED GRIEVANCE

GRIEVANCE: that I have been unjustly transferred to _____.

REMEDY REQUESTED: that I be returned to my former job immediately and be whole for any and all losses.

PROMOTION

GRIEVANCE: on the basis of seniority, that I should receive the promotion to _____, _____.

REMEDY REQUESTED: that I be given the above promotion and be made whole for any and all losses.

DEMOTION GRIEVANCE

GRIEVANCE: that I was unjustly demoted _____.

REMEDY REQUESTED: that I be reinstated to my proper rank and position and be made whole for any and all losses.

PERFORMANCE APPRAISAL RATING

GRIEVANCE: that my current performance appraisal does not correctly evaluate my performance in the following factors: _____, _____, _____ and/or comments.

REMEDY REQUESTED: that supervision produces and turns over to the steward and myself copies of all standards and records that he/she relied upon in making the above performance appraisal. I further request that I be re-appraised in the above factors and/or comments.

MISCELLANEOUS GRIEVANCES

FAILURE TO PROVIDE A STEWARD WITHIN A REASONABLE PERIOD OF TIME

GRIEVANCE: that the Town/Board did not provide a steward within a reasonable period of time.

REMEDY REQUESTED: that _____ be instructed to provide a steward within a reasonable period of time when requests for a steward were made. And further that the _____ apologize to me for the delay in obtaining my steward.

EARNEST EFFORT GRIEVANCE

GRIEVANCE: I grieve that supervision failed to make an earnest effort to resolve the grievance of _____.

REMEDY REQUESTED: that supervision be reinstructed to make an earnest effort and apologize to the parties involved.

PROPER STEWARD REQUEST

GRIEVANCE: that my proper request for a shop steward was not granted _____ at _____.
(Date) (Time)

REMEDY REQUESTED: that my supervision be reinstructed in this contractual obligation, to cease and desist this practice immediately and further that I be made whole for any loss incurred.

BARGAINING UNIT WORK

GRIEVANCE: that _____ was (is) performing bargaining unit work.

REMEDY REQUESTED: that this practice ceases and desist immediately.

ATTENDANCE RECORDS

GRIEVANCE: that _____ required me to sign incorrect entries in the attendance records.

REMEDY REQUESTED: that the incorrect entries be removed and the record corrected.

IMPROPERLY LAID-OFF

GRIEVANCE: that I have been unjustly and improperly laid-off.

REMEDY REQUESTED: that I be reinstated immediately to my job and be made whole for any and all losses.

INTERNAL INVESTIGATION

GRIEVANCE: I grieve that internal investigation procedure is unjust and unfair.

REMEDY REQUESTED: that the investigation ceases and desists immediately and that any and all records related to this investigation be stricken from the files.

SAFETY GRIEVANCE

GRIEVANCE: that the Town/Board is not complying with proper safety procedures _____ _____.
(Give brief explanation of unsafe condition)

REMEDY REQUESTED: that the Town immediately corrects this unsafe practice and insures the health and safety of employees until the situation is remedied.

MINIMUM STAFFING

GRIEVANCE: that the Town is not providing minimum back up for patrol officers which unnecessarily endangers the officers health and safety.

REMEDY REQUESTED: that the Town provides adequate staffing to ensure that proper back up is available at all times.

PERSONNEL FILE

GRIEVANCE: that the Town/Board has refused to grant me access to my personnel file in violation of State law and the contract.

REMEDY REQUESTED: that the Town immediately allows me access to inspect my file and provide me copies of any records I so request.

GRIEVANCE: that the Town/Board is violating State law by keeping more than one personnel file on employees.

REMEDY REQUESTED: that the Town/Board immediately comply with the law and designate that one file for employees be maintained.

FINAL NOTE: The preceding standard language is intended as a guide for most grievance situations. This language should be followed closely to avoid any pitfalls and to provide uniformity in union grievance action. Any situations not covered by this language should be referred to your president, UPSEU representative or attorneys.

STATEMENT OF GRIEVANCE

Stewards should add to the "applicable violation," the specific contract provision being violated and the following phrase:

"…and any other pertinent contract provisions."

WEINGARTEN RIGHTS

If this meeting or discussion could in any way lead to my being disciplined, terminated, or affect my personal working conditions, I respectfully request that my union representative be present Without this representation, I choose not to participate in this meeting or discussion.

Under Weingarten, an employee has the right to union representation when:

a. *He/she is subject to an investigatory interview. Investigatory interviews occur when a supervisor or other management official questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend her or his conduct.* And*;*

b. *The employee has a reasonable belief that discipline or other adverse consequences may result from what he/she says during the Interview.*

When those conditions are met, it is the employees right to have union representation.

The Weingarten Rule at a glance...

1 There must be an investigatory interview. The employee MUST, either before or during the interview, ask for Union representation.

2: When the request is made:

- (a) The supervisor MUST either grant the request and delay questioning until a Union representative arrives and has a chance to consult privately with the employee; or
- (b) Deny the request and end the interview immediately; or
- (c) Give the employee a choice of:

    1. Having the interview without the union representative
    2. Ending the interview

3: If the supervisor refuses to honor the employee's request and insists on the interview, he or she commits an unfair labor practice (UIP) and the results of the interview may be set aside, if the charge is upheld.

DERECHOS de WEINGARTEN

Si esta reunión o la discusión pueden en ninguna manera lleva a mi ser disciplinado, para ser terminado, o afecta mis condiciones de trabajo personales, yo solicito respetuosamente que mi enlace es presente Sin esta representación, yo escojo no tomar parte en esta reunión o la discussion.

Bajo Weingarten, un empleado tiene el derecho a la representación de la unión cuando:

c. *El/ella es susceptible a una entrevista investigadora. Las entrevistas investigadoras ocurren cuando un supervisor u otro funcionario de gestión preguntan a un empleado para obtener información que podría ser utilizada como una base para la disciplina o pide que un empleado defiendala o su conducto. Y;*

d. *El empleado tiene una creencia razonable que disciplina u otras consecuencias adversas pueden resultar de lo que él/ella dice durante la Entrevista.*

Cuando esas condiciones son encontradas, es el derecho de empleados de tener representación de unión.

La Regla de Weingarten en una mirada...

1 Debe haber una entrevista investigadora. El empleado DEBE, o antes de o durante la entrevista, pide representación de Unión.

2: Cuando la petición es hecha:

- (a) El supervisor o debe otorgar la petición y tardanza que preguntan hasta que un enlace llegue y tenga una oportunidad de consultar en privado con el empleado; o
- (b) Niega que la petición y termina la entrevista inmediatamente; o
- (c) le Da al empleado una preferencia de:

    1. Tener la entrevista sin el enlace
    2. Terminar la entrevista

3: Si el supervisor se niega a honorar la petición del empleado e insiste en la entrevista, él o ella cometen una práctica injusta de trabajo (UIP) y los resultados de la entrevista pueden ser apartados, si la carga es apoyada.

Garrity Rights

Garrity Basics

Garrity Rights protect public employees from being **compelled to incriminate** themselves during investigatory interviews conducted by their employers. This protection stems from the Fifth Amendment to the United States Constitution, which declares that the government cannot compel a person to be a witness against him/herself.

For a public employee, the **employer is the government itself**. When questioned by their employer, they are being questioned by the government. Therefore, the Fifth Amendment applies to that interrogation if it is related to potentially criminal conduct.

Garrity Rights stem not just from the Fifth Amendment, but also the Fourteenth Amendment. While the Fifth Amendment could be said to apply only to the federal government, the "equal protection" clause of the Fourteenth Amendment makes the Fifth Amendment applicable to state, county, and municipal governments as well (determined by the United States Supreme Court in 1964's *Malloy v. Hogan*)

Garrity Rights originate from a 1967 United States Supreme Court decision, *Garrity v. New Jersey*.

