

CHAPTER 68*

COLLECTIVE BARGAINING FOR STATE EMPLOYEES

*See Sec. 4-38i re effect of government reorganization under public act 77-614.

Cited. 179 C. 184, 190. Cited. 183 C. 235, 237. Cited. 192 C. 539, 540, 545. State Labor Relation Act cited. 201 C. 577, 592. Cited. 204 C. 746—748. State employee relations act, Secs. 5-270—5-280 cited. 216 C. 253, 257. Secs. 5-270—5-280 cited. 226 C. 670, 673, 682.

Cited. 8 CA 197, 199, 201. Sec. 5-270 et seq. cited. 29 CA 559, 564.

Cited. 40 CS 381—383, 389, 390, 393.

Sec. 5-270. Collective bargaining. Definitions. When used in sections 5-270 to 5-280, inclusive:

(a) “Employer” means the state of Connecticut, its executive and judicial branches, including, without limitation, any board, department, commission, institution, or agency of such branches or any appropriate unit thereof and any board of trustees of a state-owned or supported college or university and branches thereof, public and quasi-public state corporation, or authority established by state law, or any person or persons designated by the employer to act in its interest in dealing with employees, but shall not include the State Board of Labor Relations or the State Board of Mediation and Arbitration.

(b) “Employee” means any employee of an employer, whether or not in the classified service of the employer, except elected or appointed officials other than special deputy sheriffs, board and commission members, managerial employees and confidential employees.

(c) “Professional employee” means: (1) Any employee engaged in work (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; (D) 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 (2) any employee who has completed the courses of specialized intellectual instruction and study described in subsection (c)(1)(D) and is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subsection (c)(1).

(d) “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 state employees.

(e) “Confidential employee” means any public employee who would have access to confidential information used in collective bargaining.

(f) “Supervisory employee” means any individual in a position in which the principal functions are characterized by not fewer than two of the following: (1) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (2) performing such duties as are distinct and dissimilar from those performed by the employees supervised; (3) exercising judgment in adjusting

grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (4) establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards, provided in connection with any of the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment, and such individuals shall be employees within the meaning of subsection (b) of this section. The above criteria for supervisory positions shall not necessarily apply to police or fire departments.

(g) "Managerial employee" means any individual in a position in which the principal functions are characterized by not fewer than two of the following, provided for any position in any unit of the system of higher education, one of such two functions shall be as specified in subdivision (4) of this subsection: (1) Responsibility for direction of a subunit or facility of a major division of an agency or assignment to an agency head's staff; (2) development, implementation and evaluation of goals and objectives consistent with agency mission and policy; (3) participation in the formulation of agency policy; or (4) a major role in the administration of collective bargaining agreements or major personnel decisions, or both, including staffing, hiring, firing, evaluation, promotion and training of employees.

(P.A. 75-566, S. 1; P.A. 77-22, S. 1, 3; P.A. 81-457, S. 12; P.A. 82-454; P.A. 86-411, S. 5, 8; P.A. 97-148, S. 1, 8; P.A. 01-103, S. 1.)

History: P.A. 77-22 deleted legislative branch from definition of "employer" in Subsec. (a); P.A. 81-457 added Subdiv. (g), which defines "managerial employee", and excluded them from collective bargaining by excepting them from the definition of "employee", where previously they were specifically excluded if working less than twenty-four hours per week; P.A. 82-454 amended Subsec. (b) to include part-time employees within the definition of "employee", where previously they were specifically excluded if working less than twenty-four hours per week; P.A. 86-411 amended Subsec. (g), removing the percentage cap on the number of managerial employees, and requiring the provisions of Subpara. (D) to be satisfied for any position in the system of higher education to be considered managerial, effective July 1, 1986, and applicable to negotiations then in progress; (Revisor's note: In 1995 the Revisors editorially substituted in Subdiv. (c) the alphabetic indicators (A), (B), (C) and (D) for (i), (ii), (iii) and (iv) for consistency with statutory usage); P.A. 97-148 amended Subsec. (b) to include special deputy sheriffs, effective July 1, 1997; P.A. 01-103 deleted former Subdiv. (2) re certain Department of Correction employees, redesignated existing Subparas. (A) to (D) as Subdivs. (1) to (4), and made conforming technical changes.

Cited. 204 C. 746, 747.

Cited. 40 CS 381.

Subsec. (b):

Cited. 184 C. 578. Cited. 204 C. 746—750. Cited. 226 C. 670, 673, 674.