The Garrity Story

In 1961, the New Jersey attorney general began investigating allegations that traffic tickets were being "fixed" in the townships of Bellmawr and Barrington. The investigation focused on **Bellmawr police chief Edward Garrity** and five other employees. When questioned, each was warned that anything they said might be used against them in a criminal proceeding, and that they could refuse to answer questions in order to avoid self-incrimination. However, they were also told that **if they refused to answer, they would be terminated**. Rather than lose their jobs, they answered the investigators' questions. Their statements were then used in their prosecutions – over their objections – and they were convicted.

The U.S. Supreme Court then ruled in 1967's *Garrity v. New Jersey* that the employees' statements, **made under threat of termination**, were **compelled** by the state in violation of the Fifth and Fourteenth Amendments. The decision asserted that "*the option to lose their means of livelihood or pay the penalty of self-incrimination is the antithesis of free choice to speak or to remain silent*." Therefore, **because the employees' statements were compelled, it was unconstitutional to use the statements in a prosecution.** Their convictions were overturned.

Several **subsequent cases** further clarified the protections that fall under the umbrella of **Garrity Rights:**

KEY GARRITY RIGHTS CASES 1967-1972

Case	Holding
Garrity v. New Jersey (1967)	Compelled statements cannot be used in a subsequent criminal proceeding.
Gardner v. Broderick (1967)	The employer cannot use a threat of discharge to coerce an employee to waive their constitutional rights.
Uniformed Sanitation Men Association v. Commissioner of Sanitation, "Uniformed Sanitation I" (1968)	An employee cannot be dismissed for refusing to incriminate themselves.
Uniformed Sanitation Men Association v. Commissioner of Sanitation, "Uniformed Sanitation II" (1970)	If an employee's statements are immunized from use in future criminal proceedings and yet they still refuse to answer, they can be discharged.
Kastigar v. United States (1972)	"Use/derivative use immunity" - The employee may still be prosecuted as long as the evidence used against them does not include compelled statements or any evidence derived from those statements.

Garrity Rights in the Public Workplace

A city sanitation employee sits down with his supervisor, who asks questions about allegations that the employee has been selling illegal drugs to his co-workers. Perhaps the worker has no involvement in such activity, and would choose to cooperate with the investigation; however, perhaps he is concerned that something he says could be used to prosecute him, and thus he might want to assert his Fifth Amendment privilege.

Whether his Garrity Rights come into play depends primarily on whether he is compelled to answer questions. If he **faces little or no penalty** and then makes statements, his statements are **voluntary**. However, if he faces a sufficiently severe penalty for refusing to answer, courts would generally hold that his statements were compelled and thus their use in a future criminal proceeding would be unconstitutional.

The most commonly-threatened penalties that bring about compulsion are a **threat of dismissal** or a threat of **disciplinary action "up to and including termination."** However, in some places, "up to and including termination" may NOT be considered compulsion; see the FAQ for more on this issue.

This scenario could unfold in a number of ways:

SCENARIO 1.
Our city sanitation worker meets with his supervisor regarding the allegations that he has been selling illegal drugs. The supervisor advises him that his participation in the interview is **completely voluntary** and he can refuse to answer questions at any time, with **no penalty** for doing so. He is

also advised that his answers **may be used against him** in a criminal proceeding. During the course of the interview, **he admits** that he sold drugs to his co-workers. For this violation of city policy, he is terminated. His admission is turned over to law enforcement and is used as evidence to prosecute him. **Bottom line: he had no immunity because his statements were voluntary, not compelled; voluntary statements can be used in prosecutions.**

SCENARIO 2.

Our city sanitation worker meets with his supervisor regarding the allegations that he has been selling illegal drugs. The supervisor advises him that his participation in the interview is **completely voluntary** and he can refuse to answer questions at any time, with **no penalty** for doing so. He is also advised that his answers **may be used against him** in a criminal proceeding. He is asked about the allegations and **refuses to answer**, asserting his rights under the Fifth Amendment. The supervisor cannot take adverse action against the worker for his assertion of his rights. **Bottom line: lacking immunity, the employee can stand on the Fifth Amendment and decline to participate, without repercussion for doing so.**

SCENARIO 3.

Our city sanitation worker meets with his supervisor regarding the allegations that he has been selling illegal drugs. The supervisor advises him that he is **ordered to cooperate**, and that if he refuses to answer questions, he **will be dismissed** from his job. During the course of the interview, **the worker admits** that he sold drugs to his co-workers. The employer can discipline or terminate him for the violation of city policy, but his statements **cannot legally be used** as evidence against him in a prosecution. **Bottom line: compelled statements are protected from use in criminal proceedings.**

SCENARIO 4.

Our city sanitation worker meets with his supervisor regarding the allegations that he has been selling illegal drugs. The supervisor advises him that he is **ordered to cooperate**, and that if he refuses to answer questions, he **will be dismissed** from his job. Despite this, the worker **still refuses to answer questions**, asserting his Fifth Amendment privilege. The worker is lawfully **terminated** for insubordination. **Bottom line: the employee's statements were made immune by the supervisor's act of compelling them; once the employee's statements are protected, he can no longer refuse to answer.**

Often, public employers will simply want to conduct an administrative investigation in order to ascertain whether misconduct has occurred, and to determine if disciplinary action is warranted. Accordingly, many public employers begin investigatory interviews by asking employees to sign "Garrity Statements," "Garrity Advisements," or "Garrity Warnings." Once signed, a properly-worded statement enables management to question the employee and require that they respond.

The courts have not been consistent in their interpretation and application of Garrity Rights. As a result, certain aspects of Garrity Rights are interpreted differently, depending on where one lives. See the FAQ for more information.

Frequently Asked Questions

Why don't private sector employees have Garrity Rights?

The answer lies in the applicability of the rights contained in the United States Constitution and the Bill of Rights. The Constitution protects citizens from the **actions of government**, *not* the actions of private employers.

When a public employee is being questioned by their employer, they are being questioned by the government. Therefore, the Fifth Amendment applies to that interrogation, if it is related to potentially criminal conduct.

The Fourteenth Amendment makes this applicable not just to the federal government, but to state and local governments as well.

On the other hand, the Constitution **does not protect citizens from the actions of private entities**, such as private employers. If you work for a manufacturing company or a restaurant, for example, and your employer questions you about a potentially criminal matter, this is not a case of the government questioning you. Therefore, there is no protection from being compelled to incriminate yourself.

Aren't these "special rights" for public employees?

Not at all. Regardless of whether one is a public employee or a private sector employee, **everyone** has the right not to be compelled to incriminate themselves **when questioned by the government**.

What's the difference between Garrity Rights and Weingarten Rights? And Loudermill Rights?

These are entirely separate and distinct rights. People confuse them because they often come into play at the same time.

Garrity Rights apply to the right of a public employee not to be compelled to incriminate themselves by their employer. These rights are based on the 1967 United States Supreme Court decision *Garrity v. New Jersey*. Garrity Rights apply only to public employees, because they are employed by the government itself.

Weingarten Rights apply to the right of a unionized employee to request union representation for any investigatory interview conducted by their employer, in which the employee has the reasonable belief that the discussion could lead to disciplinary action. These rights are based on the 1975 United States Supreme Court decision *NLRB v. J. Weingarten Inc*. The Weingarten decision itself applies only to private sector employees, but the federal government and many states have extended similar rights to public employees via legislation, court decision, and/or rulings by state labor boards. In some cases, unionized public employees have enshrined Weingarten Rights into their collective bargaining agreements.

Loudermill Rights require due process before a public employee can be dismissed from their job. These rights are based on the 1985 United States Supreme Court decision *Cleveland Board of Education v. Loudermill*. Generally, these rights require a public employer to offer to have a "pre-termination" meeting with the affected employee; at this meeting, the employer presents their

grounds for termination, and the employee is given the opportunity to respond.

Like Garrity Rights, these rights only apply to public employees because they are employed by the government itself, and the Constitution only applies to actions taken by the government. A private sector employee - for example, a manufacturing worker - possesses only Weingarten Rights, and only if s/he is in a unionized workplace.

A public sector employee possesses Garrity Rights and Loudermill Rights because their employer is the government, regardless of whether he/she works in a unionized workplace. The same public sector employee may possess rights similar or identical to Weingarten Rights, provided they work in a unionized workplace.

Below is a scenario in which all three sets of rights could coexist. This demonstrates that public employees and their representatives must have a clear understanding of these three sets of rights - not only an understanding of how they are separate and distinct, but also an understanding of how their functions can overlap.

A public employee in a unionized unit is summoned to their supervisor's office for questioning. Having a reasonable belief that the questioning is an investigatory interview for the purpose of determining possible disciplinary action, the employee invokes his/her **Weingarten Rights** and requests union representation for the meeting.

Once the union representative arrives and the questioning begins, it becomes clear that the investigation involves potentially criminal misconduct. Therefore, the union representative and the employee secure an affirmation from the supervisor stating that the questioning is for disciplinary purposes only, that the employees' answers will not be used in a criminal proceeding, and that failure to answer will result in termination. Now the employee is protected by their **Garrity Rights**.

A few days later, the employee receives notification that management wishes to meet again, and that they believe they have grounds for terminating the employee for misconduct, based on the answers provided at the investigatory interview. The notification states that at this meeting, management will explain why they think they have grounds for termination, and the employee will have the opportunity to respond. This satisfies the employee's **Loudermill Rights**.

Can I be forced to waive my Garrity Rights?

No. The United States Supreme Court ruled in 1968's *Gardner v. Broderick* that public employers cannot use a threat of termination to force employees to waive their constitutional rights.

However, some employers might attempt to **convince or persuade** an employee to cooperate by using leverage short of termination. By using penalties such as unwelcome schedule changes or assignment to unattractive duties, employers might try to bring about cooperation without making threats of severe discipline or termination. Employees who give statements under such circumstances are very unlikely to be protected by *Garrity*, as courts would find that their cooperation was voluntary and not compelled.

Do Garrity Rights apply if I'm investigated by an outside agency?

If you are a public employee and are investigated by an outside agency, Garrity Rights can still apply if you are **clearly subject to severe disciplinary action or termination** if you refuse to answer the

outside agency's questions. Typically, **your own agency** will order you to cooperate with the outside investigator; if this order is made, and the penalty for refusing to comply is made clear and is severe (generally termination), then Garrity Rights apply.

Employees should be careful they are not *assuming* the nature and severity of the penalty; if **your own employing agency** does not make clear statements or have clear policies and procedures that require severe discipline or termination for refusal to participate in such an investigation, you are probably not protected.

A recent example is *U.S. v. Lamb*, a 2010 West Virginia case in which a firefighter was summoned by his captain to speak to federal law enforcement agents. A court determined that the employee's Garrity Rights had not been violated because the captain had not *ordered* the employee to answer the federal agents' questions, and the employee had not been threatened with termination for refusing to cooperate.

Be sure you are not relying solely upon the statements of the outside investigator; they do not have the power to discipline or terminate you. A court would probably rule that compulsion cannot be caused by threats made by an outside party.

What is "compulsion?"

The Fifth Amendment states that the government cannot compel a person to incriminate themselves; Garrity brings this into the employment relationship, affirming that a governmental employer cannot compel their employees to incriminate themselves. The key to defining "compulsion" revolves primarily around one question: **what is the penalty for refusing to answer questions?** In general, the courts have found that if a public employer threatens an employee with severe administrative sanctions - usually **termination** - for refusal to answer questions, then the employee's statements are considered compelled and therefore unusable against the employee in any future criminal proceeding.

It is important to note, however, that the precise definition of "compulsion" has varied in court decisions across the country. The answer to the question, "What is compulsion?" **can depend on where you live.** Most courts, including the United States Supreme Court, have taken a broad view of "compulsion." Courts have ruled a variety of threatened penalties as sufficient to bring about "compulsion," including disbarment, suspension, demotion, and in general, any "substantial economic penalty."

However, some courts have held that **only a threat of termination** is sufficient to bring about compulsion, and further, that this threat must be made very clearly. The U.S. District Court of Appeals for the **First Circuit**, which covers the states of Maine, Massachusetts, and New Hampshire, has stated that only termination can cause compulsion, and that this threat of termination must be explicit in order for the employee to be protected by Garrity Rights (see *U.S. v. Indorato*). Other jurisdictions *potentially* subject to this narrow view include Illinois (*People v. Bynum*, 1987), Florida (*United States v. Camacho*, 1990), New Jersey (*New Jersey v. Lacaillade*, 1993), Idaho (*State v. Connor*, 1993), Minnesota (*United States v. Najarian*, 1996), Colorado (*People v. Sapp*, 1997, and *Hopp & Flesch, LLC v. Backstreet*, 2005) and Wisconsin (*Wisconsin v. Brockdorf*, 2006).

To have a complete understanding of this question, **you must be familiar with the case law in your area.**

Does management have to advise an employee of their rights?

In **federal employment** and in states under the jurisdiction of the United States Court of Appeals for the **Seventh Circuit** (Illinois, Indiana, Wisconsin), the employer has the affirmative duty to inform the employee of their Garrity Rights. Public employers in the state of **California** must also advise employees of their rights.

The requirement in federal employment stems from the 1973 case *Kalkines v. United States*. This is why, in federal employment, the documents advising employees of their rights are routinely called "Kalkines Warnings." The requirement in the Seventh Circuit stems most notably from *Confederation of Police v. Conlisk* and *Atwell v. Lisle Park District*, leading some to give this doctrine the name "Conlisk-Atwell."

It can also be argued that a similar approach was embraced by the **Second Circuit** (Connecticut, New York, Vermont) in *Uniformed Sanitation II*, in which the court said that public employees "subject themselves to dismissal if they refuse to account for their performance of their public trust, **after proper proceedings**, which do not involve an attempt to coerce them to relinquish their constitutional rights" (625). The phrase "after proper proceedings" has been interpreted by some to mean an advisement of the employee's rights.

Whether based on *Kalkines*, *Conlisk-Atwell*, or *Uniformed Sanitation II*, these advisements usually take the form of a document advising the employee of their rights.

In California, the duty to advise public employees of their rights results from the 1985 case *Lybarger v. City of Los Angeles*, in which the court found that the state's Public Safety Officers Procedural Bill of Rights required such an advisement if the employee could potentially be charged with a criminal offense.

Outside of **federal employment**, the states of the **Seventh Circuit** (and perhaps the states of the **Second Circuit**), and the state of California, public employers have no such obligation.

In other jurisdictions, many public employers have voluntarily adopted the practice of administering an advisement document prior to questioning.

Are Garrity Rights automatically "triggered," or must they be granted/extended?

I am of the opinion that Garrity Rights can be triggered by the actions/statements of the public employer, regardless of whether any prior affirmation or discussion of those rights ever takes place.

As soon as the employer orders the employee to answer questions and threatens them with severe discipline (usually termination) for refusing to answer, Garrity Rights, in my opinion, **automatically apply**. The order to answer and the threat of termination **trigger use/derivative use immunity** for the statements the employee makes. At no time does the employer have to say "I am activating your Garrity Rights." Similarly, the triggering of Garrity Rights does not require the employee to "invoke" them. Once the employee is ordered to answer and threatened with termination for refusing to do so, use/derivative use immunity applies to their subsequent statements during that interview.

In *Uniformed Sanitation II*, the Second Circuit said, in reference to the original *Garrity* case, "the very act of the attorney general in telling the witness that he would be subject to removal if he refused to answer was held to have conferred such immunity" (626).

In a footnote to *Wiley v. Mayor and City Council of Baltimore*, the Fourth Circuit stated, "*Garrity* immunity is self-executing." The court did note, however, that "In an appropriate case, it might be necessary to inform an employee about its nature and scope" (778). Other courts which have held that Garrity Rights can be "triggered" include the Eleventh Circuit in *Hester v. City of Milledgeville* and the Fifth Circuit in *Gulden v. McCorkle*.