Cited. 40 CS 381—384, 394.

Subsec. (f):

Court held section not unconstitutionally vague. 204 C. 746, 749, 756, 757, 759.

Cited. 40 CS 381, 383, 389—391.

Subsec. (g):

Court held section not unconstitutionally vague. 204 C. 746—751, 755—757, 759.

Classification of managerial employees and denial to them of collective bargaining rights survives challenge on equal protection grounds; statute repels vagueness challenge, is not offensive to due process requirements. 40 CS 381—384, 389, 394.

Sec. 5-271. 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, except as provided in subsection (d) of section 5-272, 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 employees in an appropriate unit, that employee organization shall be recognized by the 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 this chapter 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 this chapter, 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 designated as the exclusive representative shall be given prior notice of the grievance and shall be informed of the terms of the settlement.

(f) The 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 5-272.

(P.A. 75-566, S. 2.; P.A. 93-426, S. 2.)

History: P.A. 93-426 inserted new Subsec. (d) to impose a duty of fair representation on employee organizations representing state employees and redesignated existing Subsecs. (d) and (e) as (e) and (f), respectively.

Cited. 201 C. 685, 693.

Cited. 40 CS 381, 382.

Subsec. (c):

Cited. 192 C. 539, 556.

Sec. 5-272. Prohibited acts of employers and employee organizations. (a) Employers or their representatives or agents are prohibited from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 5-271 including a lockout; (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 5-270 to 5-280, 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; including but not limited to refusing to discuss grievances with such exclusive representative; (5) discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization; (6) refusing to reduce a collective bargaining agreement to writing and to sign such agreement; (7) violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing employees in the exercise of the rights guaranteed in subsection (a) of section 5-271; (2) restraining or coercing an employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (3) refusing to bargain collectively in good faith, with an employer, if it has been designated in accordance with the provisions of sections 5-270 to 5-280, inclusive, as the exclusive representative

of employees in an appropriate unit; (4) breaching their duty of fair representation pursuant to section 5-271; (5) violating any of the rules and regulations established by the board regulating the conduct of representation elections; (6) refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(c) For the purposes of sections 5-270 to 5-280, inclusive, to bargain collectively is the performance of the mutual obligation of the 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 bargain in good faith with respect to wages, hours and other conditions of employment, except as provided in subsection (d) of this section, 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.

(d) Nothing herein shall diminish the authority and power of the Employees' Review Board, the Department of Administrative Services or any state agency established by statute, charter or special act to establish, conduct and grade merit examinations and to rate candidates in 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 state served by the Department of Administrative Services. The establishment, conduct and grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining.

(P.A. 75-566, S. 3; P.A. 77-614, S. 118, 610; P.A. 80-483, S. 150, 186; P.A. 81-472, S. 2, 159; P.A. 93-426, S. 3.)

History: P.A. 77-614 replaced personnel department and personnel policy board with department of administrative services in Subsec. (d); P.A. 80-483 changed "appeals" to "appeal" in board's name in Subsec. (d); P.A. 81-472 amended Subsec. (d) to refer to the employee's review board, rather than the personnel appeal board; P.A. 93-426 inserted a new Subdiv. (4) in Subsec. (b) to prohibit an employee organization which represents state employees from breaching its duty of fair representation to its members and redesignated existing Subdivs. (4) and (5) as (5) and (6), respectively.

See Sec. 5-226f re pilot program authorizing discussion between the state and union representatives concerning the state classifications and examination system.

Cited. 192 C. 539, 557. Cited. 197 C. 91, 93, 96, 101. Cited. 201 C. 685, 693.

Cited. 8 CA 197, 200.

Subsec. (a):

Subdiv. (1) cited. 197 C. 91, 93. Subdiv. (4) cited. Id., 91, 93, 94; 226 C. 670, 674.

Subsec. (c):

Cited. 216 C. 253, 261. Cited. 226 C. 670, 674.

Sec. 5-273. Powers of State Board of Labor Relations. The State Board of Labor Relations shall administer sections 5-270 to 5-280, inclusive, as follows:

(a) The board shall exercise those powers and perform those duties which are specifically provided for in said sections. Those powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by statutory enactment.

(b) The board shall have authority, from time to time, to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of sections 5-270 to 5-280, inclusive. Such rules and regulations shall be effective upon passage, in conformance with the terms of chapter 54.

(P.A. 75-566, S. 4.)

Cited. 43 CS 1, 4.