Can Garrity Rights be "invoked" by the employee?

Sort of, but not really. What some may view as an "invocation" of one's rights is really just a statement of rights - rights that exist whether or not the employee "invokes" them. *Garrity* protection depends on whether they are **ordered to answer questions**, whether the answers to those questions could **incriminate** the employee, and whether there is a **severe penalty** - usually termination - for refusing to answer questions.

What the employee can invoke is their Fifth Amendment right not to give a statement. However, this right disappears once *Garrity* is triggered. Once the employee has been threatened with severe discipline or termination for refusal to answer, they are protected by *Garrity* and its use/derivative use immunity, and can no longer stand on the Fifth Amendment. See *Uniformed Sanitation II*.

In one possible scenario, an employee is called in for questioning, and is told they are required to answer questions. They are also told that if they refuse, they will be terminated. The employee emphatically announces, "I am invoking my Garrity Rights." What does this mean? Their invocation does not trigger their protection - the *actions of the employer* triggered Garrity protection before the employee said a word. Does their invocation now entitle them not to answer questions? Absolutely not. As previously stated, once use/derivative use immunity has been activated, the employee can no longer refuse to answer questions. So it is difficult to ascertain what the employee's invocation of their rights actually accomplishes. However, it must be acknowledged that an employee in an investigatory situation should endeavor to "cover all the bases" and make sure all parties are aware of the rights and obligations in place at the time; thus an invocation/affirmation of these rights certainly does no harm.

In an alternate scenario, the employee is called in for questioning, and upon entering the room, emphatically announces, "I am invoking my Garrity Rights." What does this mean? They have not been given any directives, nor have they been threatened with any penalty, real or implied. No compulsion has occurred yet. Therefore, Garrity Rights have not yet been triggered, notwithstanding the employee's invocation. Again, in a legal sense, the employee invocation accomplishes little; but it does no harm, as long as the employee fully understands it.

What is use/derivative use immunity?

When people are given complete immunity from prosecution for a particular crime, it is known as **"transactional"** immunity.

In Garrity Rights cases, the immunity is not complete "transactional" immunity. In 1972's *Kastigar v. United States*, the Supreme Court held that immunity for compelled statements only applies to the **use of the statements** themselves, and to any **evidence gained as a result of the protected statements**. This is known as "**use and derivative use**" immunity, in which "use" is the use of the protected statements, and "derivative use" pertains to any evidence gained as a result of the protected statements. It is also known as "use plus fruits" immunity.

This means that the person in question **can still be prosecuted** for the offense under investigation, as long as the prosecution relies solely on evidence other than the protected statements and their fruits.

The result is that in many cases, what is known as a "**Kastigar Hearing**" takes place, in which the prosecution must demonstrate that its case rests solely on evidence **other than** the protected statements and their fruits.

Recently, this was significant in relation to the **Nisour Square** incident of September 16, 2007. On that day, Blackwater military contractors in Iraq killed 17 civilians in Baghdad's Nisour Square. In December 2008, the United States Department of Justice brought criminal charges against five of the contractors who had been involved, but the charges were dismissed in late 2009 because the prosecution had utilized evidence that was gained as a result of compelled statements.

It should be noted that full transactional immunity for compelled statements does apply in the Commonwealth of Massachusetts, as a result of the 1988 state supreme court decision in *Carney v. City of Springfield*.

If I have Garrity protection, can I still take the Fifth and refuse to answer questions?

No. In "*Uniformed Sanitation II*," the court determined that once employees are protected by *Garrity* - meaning, their statements are protected by "use/derivative use" immunity - they are no longer able to refuse to answer questions. This is because once use/derivative use immunity is assured, the employee is no longer being required to give self-incriminating statements.

I made statements after being told that if I refused to answer questions, I would face "discipline up to and including termination." Are my statements protected?

You are on potentially shaky ground, depending on where you live. In the states of the U.S. Court of Appeals for the **First Circuit** (Maine, Massachusetts, and New Hampshire), the courts would likely find that your statements were **voluntary** because, while termination was a possibility, other less-severe sanctions were possibilities as well. See, for example, *United States v. Indorato*, *Commonwealth v. Harvey*, *Singer v. Maine*, *Dwan v. City of Boston*, and *New Hampshire v. Litvin*.

A number of other jurisdictions *potentially* subject to this narrow view include Illinois (*People v. Bynum*, 1987), Florida (*United States v. Camacho*, 1990), New Jersey (*New Jersey v. Lacaillade*, 1993), Idaho (*State v. Connor*, 1993), Minnesota (*United States v. Najarian*, 1996), Colorado (*People v. Sapp*, 1997, and *Hopp & Flesch, LLC v. Backstreet*, 2005) and Wisconsin (*Wisconsin v. Brockdorf*, 2006).

While many courts would find "discipline up to and including termination" coercive enough to trigger *Garrity* protection, it is also not hard to imagine other courts finding that coercion has not occurred if dismissal was possible **but not definite**. Obviously, then, the only way to be completely sure your statements are protected is to ensure that you are unequivocally subject to **termination** for refusal to answer. Otherwise, you gamble with the possibility that a court will deem your statements voluntary.

What happened to Chief Garrity after *Garrity v. New Jersey* was decided?

Edward Garrity **returned to his job as police chief** of the township of Bellmawr, New Jersey. In 1969, just two years after the *Garrity* decision by the Supreme Court, he received the **J. Edgar Hoover Award for Law Enforcement in New Jersey.**

He retired from the Bellmawr police department in 1978, after serving as chief of police since 1951. Upon his retirement, he joined the **Camden County Prosecutor's Office**. He died in 2000.

It is also interesting to note that his father, James Garrity, was Bellmawr's chief of police from 1930-1949. So with just a two-year gap from 1949-1951, a member of the Garrity family was the township's police chief from 1930 to 1978.

Does Garrity protect false statements?

No. If an employee makes false statements under *Garrity* protection, they can be prosecuted for making false statements, and their statements can be used against them in that prosecution.

A number of courts have ruled that *Garrity* does not protect false statements. See *McKinley v. City of Mansfield* (6th Cir. 2005), *U.S. v. Veal* (11th Cir. 1998), *FOP Lodge No. 5 v. City of Philadelphia* (3rd Cir. 1988), *U.S. v. Devitt* (7th Cir. 1974), and *U.S. ex. rel. Annunziato v. Deegan* (2nd Cir. 1971).

The United States Supreme Court has repeatedly ruled that the Fifth Amendment does not shield perjured or false statements. See *U.S. v. Wong* (1977), *U.S. v. Mandjuano* (1976), and *U.S. v. Knox* (1969).

Does Garrity apply to drug tests, breathalyzer tests, etc?

No. Remember that Garrity Rights relate to the right not to be compelled to incriminate oneself. Courts have consistently found that this Fifth Amendment right applies only to **statements**, not to physical evidence. In *Schmerber v. California*, the United States Supreme Court stated that "the privilege is a bar against compelling 'communications' or 'testimony,' but that compulsion which makes a suspect or accused the source of 'real or physical evidence' does not violate it" (764). This doctrine extends as far back as 1910's *Holt v. United States* and even 1886's *Boyd v. United States*.

More recently, in the 2008 case *Illinois v. Carey*, a police officer who had been arrested for DUI argued that his breathalyzer results should be suppressed because he had been threatened with termination if he refused to take the test. The Illinois appellate court disagreed, saying that "it is well settled that the Fifth Amendment applies only to testimonial or communicative evidence and that it does not apply to physical evidence" (1139).

My question is not listed here. What can I do?

Feel free to contact me - I'll do my best to answer your question, or at least point you in the right direction.

Case Summaries

United States Supreme Court

- *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- *Spevack v. Klein*, 385 U.S. 511 (1967).
- *Gardner v. Broderick*, 392 U.S. 273 (1968).
- *Uniformed Sanitation Men Association Inc. v. Commissioner of Sanitation*, 392 U.S. 280 (1968). - "Uniformed Sanitation I"
- *Kastigar v. United States*, 406 U.S. 441 (1972).

United States Circuit Courts of Appeals

- *Uniformed Sanitation Men Assoc. Inc. v. Commissioner of Sanitation*, 426 F.2d 619 (2nd Cir. 1970). - "Uniformed Sanitation II"
- *Confederation of Police v. Conlisk*, 489 F.2d 891 (7th Cir. 1973).
- *Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973) (now the Federal Circuit).
- *United States v. Indorato*, 628 F.2d 711 (1st Cir. 1980).
- *United States v. Friedrick*, 842 F.2d 382 (D.C. Cir. 1988).
- *United States v. Vangates*, 287 F.3d 1315 (11th Cir. 2002).

State Courts

- *State of New Hampshire v. Valerie Litvin*, 147 N.H. 606 (2002).
- *Wisconsin v. Brockdorf*, 2006 Wi 76 (2006).
- *Spielbauer v. County of Santa Clara*, 45 Cal.4th 704 (2009).

THE 7 TESTS OF "JUST CAUSE"

Many UPSEU collective bargaining agreements contain a just cause provision, yet very few of them adequately define what it means. This has been left to the arbitrators.

In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action. In the Seven Tests of Just Cause, the employer must be able to answer YES to the following seven questions.

1. Reasonable Rule or Order

Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?

This rule or order must not be arbitrary, capricious or discriminatory and must be related to the employer's stated goals and objectives.

Even if this order is unreasonable, the member MUST obey, except in cases when doing so would jeopardize health and safety.

2. Notice

Did the employer give any warning as to any possible discipline or consequence that could result from that employee's action or behavior?

While maintaining the contractual right to manage it's workforce by establishing the rule and orders necessary, the employer is responsible for informing the employees as to their meaning and application.

The employer must advise the employee that any act of misconduct or disobedience would result in discipline. This statement should be clear, unambiguous and inclusive of any possible penalties.

3. Investigation

Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?

The employer's investigation must be made BEFORE any disciplinary action is invoked.
The employer is prosecutor, judge and jury in discipline cases, and must bear full responsibility for collecting any and all facts that are relevant to the final decision.

4. Fair Investigation

Was this investigation fair and objective?
The employer has the obligation to conduct a fair, timely and thorough investigation that respects the employee's right to union representation and due process.

Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment.

5. Proof

Did this investigation uncover any substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?

Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial.

While conducting the investigation, the employer must actively seek out witnesses and search for evidence. If an offense cannot be proven, then no penalty could ever be considered just.

6. Equal Treatment

Did the employer apply all rules, orders and penalties evenhandedly and without discrimination to ALL employees?

If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this test.

7. Penalty

Was the degree of discipline administered reasonable related to either the seriousness of the employee's offense or to the record of past service?

A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past.

Though an employee's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.

Should two or more employees be found guilty of the same offense, their respective records will be used to determine their individual discipline. Thus, if employee A has a better record than employees B or C, then the employer has a right to give a lighter penalty to employee A without being discriminatory.

The employee's offense may be excused through mitigating circumstances. For example, a warehouse employee found asleep on the job may be excused by the mitigating circumstance of being under medication by the company doctor. Or, an employee with domestic troubles may be proven incompetent rather than negligent, the latter indicating a willful deliberation.

UPSEU officers and stewards who approach disciplinary hearings with the above Seven Tests in mind can often detect weaknesses in the employer's case.

MUNICIPAL EMPLOYEES' RIGHTS

(Internal Investigations)

1. WEINGARTEN RULE
   Right to Union Representation during disciplinary interviews.

QUESTIONS THAT SHOULD BE ASKED PRIOR TO INTERVIEW

(Keep Notes)

1. What is the purpose of the interview?
2. Are you being ordered to respond?
3. Can discipline result?
   What will be the result if you refuse to speak? (Verbal Reprimand – Suspension – Discharge)

JUST CAUSE" CHECKLIST

A. Are rules or standard of conduct clear and unambiguous?

1) Rules and Regulations
2) Policy and Procedures
3) Department Orders
4) Contract
5) Laws

B. Have rules been communicated to Employee prior to use?

(Handouts do not qualify)

C. Is there consistent enforcement of the rules?

(When the Employer knows about it)

D. Is there Proof of Violation?

(To extent of wrongdoing)

E. Is discipline progressive?

(Corrective not punitive)

F. Are there mitigating circumstances?

QUESTIONS YOU SHOULD ASK WHEN YOU ARE BEING QUESTIONED:

1. I respectfully request that I be informed of the nature of the charges and/or complaints being made against me.

If the reply to this question is that there are no charges or complaints pending, then the further question should be asked:

2. Why and for what purpose am I being interrogated?

If information is forthcoming in which there is an answer to this question or to the previous question, every effort should be made to have the particular incident or incidents pinned down to a specific time and place and further efforts should be made to attempt to ascertain whether these are all the charges or complaints pending at that time. The member then being interrogated should then use this further question:

3. I respectfully request time to consult my notes and witnesses so that I may refresh my recollection as to all the facts in question.

If this request is denied, the further question should be asked for the record:

4. Are you refusing me the opportunity to avail myself of information to enable me to file an accurate and truthful report?

One other question that should be brought up is that the person being interrogated should formally ask:

5. May I have an opportunity to consult and counsel with an attorney regarding the situation?

WORKBOOK FOR TEACHING GRIEVANCE WRITING

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WORKBOOK FOR TEACHING GRIEVANCE WRITING

This material is to help stewards or other people handling grievances learn the writing techniques. It is intended for use in a two or three session workshop. The material covers the different kinds of writing used in grievance processing. Progression is based on the steps involved, with the final exercise a written grievance for presentation to management. The emphasis throughout is on effective planning and organization, on how the writer processes his or her information.

GRIEVANCE WRITING explains the two kinds of writing that stewards handling grievances use, and lists the appropriate items for each category 3

SOME PRINCIPLES OF GRIEVANCE WRITING outlines the basics of good writing as they apply to the formal grievance……. 4

SOME EXAMPLES OF GRIEVANCE WRITING is a tool for discussion. It provides contrasting samples of grievance writing styles 5-6

VOCABULARY FOR GRIEVANCE WRITING is a reference for students. It lists common words and phrases used in grievance writing 7

STEPS IN THE GRIEVANCE PROCESS (p.8) should be used with the forms on pp.9-13 (Interviewing Sheet, Analyzing the Grievance, Preparation for Oral Presentation and Grievance Form) 8-13

FRED RAYMOND is an interview with sample forms completed as a person investigation the grievance might do them. It is an example of how to do the cases which follow 14-20

ROGER MARTINEZ, JANE ROSS and JOE GRIMES—a series of notes on three potential grievances. Working with these notes, students should complete the forms on pp. 9-13. Class discussion should follow each "case" 21-23

WRITING THE GRIEVANCE—additional practice for the students 24-25

GRIEVANCE WRITING

A person handling grievances (steward, business agent, representative) does two kinds of writing. There is a difference in the writing as illustrated below.

***For the Union files*:** Everything you can get: interviews, notes from meetings, records of conversations, minutes of meetings, summaries of documents. Everything should be included. Do not be concerned about style—be concerned about getting all the information.

***For presentation to management*:** A brief statement containing two basic elements:

1. Statement of Grievance
2. The Remedy

Example:

GRIEVANCE—Marian Ross was discharged on August 10 without just cause.

REMEDY—Reinstate Marian Ross effective August 10 and make her whole for all wages and all other employment rights and benefits.

Save arguments, proof, documentation for future meetings and hearings.

SOME PRINCIPLES OF GRIEVANCE WRITING

1. **USE PLANNING TECHNIQUES.** They will help you do a better job. Although they may seem like extra work to you until they become automatic, they will save you time and trouble by helping you define the issues, identify what you want and how to get it.