Sec. 5-274. Prohibited practice questions determined by State Board of Labor Relations. Whenever a question arises as to whether a practice prohibited by sections 5-270 to 5-280, inclusive, has been committed by an 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 in writing that a prohibited practice has been or is being committed, the board shall refer such complaint to its agent for investigation within ten calendar days of the date it was received. Upon receiving a report from the agent, the board may within ten days of such receipt issue an order dismissing the complaint or may order a further investigation or a hearing thereon. When an investigation is ordered the board shall set a time when the report must be made. 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 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 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 5-270 to 5-280, inclusive, including but not limited to: (1) Withdrawal of certification of an employee organization established or assisted by any action defined in said sections as a prohibited practice; (2) reinstatement of an employee discriminated against in violation of said sections, with or without back pay; or (3) 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 5-276a 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 5-270 to 5-280, inclusive, the board shall have the same power and authority as it has in sections 31-107, 31-108 and 31-109, and the employer and the employee organization shall have the right of appeal as provided therein.

(P.A. 75-566, S. 6; P.A. 78-111, S. 1, 2; P.A. 81-472, S. 117, 159; P.A. 86-411, S. 1, 8.)

History: P.A. 78-111 replaced reference to Sec. 31-103 in Subsec. (d) with reference to Sec. 31-108; P.A. 81-472 replaced reference to Sec. 5-278 with reference to Sec. 5-277; P.A. 86-411 removed all references to fact-finding and provided instead that the board may order arbitration when a party has failed to bargain in good faith, effective July 1, 1986, and applicable to negotiations then in progress.

Cited. 43 CS 1, 2.

Subsec. (d):

Cited. 8 CA 197, 199, 202.

Sec. 5-275. Employee organization designated as exclusive representative. Bargaining unit determination. Petitions seeking clarification or modification of existing units. (a)(1) On and after October 1, 1975, any interested organization may notify the State Board of Labor Relations that thirty per cent or more of the employees in a bargaining unit established under sections 5-270 to 5-280, inclusive, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative; (2) if the board certifies that a majority of the employees in such bargaining unit desire to be so represented, said board shall agree to said designation, unless there is a challenge. To challenge, an intervening organization must show that at least ten per cent or more of the employees of the unit seek to be the exclusive representative. Any additional organization meeting said ten per cent prerequisite shall be treated, upon request, as an additional intervenor; (3) if there is a challenge, or if the board certifies that thirty per cent or more but less than a majority of employees in a bargaining unit desire to be exclusively represented by a particular organization, said board shall direct an election by secret ballot to determine whether and by which employee organization the employees desire to be represented and shall certify the results thereof. 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 second largest number of valid votes cast in the election. An employee organization which receives a majority of votes cast in an election shall be designated by the board as exclusive representative of the employees in the unit. No employee organization shall be eligible to petition for or participate in a recognition election until it has been in existence in state employment for at least six months.

(b) The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall: (1) Take into consideration, but shall not be limited to, the following: (A) Public employees must have an identifiable community of interest, and (B) the effects of overfragmentation; (2) not decide that any unit is appropriate if (A) such unit includes both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit, or (B) such unit includes both

Department of Correction employees at or above the level of lieutenant and Department of Correction employees below the level of lieutenant; (3) take into consideration that when the state is the employer, it will be bargaining on a state-wide basis unless issues involve working conditions peculiar to a given governmental employment locale; (4) permit the faculties of (A) The University of Connecticut, (B) the Connecticut State University system, and (C) the state regional vocational-technical schools to each comprise a separate unit, which in each case shall have the right to bargain collectively with its respective board of trustees or its designated representative; and (5) permit the community college faculty and the technical college faculty as they existed prior to July 1, 1992, to continue to comprise separate units which in each case shall have the right to bargain collectively with its board of trustees or its designated representative. Nonfaculty professional staff of the above institutions may by mutual agreement be included in such bargaining units, or they may form a separate bargaining unit of their own. This section shall not be deemed to prohibit multiunit bargaining.

(c) An employee organization or an 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 an 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.

(P.A. 75-566, S. 5; P.A. 81-29, S. 2; P.A. 82-218, S. 39, 46; P.A. 89-260, S. 5, 41; P.A. 91-255, S. 1; 91-256, S. 42, 69; P.A. 92-126, S. 15, 48; P.A. 01-103, S. 2.)

History: P.A. 81-29 amended Subsec. (a) to provide board's agent with increased powers over petitions concerning the election of representatives, while resting final action with the board; P.A. 82-218 replaced "state colleges" with "Connecticut State University" in Subsec. (b) pursuant to reorganization of higher education system, effective March 1, 1983; P.A. 89-260 in Subdiv. (4) of Subsec. (b) substituted "regional community colleges" for "community colleges", "regional technical colleges" for "state technical colleges" and "regional vocational-technical schools" for "vocational schools"; P.A. 91-255 added Subsec. (c) re petitions seeking clarification or modification of existing units; P.A. 91-256 made a technical change in Subsec. (b); P.A. 92-126 amended Subsec. (b) to add Subdiv. (5) retaining rights of community college and technical college faculty to have separate bargaining units; (Revisor's note: In 1995 the Revisors editorially substituted in Subdivs. (1) and (4) of Subsec. (b) the alphabetic indicators (A), (B) and (C) for (i), (ii) and (iii), as appropriate, for consistency with statutory usage); P.A. 01-103 amended Subsec. (b)(2) by designating a portion of existing provisions as Subpara. (A) and adding Subpara. (B) re appropriateness of unit if such unit includes Department of Correction employees both at or above the level of lieutenant and below the level of lieutenant.

Subsec. (a):

Cited. 183 C. 235, 243.

Sec. 5-276. Mediation and arbitration services by State Board of Mediation and Arbitration. (a) The services of the State Board of Mediation and Arbitration shall be available to employers or employee organizations designated as the exclusive bargaining representative for purposes of settlement of grievances arising out of the interpretation and application of the terms of a written agreement, for mediation of impasses in contract negotiations, for purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement and for arbitration of impasses resulting from negotiations over unit contracts, unit reopeners and coalition bargaining matters as provided in subsection (f) of section 5-278.

(b) Nothing contained herein shall prevent the use of other arbitration tribunals in the resolution of disputes between employers and designated employee organizations.

(P.A. 75-566, S. 7; P.A. 86-411, S. 2, 8.)

History: P.A. 86-411 provided that the state board of mediation and arbitration shall provide arbitration services for negotiation impasses concerning unit contracts, reopeners and coalition bargaining, effective July 1, 1986, and applicable to negotiations then in progress.

Subsec. (b):

Cited. 20 CA 676, 677.

Sec. 5-276a. Timetable for negotiations between employer and designated employee organization. Mediation. Elective binding arbitration; procedure. (a) In the event that either the employer, as defined in subsection (a) of section 5-270, or a designated employee organization, as defined in subsection (d) of said section, may desire negotiations with respect to an original or successor collective bargaining agreement, such party, not more than one hundred eighty days prior to the expiration of the existing collective bargaining agreement nor less than one hundred fifty days prior thereto, shall serve written notice thereof upon the other party. Negotiations shall commence within thirty days of such service. Negotiations as to wage reopeners shall commence within twenty days of receipt by one party of a written notice with respect thereto, served in accordance with the provisions of any such reopener in the affected contract or, if none is stated therein, not more than sixty days nor less than thirty days prior to the effective date of such reopener.

(b) Upon the joint request of the parties, following the commencement of good faith negotiations, the State Board of Mediation and Arbitration may designate a mediator to assist the parties in continuing such negotiations and in reaching a settlement of the issues presented in such negotiations. The mediator designated shall be experienced in labor mediation and shall be drawn from lists of such mediators maintained by the board, the American Arbitration Association or the Federal Mediation and Conciliation Service. The mediator so designated may only serve if approved by both parties.

(c) If, after a reasonable period of negotiation, or, in the case of negotiations by the parties to an existing collective bargaining agreement to revise such agreement concerning any matter affecting wages, hours and other conditions of employment, after ninety days from the commencement of such negotiations, the parties are unable to reach an agreement, both parties or either of them may initiate arbitration by filing with the State Board of Mediation and Arbitration a list of the issues as to which an impasse has been reached. If such filing is not made jointly, a copy of the filing shall be served on the other party.

(d) Within ten days of a joint filing or within ten days of service on the other party in the case of a single filing, the parties shall jointly select an arbitrator. The person selected shall have substantial, current experience as an impartial arbitrator of labor-management disputes. Persons who serve partisan interests as advocates or consultants for labor or management in labor-management relations or who are associated with or are members of a firm which performs such advocate or consultant work may not be selected. If the parties fail to agree on an arbitrator within the ten-day period, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association.