2. **AS A GENERAL RULE, KEEP YOUR DOCUMENTATION OUT OF THE GRIEVANCE FORM. HAVE IT READY IN THE GRIEVANCE ANALYSIS AND IN THE ORDER MATERIALS YOU WORK WITH.** " Marty Williams was sent home by his supervisor, Joe Clark, at 3 p.m. on Monday, March 22, 1979, for insubordination. Specifically, Williams called Clark a !@#$%. The disciplinary action was unjust because Clark had called Williams a !@#$%* just three minutes before the incident occurred…" is not a good statement of the grievance; "Marty Williams was disciplined without just cause on Monday, March 22, 1979" is. The facts are there to support the Union's contention. You may not want to introduce them until you get into formal discussion.

3. **USE SHORT, POSITIVE STATEMENTS TO WRITE THE GRIEVANCE.** Long sentences are hard to read. They can be tedious and irritating to the reader. Sometimes, after you've strung a long series of thoughts into one big "super" sentence, the whole thing doesn't come out right anyway. Then, if your reader is "of the picky persuasion" and wants to find fault with you, he may hold the faulty sentence against you. Stick to short, clear sentences. They're the basis of good writing.

4. **USE SIMPLE DESCRIPTIVE WORDS.** Let people be impressed with how well you've researched the grievance, how clearly you have identified the issues—not by the complexity of your vocabulary or sentence structure (these are often a cover-up for sloppy thinking). Stick to good plain speech and leave legalistic writing to the lawyers.

5. **USE AN OBJECTIVE APPROACH IN COMMUNICATING WITH MANAGEMENT. USE THE THIRD PERSON ("he, she, the supervisor" NOT "you, me, us") TO DESCRIBE BEHAVIOR WITHOUT MORALIZING ABOUT IT.** "Joe Blow was terminated without just cause" inclines your reader to look at the information to see if just cause did or didn't exist. "You people acted unfairly when you fired Joe Blow" puts the reader on the defensive. If s/he admits that Joe shouldn't have been terminated, s/he has to accept the "bad guy" label. Joe Blow stands a better chance of getting his job back if you describe his case for him in language that is free of "blaming" words.

SOME EXAMPLES OF GRIEVANCE WRITING

Read the following examples of grievance writing, keeping in mind the principles we have discussed. Circle the letter (a) or (b), indicating which example you prefer. Be ready to state your reasons in the class discussion.

1. (a) Supervisor Stoney Hudson is requiring employees to perform work which is inappropriate under their job classifications. He is utilizing park laborers in the performance of tasks which are properly performed by gardeners. When this matter was brought to his attention by Doris Knight, the Union representative, Mr. Hudson stated that it was his prerogative to assign the work in such a way. He maintained that the matter did not fall within the Union's purview. His reasons for holding this view were that the job description of laborer had elements in common with that of gardener and that inasmuch as he was not having the laborers perform tasks which were peculiar to the gardener's job description, the collective bargaining agreement had in no way been abridged.

   (b) Supervisor Stoney Hudson is using park laborers to perform gardeners' work without compensation at the gardener's rate of pay.

2. (a) Management assigned the ninth person on the seniority list to perform overtime work on Saturday, February 10.

   (b) On Saturday, February 10, Gloria Fall was chosen by a supervisor to perform overtime work. At that time, eight employees were ahead of her on the overtime list. A number of these employees had the same classification as Ms. Fall. None of them were asked to do the work. In selecting Ms. Fall for the overtime work, the supervisor displayed favoritism.

3. (a) Management acted unjustly by imposing a two-day suspension upon Freddie Bolt when he refused to perform a potentially dangerous electrical testing operation without an assistant. By ordering Freddie to perform the operation alone, management demonstrated its total disregard for both the contract and the safety of the employees. In suspending Freddie for two days because he showed respect for his own safety and for the contract, management performed a punitive and unjust action.

   (b) Freddie Bolt was disciplined without just cause when he was given a two-day suspension for refusing to perform an electrical testing operation without an assistant.

4. (a) Management has violated the collective bargaining agreement, specifically Article 7 governing rotation of work assignments, in those assignments given to the grievant, Bill Brown.

   (b) The grievant, Bill Brown, has been abused and discriminated against by his supervisor, Vic File. If higher management took a look at the work assignments Brown has had and talked to his fellow workers, they would agree with the Union on this.

5. (a) Management will not allow Ms. Richmond to transfer to the day shift which she wants so that she can stay home with her children in the evening. Since Ms. Richmond has seniority over certain other workers who have been transferred to the day shift and since children should have their mothers' home with them at night, it is unfair to refuse her this transfer.

   (b) Management has violated the collective bargaining agreement and past practice by refusing Ms. Richmond a transfer to the day shift.

6. (a) The water truck at the main corporation yard is unsafe to drive because it has bad brakes and doesn't steer very well and hasn't been maintained for over a year. They are making Sue Gillette drive it because she is a new driver and afraid to complain.

   (b) Management at the main yard is assigning drivers to vehicles which have not had proper maintenance.

7. (a) Jennie Hall was home on legitimate sick leave because she had the flu when she got a call from her supervisor wanting to know what was wrong with her. The Supervisor said she'd been using too much sick leave and there was now a policy of calling to find out what was wrong when people were off sick. This is treating Jennie different from other people because they think she's not a good employee.

   (b) Management performed a discriminatory action against Jennie Hall by phoning her while she was home on sick leave to inquire about the nature of her illness.

VOCABULARY FOR GRIEVANCE WRITING

The following are some words and phrases commonly used in grievance writing:

- Violated the collective bargaining agreement and/or past practice
- Performed a discriminatory action
- Discipline (discharge, demote, suspend, transfer, fine, reprimand)
- Failed to comply with laws or regulations
- Obstructed due process
- Jeopardized health or safety
- Reinstate
- Make whole
- All rights and benefits
- Article_____, governing _____
- Past practice
- Consideration
- Letter of warning (reprimand)
- Verbal criticism
- Transfer from station to station
- Upgrade in classification
- Violation of contractual rights
- Interference in the performance of duties
- The rights of employees to effective and fearless representation
- The workstation
- Matters affecting the terms and conditions of her/his employment
- Without just cause
- Arbitrarily
- Entitled to
- Incidental to his/her duties as steward

STEPS IN THE GRIEVANCE PROCESS: THE STEWARDS ROLE

STEP I: INVESTIGATING THE GRIEVANCE

A. **Interviewing the Grievant:** Your first job is to listen well, to let the grievant express his/her feelings about what has happened. Get all the facts you can from the grievant.

Next, ask the grievant to listen as you give a "recap" of the story and to fill you in or correct you when you have finished.

As you work together, take notes on the "w" questions included in the interview sheet. Be sure to note any additional information you're going to need.

B. **Follow-up:** Now is the time for research. Talk to people who may have witnessed the incident or be able to verify facts surrounding the grievant's story. Check the agreement and any other relevant documents including the grievant's personnel file, if necessary. Find out what past practices have been. Indicate this information and your sources on the interview sheet.

STEP II: ANALYZING THE GRIEVANCE

A. **Use the sheet entitled "Analyzing the Grievance".** This is a working document. Its purpose is to help you get control of the problem, to understand and organize your material. You can use it to prepare for oral discussion with management or as the basis for the written grievance you may file later. If you follow it step by step, it ought to save you time and trouble.

B. **Follow-up:** After you have worked through the analysis, you may find you need more information before you can begin following the plan you've worked out. You might have decided to file a grievance on behalf of an individual and to file a separate one on behalf of the union, for example. In this kind of situation, you would probably have more research to do.

STEP III: PREPARING FOR DISCUSSION

A. Block-out your strategy for moving the grievance into more formal stages, thinking through the personalities and special considerations involved. Develop your argument of the case. Be prepared for management's arguments.

B. **Follow-up:** This is the time to do any last minute research and to prepare the grievant is s/he is going to be participating in the discussion.