(e) (1) The arbitrator selected shall contact the parties to schedule dates and places for hearings which shall commence not later than twenty days after the selection of the arbitrator and which shall be, where feasible, in the principal locality of the state board, department, commission or agency or unit thereof involved. At least ten days prior to each such hearing, written notice of the designated time and place of such hearing shall be sent to the state employer and the state employee organization. The arbitrator shall preside over such hearings, shall have the power to take testimony, to administer oaths

and to summon, by subpoena, any person whose testimony may be pertinent to the proceedings, together with any records or other documents deemed by the arbitrator to relate 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 arbitrator or either party, shall have jurisdiction to order such person to appear before the arbitrator to produce subpoenaed records and to give testimony touching the matter under investigation or in question, and any failure to obey such order may be punished by the court as a contempt thereof. The parties may, at any time during the course of the proceeding, jointly request the arbitrator to attempt to mediate any or all of the disputed issues.

(2) The hearings may, at the discretion of the parties or the arbitrator, be continued and shall be concluded within thirty days after their commencement, unless such period is extended by the joint request of the parties or by the arbitrator.

(3) Prior to the commencement of the hearings, each party shall submit to the arbitrator three copies of a list of all resolved and unresolved issues, including the party's proposal on each disputed issue. During the hearing no new issues can be considered unless such addition is mutually agreed to by the parties. Upon receipt of both such lists, the arbitrator shall simultaneously distribute a copy of each to the opposing party. Upon the hearing, each party shall present such testimony and other evidence as it deems appropriate and as the arbitrator finds relevant to the issues presented. Evidence as to each disputed issue shall be presented first by the party presenting the demand underlying such issue. At any time prior to the issuance of the award by the arbitrator, the parties may jointly file with the arbitrator stipulations setting forth such disputed issues the parties have agreed are to be withdrawn from arbitration. Within fourteen days after the conclusion of the taking of testimony, the parties may file with the arbitrator three copies of their briefs including their last best offer on each unresolved issue and, where possible, estimates of the costs of resolution of each disputed issue. Immediately upon receipt of both briefs or upon the expiration of the time for filing such briefs, whichever is sooner, the arbitrator shall distribute a copy of each such brief to the opposing party. Within seven days after receipt of the opposing briefs on the disputed issues or within seven days after the expiration of the time for filing such briefs, whichever is sooner, the parties may file with the arbitrator three copies of a reply brief, responding to the briefs on the unresolved issues. Immediately upon receipt of both reply briefs or upon the expiration of the time for filing such briefs, whichever is sooner, the arbitrator shall distribute a copy of each such brief to the opposing party.

(4) Within twenty days after the last day for filing reply briefs, the arbitrator shall file with the secretary of the State Board of Mediation and Arbitration the award on each unresolved issue as well as the issues resolved by the parties during the arbitration proceedings. The arbitrator shall immediately and simultaneously distribute a copy thereof to each party. In making such award, the arbitrator shall select the more reasonable last best offer proposal on each of the disputed issues based on the factors in subdivision (5) of this subsection. The arbitrator (A) shall give a decision as to each disputed issue considered, (B) shall state with particularity the basis for such decision as to each disputed issue and the manner in which the factors enumerated in subdivision (5) of this subsection were considered in arriving at such decision, (C) shall confine the award to the issues submitted and shall not make observations or declarations of opinion which are not directly essential in reaching a determination, and (D) shall not affect the rights accorded to either party by law or by any collective bargaining agreement nor in any manner, either by drawing inferences or otherwise, modify, add to, subtract from or alter such provisions of law or agreement. If the day for filing any document 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 filing shall be extended to the next business day of the board.

(5) The factors to be considered by the arbitrator in arriving at a decision are: The history of negotiations between the parties including those leading to the instant proceeding; the existing conditions of employment of similar groups of employees; the wages, fringe benefits and working conditions prevailing in the labor market; the overall compensation paid to the employees involved in the arbitration proceedings, including direct wages compensation, overtime and premium pay, vacations, holidays and other leave, insurance, pensions, medical and hospitalization benefits, food and apparel furnished and all other benefits received by such employees; the ability of the employer to pay; changes in the cost of living; and the interests and welfare of the employees.

(6) The award of the arbitrator shall be final and binding upon the employer and the designated employee organization unless rejected by the legislature as provided in section 5-278, except that a motion to vacate or modify such award may be filed in the superior court for the judicial district of Hartford within thirty days following receipt of such award. The court, after hearing, may vacate or modify the award if substantial rights of a party have been prejudiced because such award is: (A) In violation of constitutional provisions; (B) in excess of the statutory authority of the arbitrator; (C) made upon unlawful procedure; (D) affected by other error of law; (E) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(7) The secretary of the State Board of Mediation and Arbitration shall serve as staff to the arbitrator for purposes of all proceedings undertaken pursuant to this subsection.

(f) The arbitrator's fees and itemized expenses, the rental, if any, of the facilities used for the hearing and the cost of the transcript, if any, of the proceedings shall be divided equally between the employer and the designated employee organization.

(g) Any or all of the timing requirements established in this section may be waived by agreement of the parties or by request of the arbitrator.

(P.A. 86-411, S. 3, 8; P.A. 88-230, S. 1, 12; 88-364, S. 6, 123; P.A. 90-98, S. 1, 2; P.A. 91-290; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4—6.)

History: P.A. 86-411 effective July 1, 1986, and applicable to negotiations then in progress; P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 88-364 made technical change in Subsec. (e); P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 91-290 amended Subsec. (c) by adding provisions re ninety-day period for negotiations to revise existing collective bargaining agreements; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995.

Cited. 20 CA 676, 677.

Subsec. (c):

Cited. 226 C. 670, 674.

Sec. 5-276b. Interest charges on overdue arbitration settlement payments. (a) Whenever a monetary settlement is awarded pursuant to an interest arbitration proceeding conducted pursuant to section 5-276a, and such award is not rejected by the legislature pursuant to section 5-278, and payment is not made in accordance with the terms of such settlement within sixty days of the date such award was issued, the party liable for such payment shall be required to pay interest, at the rate of five per cent per annum, on such overdue payment, calculated from the date the award was issued.

(b) Whenever a monetary settlement is awarded pursuant to a state employee grievance arbitration proceeding, and payment is not made in accordance with the terms of such settlement within thirty days of the date such award was issued, the party liable for such payment shall be required to pay interest, at the rate of five per cent per annum, on such overdue payment, calculated from the date the award was issued.

(P.A. 87-335.)

Subsec. (b):

Constitutes statutory exception to power of claims commissioner and is legislative waiver of sovereign immunity with respect to interest. 20 CA 676—680.

Sec. 5-277. Petition to State Board of Mediation and Arbitration for fact finding. Section 5-277 is repealed.

(P.A. 75-566, S. 8; P.A. 86-411, S. 7, 8.)

Sec. 5-278. Determination of employer representative. Negotiations and agreements with employee representative. Arbitration awards. Conflicts with statutes, acts or agency regulations. (a) When an employee organization has been designated, in accordance with the provisions of sections 5-270 to 5-280, inclusive, as the exclusive representative of employees in an appropriate unit, the employer shall be represented in collective bargaining with such employee organization in the following manner: (1) In the case of an executive branch employer, including the Division of Criminal Justice, by the chief executive officer whether elected or appointed, or his designated representative; who shall maintain a close liaison with the legislature relative to the negotiations and the potential fiscal ramifications of any proposed settlement; (2) in the case of a judicial branch employer, by the Chief Court Administrator or his designated representative; and (3) in the case of each segment of the system of higher education, the faculty and professional employees shall negotiate with their own board of trustees or its designated representative.

(b) Any agreement reached by the negotiators shall be reduced to writing. The agreement, together with a request for funds necessary to fully implement such agreement and for approval of any provisions of the agreement which are in conflict with any statute or any regulation of any state agency, and any arbitration award, issued in accordance with section 5-276a, together with a statement setting forth the amount of funds necessary to implement such award, shall be filed by the bargaining representative of the employer with the clerks of the House of Representatives and the Senate within ten days after the date on which such agreement is reached or such award is distributed. The General Assembly may approve any such agreement as a whole by a majority vote of each house or may reject such agreement as a whole by a majority vote of either house. The General Assembly may reject any such award as a whole by a two-thirds vote of either house if it determines that there are insufficient funds for full implementation of the award. If rejected, the matter shall be returned to the parties for further bargaining. Once approved by the General Assembly, any provision of an agreement or award need not be resubmitted by the parties to such agreement or award as part of a future contract approval process unless changes in the language of such provision are negotiated by such parties. Any supplemental understanding reached between such parties containing provisions which would supersede any provision of the general statutes or any regulation of any state agency or would require additional state funding shall be submitted to the General Assembly for approval in the same manner as agreements and awards. If the General Assembly is in session, it shall vote to approve or reject such agreement or award within thirty days after the date of filing. If the General Assembly is not in session when such agreement or award is filed, it shall be submitted

to the General Assembly within ten days of the first day of the next regular session or special session called for such purpose. The agreement or award shall be deemed approved if the General Assembly fails to vote to approve or reject such agreement or award within thirty days after such filing or submission. The thirty-day period shall not begin or expire unless the General Assembly is in regular session. For the purpose of this subsection, any agreement or award filed with the clerks within thirty days before the commencement of a regular session of the General Assembly shall be deemed to be filed on the first day of such session.