STEP IV: WRITING THE GRIEVANCE FORM

Working from the interview sheet and the analysis, write a short, concise statement of the grievance and the remedy. Union grievance forms will vary in format but the two essential elements are always a) statement of grievance; and b) remedy (relief desired, adjustment).

NOTE: Steps in the Grievance Process should be used with the forms on the following five pages.

STEP I: INTERVIEWING SHEET

_____
(Grievant's name)

1. Who is involved?

2. What happened? (The story)

3. Where did it happen?

4. When did it happen?

5. Why is it a grievance? (contract violation? Past practice?)

6. What is the remedy? (How can the situation be corrected?)

7. What other information is needed?

STEP II: ANALYZING THE GRIEVANCE

1. Get the story down on paper working from your notes on the interview sheet. What exactly happened? Write the story in complete sentences.

2. Analyze the problem: Why did it happen (the underlying cause)?

   Has the agreement been violated? Past Practice? Precedent?

   Why is (isn't) this a grievance?

3. Plan (What are my objectives?):

   What is the specific issue?

   Do I need more information? Where will I find it?

   Has the grievant given me all the information s/he has?

   Does the grievant understand what is going to happen?

   What steps (in order) am I going to take now?

STEP III: PREPARATION FOR ORAL PRESENTATION

1. Who will be hearing what you've got to say?

2. Are they likely to want to do something about the problem? How much can they do?

3. How much do they know? What else will they need to know?

4. Are there any special considerations involved (personality conflicts, facts you may not want to use at this stage in the process, "buttons" to be careful not to push, etc.)?

5. How will you handle these?

6. Is there any work you need to do with the grievant to prepare him/her for the discussions (be specific)?

7. Has your analysis of the problem changed? If so, what is the analysis now? a) What happened b) What's the grievance c) What do you want done?

STEP IV: GREIVANCE FORM

Grievant:

Nature of Grievance:

Relief Desired:

On the following pages are sample cases for practice in grievance writing. For the first case, we have filled out the forms for Steps 1-IV as a person investigating the grievance might do it.

After reviewing the example, read the other cases and complete the worksheets on your own.

* * * * * * * * * * * * *

NOTES FROM INTERVIEW WITH FRED RAYMOND

(Who, when, what, where, why, what remedy)

Date: March 28, 1978
Grievant's name: Fred Raymond
Classification: Utility Man

Not paid overtime he had coming. Worked overtime February 16; 3-1/2 hours. Should have shown on February 24 paycheck. Went to Joe Barnes, his supervisor, who argued with him that it was only two hours. Settled that by checking records.

Barnes said he'd straighten it out. A few days later told Raymond that he had talked to Payroll and it would be on next check. Not on next check. Raymond called Payroll himself then. They said it was a computer problem and would be on next check. Raymond told Payroll he wanted supplemental check. They said it couldn't be done as time was already in the program for the computer.

Letter came two days after he called Payroll stating that a supplemental check would be issued and arrive with next regular check. Instead of a supplemental check, there was a memo stating supplemental check could not be issued because of computer difficulties. Raymond talked to Barnes who called Payroll and then Raymond called Payroll. Raymond very upset. Payroll told Barnes that problem was several new employees in Payroll Department who need training. Supervisor in Payroll said they had a number of people with the same problem and they would get it straightened out as quickly as possible. Reported this to Raymond.

Raymond's call to Payroll was different. Clerk said he could be issued supplemental check under new policy, but they only got the record of the overtime ten days ago as some records got in wrong basket somewhere. Raymond should get supplemental check first of next week.

Fred Raymond

Raymond wants formal written grievance. Wants his money plus penalty of 20% interest. Wants management to institute training program for Payroll people. Wants union to demand report of all Payroll irregularities and names of all people who were treated like him.

Steward's further investigation of Raymond's grievance:

March 29, 1978 Call to Payroll

Got clerk who transferred call to supervisor. Supervisor refused to discuss. Said he's talked to Raymond and would not discuss with me. Raymond's business only. Talk to Personnel.

March 29, 1978 Call to Personnel

Personnel Manager refused to discuss problem. Carry it through channels. Talk to supervisor.

March 30, 1978 Interview with Joe Barnes, Supervisor

Raymond would get his money if he were just being patient. Everything was taken care of. Only three hours anyway. Why the big deal? Raymond a sorehead who just wanted to cause trouble.

STEP I: INTERVIEWING SHEET

Fred Raymond
(Grievant's name)

1. **Who is involved?**

Fred Raymond, Grievant
Joe Barnes, Supervisor
Payroll Supervisor and Clerk

2. **What happened? (The story)**

Grievant underpaid on 2/24 paycheck—payment for 3-1/2 hours overtime worked on 2/16 missing. Payroll said they would issue supplemental check with next regular check, but did not due to "computer" problems, according to memo sent. Supervisor in Payroll said problem was with new, untrained personnel, clerk claims records got lost.

3. **Where did it happen?**

At workplace

4. **When did it happen?**

February 24

5. **Why is it a grievance? (Contract violation? past practice?)**

Violation of contract—section on pay.

6. **What is the remedy? (How can the situation be corrected?)**

Raymond wants pay for overtime worked plus 20% interest, training program for payroll workers, and report of pay irregularities to union

7. **What other information is needed?**

None.

STEP II: ANALYZING THE GRIEVANCE

1. **Get the story down on paper working from your notes on the interview sheet. What exactly happened? Write the story in complete sentences.**

Fred Raymond, Grievant, was underpaid on his February 24 paycheck; 3-1/2 hours overtime that he had worked did not appear on check. Payroll said they would issue a supplemental check with Raymond's next regular check, but did not due to "computer problems" according to memo sent to Raymond. A supervisor in Payroll said the problem was due to new, untrained personnel in the department, but a clerk claims that the records were misplaced originally, which caused this delay in payment.

2. **Analyze the problem: Why did it happen (the underlying cause)?**

A series of errors and misinformation.

Has the agreement been violated? Past Practice? Precedent?

Violation of contract—section on pay.

Why is (isn't) this a grievance?

Contract violation.

3. **Plan (What are my objectives?):**

To recover pay due Raymond as quickly as possible.

What is the specific issue?

Underpayment to Fred Raymond. The issue of payroll's incompetence cannot be taken up as a part of this grievance. The union will have to seek correction in some other way.

Do I need more information? Where will I find it?

Payroll department can uncover information on what happened, how to correct problem.

Has the grievant given me all the information s/he has?

Yes.

Does the grievant understand what is going to happen?

Not at this time. More discussion necessary with grievant.

What steps (in order) am I going to take now?

1. *Call payroll supervisor.*
2. *Call personnel.*
3. *Meet with Joe Barnes, supervisor.*

STEP III: PREPARATION FOR ORAL PRESENTATION

1. Who will be hearing what you've got to say?

   Joe Barnes, Supervisor of Grievant.

2. Are they likely to want to do something about the problem? How much can they do?

   Barnes may want to do something about the problem, but will not be able to do much, as issuing pay is done through Payroll Department.

3. How much do they know? What else will they need to know?

   He knows most of the story. No further information needed.

4. Are there any special considerations involved (personality conflicts, facts you may not want to use at this stage in the process, "buttons" to be careful not to push, etc.)?

   Barnes may feel responsible for the error, as he originally thought the overtime payment should have been 2 hours, not 3-1/2.

5. How will you handle these?

   Suggest that it is his responsibility to get it taken care of immediately.

6. Is there any work you need to do with the grievant to prepare him/her for the discussions (be specific)?

   Discuss desired remedy. It will be necessary to explain to Raymond that the grievance filed by him will be limited to recovering pay. Problem of straightening out Payroll is one which the union will have to take up some other way.

7. Has your analysis of the problem changed? If so, what is the analysis now? a. What's happened b. What's the grievance c. What do you want done?

   Analysis of problem has not changed.