(c) Notwithstanding any provision of any general statute or special act to the contrary, the legislature shall appropriate whatever funds are required to comply with a collective bargaining agreement, supplemental understanding or arbitration award, provided the request called for in subsection (b) of this section has been approved by the legislature.

(d) No provision of any general statute or special act shall prevent negotiations between an employer and an employee organization which has been designated as the exclusive representative of employees in an appropriate unit, from continuing after the final date for setting the state budget. An agreement between an employer and an employee organization shall be valid and in force under its terms when entered into in accordance with the provisions of this chapter 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 the agreement is entered. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between the employer and an employee organization provided by sections 5-270 to 5-280, inclusive, shall be the exclusive method for making a valid agreement for employees represented by an employee organization, and any provisions in any general statute or special act to the contrary shall not apply to such an agreement.

(e) Where there is a conflict between any agreement or arbitration award approved in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any general statute or special act, or regulations adopted by any state agency, the terms of such agreement or arbitration award shall prevail; provided if participation of any employees in a retirement system is effected by such agreement or arbitration award, the effective date of participation in said system, notwithstanding any contrary provision in such agreement or arbitration award, shall be the first day of the third month following the month in which a certified copy of such agreement or arbitration award is received by the Retirement Commission or such later date as may be specified in the agreement or arbitration award.

(f) (1) Notwithstanding any other provision of this chapter, collective bargaining negotiations concerning changes to the state employees retirement system to be effective on and after July 1, 1988, and collective bargaining negotiations concerning health and welfare benefits to be effective on and after July 1, 1994, shall be conducted between the employer and a coalition committee which represents all state employees who are members of any designated employee organization. (2) The provisions of subdivision (1) of this subsection shall not be construed to prevent the employer and any designated employee organization from bargaining directly with each other on matters related to the state employees retirement system and health and welfare benefits whenever the parties jointly agree that such matters are unique to the particular bargaining unit. (3)

The provisions of subdivision (1) of this subsection shall not be construed to prevent the employer and representatives of employee organizations from dealing with any state-wide issue using the procedure established in said subdivision.

(g) (1) Nonmandatory subjects of bargaining shall not be subject to the impasse procedures of section 5-276a. In the case of higher education teaching faculty, the arbitrator shall not make a decision involving academic policy unless it affects the wages, hours or conditions of employment of such faculty. Any arbitration award issued on such matters shall be unenforceable. (2) Unless mutually agreed to by the parties, the impasse procedures of section 5-276a shall not be invoked during the pendency before the State Board of Labor Relations of any scope of bargaining question arising from the parties' negotiations. Any such question shall take precedence over all other matters pending before said board.

(P.A. 75-566, S. 9; P.A. 76-435, S. 42, 82; P.A. 77-22, S. 2, 3; P.A. 80-483, S. 151, 186; P.A. 83-318; P.A. 86-411, S. 4, 8; P.A. 88-126, S. 1—3; P.A. 89-349, S. 1, 4; P.A. 91-265; June Sp. Sess. P.A. 91-3, S. 163, 168.)