STEP IV: GRIEVANCE FORM

GRIEVANT: *Fred Raymond, Utility Man*

NATURE OF GRIEVANCE:

Management violated the collective bargaining agreement (pay section) in failing to pay Fred Raymond for overtime worked on February 16.

RELIEF DESIRED:

Management immediately issue supplemental check to Raymond for 3-1/2 hours overtime worked.

NOTES FROM INTERVIEW WITH ROGER MARTINEZ

(Who, what, when, where, why, what remedy)

Date: March 28, 1978

Grievant: Roger Martinez

Problem vacation signup. Department signs up week of March 13-17. Roger third in seniority. Told supervisor he couldn't sign up on Monday as he was waiting for information from his wife. She did not know her dates yet from her job. Supervisor said he could have until Tuesday afternoon because 15 other people were behind him. Roger asked how many people could be gone at one time. Supervisor said two at most.

Tuesday afternoon, Roger put name on three, three-week periods with question marks. Reason was his wife still didn't know. Wednesday night Roger's wife got dates for vacation. Thursday Roger went to find list. Name crossed off on two choices. One was vacation period he wanted.

Took list to supervisor, because two other names where he wanted. Low seniority people. Demanded he either let three people go or take off one low seniority person and put Roger on. Supervisor refused. Said Roger was not supposed to put his name on three places. He crossed them off. Tough luck for Roger. He should have gotten information earlier.

NOTES FROM INTERVIEW WITH JANE ROSS

(Who, what, when, where, why, what remedy)

DATE: April 7, 1978

GRIEVANT: Jane Ross, Street Repair Crew Helper

Overtime problem. Wednesday, March 21, on way to work car broke down on freeway. Got to pay phone by little after 8:00 a.m. and called in. Able to get to headquarters by little after 10:00 a.m. Got ride from messenger out to crew by about 11:00 a.m.

Crew worked overtime finishing repairs on street. Completed work and came in at 7:30 p.m. Everyone on crew got paid overtime but Jane. She asked her foreman, Bob Hanson, about it. He said she probably wasn't entitled to overtime, as she hadn't really worked over eight hours because she was late to work. She told him that wasn't fair and she was going to union. He said don't go to union and he would check.

Couple days later he said that personnel didn't know for sure if she should get overtime but was checking on it. She said that wasn't fair to her and she was definitely going to the union. He asked her to wait a couple days more and he'd try to get definite information for her. She agreed but then changed her mind. Wants grievance filed right away. Feels she is entitled to overtime. Being late was not her fault and was beyond her control. Thinks foremen should be required to get straight answers for people and get them right away.

NOTES FROM INTERVIEW WITH JOE GRIMES

(Who, what, when, where, why, what remedy)

DATE: October 25, 1978

GRIEVANT: Joe Grimes

Discipline problem. When Joe Grimes came in to work on Wednesday, October 25, he was notified that he had been suspended for one day for failure to report to work on Tuesday, October 24.

That day, Tuesday, he had to take his wife to the hospital to deliver their first baby. Joe says he called in and talked to the operator, but couldn't reach Bob Jones, his supervisor, and doesn't know who took the message. Can't remember what he said or how much information he gave the operator, as he was very excited. He's sure he called, though, and said he wouldn't be in. Supervisor never got message—suspended Joe when he returned to work this morning.

Joe says everyone in the shop knew his wife was expecting and Jones should have known he would be gone one day this week. He thinks Jones is deliberately trying to mess him over—that he probably got the message and ignored it. Jones has been looking for a chance to get him for some time.

Joe wants union to file a grievance to get the suspension removed and supervisor transferred for harassing him.

FURTHER INVESTIGATION OF GRIMES GRIEVANCE:

Joe Grimes personnel file shows good attendance record. No prior reprimands for attendance. Was suspended for one day last year for insubordination (by same supervisor).

Interview with Bob Jones, Supervisor:

Jones says Grimes generally uncooperative. Has been insubordinate many times, bad attitude. Although he only took action once against Grimes, he could have other times too. He feels it's his job to enforce the rules—especially the one on calling in when you're going to be absent.

WRITING THE GRIEVANCE

(Additional practice for students.)

Assume no further investigation is necessary on this case and write a statement of the grievance and the remedy or adjustment desired based on the facts presented below.

For several years now a "coffee wagon" has arrived at the plant at 10:00 a.m. every morning. The employees leave the building to go to the coffee wagon to purchase coffee, doughnuts and other snacks. Work would generally resume at about 10:15, or a minute or two later. Today, a notice was posted on the bulletin board. It stated that there has been abuse of the break privileges by the employees and that from now on no one could leave the premises during break time. It also stated that supervisors had been instructed to take the names of any employees who were not back to work at 10:15 and appropriate disciplinary actions would be taken.

STATEMENT OF GRIEVANCE:

ADJUSTMENT DESIRED:

Assume no further investigation is necessary on this case and write a statement of the grievance and the remedy or adjustment desired based on the facts presented below.

Your Union Contract has the following clause: "Article 9: Hours of Work": The regular hours of work shall be from 8:00 a.m. to 4:30 p.m. with one half hour off for lunch. All hours worked outside the regular hours of work shall be compensated at the overtime rate of pay."

Without consulting the Union Steward or any other union official, the supervisor of one section called a meeting of the employees and informed them that the hours of work would be changed and they would work from 7:30 a.m. to 4:00 p.m. He stated that the company was cooperating in a program to stagger work hours and reduce traffic congestion. No mention was made of overtime pay or the Union agreement.

STATEMENT OF GRIEVANCE:

ADJUSTMENT DESIRED:

SECTION 6

We have ready, legal counsel on retainer to handle any and all matters relating to grievance representation and/or unfair labor practices as needed. In this regard, we contract the services of several firms with expertise in Connecticut Labor Law.

Our highly visible support legal team consists of four professional lawyers each with a different specialty to better handle diverse situations in the work place.

Your labor representative and a lawyer will be present for all grievance preparations and /or unfair labor practice hearings.

We recommend a workers' compensation attorney to assist our members in workers' compensation and social security matters. The initial consultation is free. If you have a workers' compensation problem contact William J. Ward, Attorney at Law, (203) 723-1647 or billwardlaw@sbcglobal.net.

State of Connecticut

CONNECTICUT DEPARTMENT OF LABOR

CONNECTICUT STATE BOARD OF MEDIATION & ARBITRATION (CSBMA)

STAFF AND CONTACT INFORMATION

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Helen Roy, Secretary II
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ARBITRATION APPEAL PROCEDURE

1. Once the final step in the grievance procedure is completed, the grievance should be immediately forwarded to the Meriden office for processing.

2. All files on the grievance, including grievance, fact sheet, documentation, notes, etc., must be forwarded immediately to the UPSEU office:

United Public Service Employees Union
130 Research Parkway, Suite 101
Meriden, CT 06450

3. The UPSEU will review and determine the course of action. T he president will promptly be notified of the determination.

4. REMEMBER TO WATCH THE TIME LINES IN YOUR CONTRACT!!! KEEP YOUR APPEALS TIMELY!!!

5. Not all cases go to arbitration and UPSEU retains a firm decision in this determination.

MEDIATION & ARBITRATION HIGHLIGHTS

HOW TO FILE REQUESTS FOR SERVICES

- **How a Demand for Grievance Arbitration Services is Filed.**
  Employers/Employee organizations submit a demand for arbitration on a completed grievance arbitration request form. Requests for arbitration are signed, include a general explanation of the dispute and accompanied by a filing fee for each grievance.

- **How a Grievance Arbitration Appeal is delivered to the State Board of Mediation and Arbitration**
  A demand for arbitration services may be filed in person, or by U.S. Mail.

- **When Mediation Services can be requested**
  The mediation services of the Board are available to Employers and Employee Organizations, in the Public and Private Sector. Mediation services are offered to the parties free of charge.

- **How Requests for Mediation Services are filed**
  The Mediation Services of the Board are requested in writing to the State Board of Mediation and Arbitration.