History: P.A. 76-435 replaced vague reference to "provisions of this law" with "provisions of this chapter" in Subsec. (d); P.A. 77-22 amended Subsec. (a) removing provision that chief administrative officer or his representative represent legislative branch employer in collective bargaining; P.A. 80-483 replaced references to personnel boards with references to any state agency; P.A. 83-318 amended Subsec. (a) by replacing the "chief administrative officer" with the "chief court administrator" as the representative of a judicial branch employer; P.A. 86-411 amended Subsec. (b) to (1) remove the provision that failure to submit a request for funds within fourteen days of the date an agreement is reached constitutes a prohibited practice, (2) allow previously approved provisions to be excluded from the submittal of any successor agreement, (3) require the legislature to vote on the request within thirty days of submittal, and (4) establish requirements for the submittal of arbitration awards to the legislature and added Subsecs. (f) and (g), establishing coalition bargaining for retirement issues and setting limitations on the use of the impasse procedures, effective July 1, 1986, and applicable to negotiations then in progress; P.A. 88-126 amended Subsec. (b) to require supplemental understandings containing provisions which supersede general statutes or state agency regulations or which require additional state funding to be submitted to general assembly for approval and made technical change in Subsec. (b) and amended Subsec. (c) to require appropriation of funds required to comply with a supplemental understanding, provided request called for in Subsec. (b) has been approved by legislature; P.A. 89-349 amended Subdiv. (2) of Subsec. (b) by adding the provisions of Subpara. (B) requiring the appropriations committee to consider arbitration awards filed when the legislature is not in session, specified that arbitration awards be filed with the clerks of the senate and the house of representatives and provided the procedures to be followed for the purposes of a special session; P.A. 91-265 amended Subsec. (f) to require coalition bargaining for health and welfare benefits to be effective on and after July 1, 1994; June Sp. Sess. P.A. 91-3 amended Subsec. (b) to establish identical filing procedures and time limits for collective bargaining agreements and arbitration awards and to provide that such agreements may be rejected by a majority vote of either house and such awards may be rejected by a two-thirds vote of either house.

Cited. 179 C. 184, 194, 197. Cited. 197 C. 91, 99. Cited. 201 C. 685, 693.

Cited. 43 CS 1, 4, 5.

Subsec. (b):

Cited. 179 C. 184, 186, 190, 191, 196, 197. Cited. 183 C. 235, 238. Cited. 197 C. 91, 92, 95, 96, 98—100. Cited. 239 C. 32.

Cited. 13 CA 461, 465.

Cited. 43 CS 1, 3, 4.

Subsec. (e):

Cited. 179 C. 184, 190, 196, 197. Cited. 197 C. 91, 99, 101.

Cited. 13 CA 461, 465.

Sec. 5-278a. Certain provisions of collective bargaining agreement to remain in effect. In the event an agreement expires before a new agreement has been approved by the employee organization, the employer representative and the legislature, the provisions of the expired agreement concerning (1) salary, excluding annual increments, (2) differentials, (3) overtime, (4) longevity, and (5) allowances for uniforms, which were implemented pursuant to approval by the legislature in accordance with section 5-278 shall remain in effect until such time as a new agreement is reached and approved in accordance with section 5-278. Nothing in this section shall affect the rights and duties of the employer and any exclusive employee representative designated to negotiate such new agreement under sections 5-271 to 5-280, inclusive, during the period of time after such agreement expires including the right to negotiate the extension of the expired agreement or any provision thereof not otherwise extended by this section. Notwithstanding any provision of a statute to the contrary, in the event an agreement expires

before a new agreement has been approved by the employee organization, the employer representative and the legislature, the employer representative and the exclusive employee representative designated to negotiate such new agreement shall negotiate and agree upon payment of an exclusive payroll deduction of employee organization regular dues, fees and assessments and, upon reaching such agreement, such payment shall be made to such exclusive employee representative.

(P.A. 79-621, S. 22, 24; P.A. 86-411, S. 6, 8; P.A. 93-80, S. 56, 67.)

History: P.A. 86-411 clarified that the section applies to the exclusive employee representative designated, rather than certified, to negotiate a new agreement, effective July 1, 1986, and applicable to negotiations then in progress; P.A. 93-80 limited provisions of expired agreement which remain in effect until approval of a new agreement to provisions "concerning (1) salary, excluding annual increments, (2) differentials, (3) overtime, (4) longevity, and (5) allowances for uniforms", effective January 1, 1994.

Sec. 5-279. Strikes by state employees prohibited. Nothing in sections 5-270 to 5-280, inclusive, shall constitute a grant of the right to strike to state employees and such strikes are prohibited.

(P.A. 75-566, S. 10.)

Sec. 5-280. Payment of dues to exclusive representative required. (a) If an exclusive representative has been designated for the employees in an appropriate collective bargaining unit, each employee in such unit who is not a member of the exclusive representative shall be required, as a condition of continued employment, to pay to such organization for the period that it is the exclusive representative, an amount equal to the regular dues, fees and assessments that a member is charged.

(b) 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 and for payroll deduction of the service fee described in subsection (a) of this section.

(P.A. 75-566, S. 11.)

Subsec. (a):

Plaintiff failed to sustain its burden of proof on damages with respect to permissible purposes of collective bargaining contract administration and grievance procedure. 38 CS 629, 630.