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CONNECTICUT POLICE & NON-POLICE COLLECTIVE BARGAINING FACT SHEET

In general, the Connecticut commission is hostile to expansive definitions of mandatory subjects of bargaining, sometimes issuing decisions that are results-driven and an expression of a preference for the substance of the employer's decision. There are a couple of distinctions between police and other units:

- The Commission is more likely to weigh safety on the side of bargaining for police than others.
- The Commission treats the requirement to bargain surveillance-based decision more expansively for non-police units than police-units.
- The Commission is more likely to find subcontracting of police work to an outside agency to be a mandatory subject of bargaining.

STATUTORY AUTHORITY FOR COLLECTIVE BARGAINING

Connecticut has three relevant statutes, one covering state agencies; one covering cities, towns, and counties; and one particular to teachers:

- **State:** 5-270 to -280: State Employee Relations Act (SERA)
- **Local:** 7-467 to -477: Municipal Employee Relations Act (MERA)
- **Teachers:** 10-153A: School Board Teachers' Negotiation Act

Coverage.

SERA governs the conduct of the State of Connecticut, including its executive and judicial branches.¹ MERA applies to "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."² Both SERA and MERA include police and sheriffs within their coverage.³ MERA requires each locality have a single bargaining unit for police and both statutes exempt police from supervisory exclusions from the bargaining unit.⁴

Scope of Bargaining.

SERA and MERA define mandatory subjects of bargaining broadly including "wages, hours, and conditions of employment."⁵ Under SERA, The promotional process, exams, and qualifications

¹ CONN. GEN. STAT. § 5-270(a) (2024).

² CONN. GEN. STAT. § 7-467(1) (2024) (listing additional political subdivisions of the state).

³ CONN. GEN. STAT. § 5-270(b) (2024) (but excluding without defining "special deputy sheriffs"); CONN. GEN. STAT. § 7-467(2) (2024).

⁴ CONN. GEN. STAT. § 7-471 (2024); CONN. GEN. STAT. § 5-271(f) (2024).

⁵ CONN. GEN. STAT. § 5-272(c) (2024) (requiring bargaining over "wages, hours, and other conditions of employment" for state employees); CONN. GEN. STAT. § 7-474(d) (2024) (requiring bargaining over "wages, hours and conditions of employment" for municipal employees).

are excluded from bargaining for police.⁶ Under MERA, the conduct and grading of merit examinations, rating of candidates, and establishment of lists from such examinations are excluded from bargaining for police; however, the necessary qualifications for taking promotional examination, the relative weight attached to each method of examination, and the use of monitors for examinations are subject to bargaining.⁷ The scope of bargaining for teachers is described as “salaries, hours and other conditions of employment” and contains many more statutory exclusions.⁸

Impasse Procedure.

In Connecticut, unlike most states, both police and non-police units have access to interest arbitration to resolve bargaining disputes. Under MERA, all negotiations must begin no later than 120 days before contract expiration.⁹ If the parties do not reach an agreement after 50 days of negotiation, the parties may request or the Board may appoint a mediator to facilitate settlement.¹⁰

Under MERA, if the parties have not reached agreement 30 days after contract expiration, they may proceed to interest arbitration before a panel of three arbitrators, one selected by the union, one selected by the employer, and one neutral selected by the first two panel members.¹¹ That panel is empowered to decide the terms of the contract, though the panel is directed to “give priority to the public interest and the financial capability of the municipal employer.”¹² The local legislative body is empowered to reject the arbitrator’s decision but may only do so by a two-thirds majority.¹³ SERA imposes a nearly identical impasse process, culminating in binding interest arbitration.¹⁴

Unfair Labor Practices

Once a party submits a complaint, it is investigated by the Board and may be dismissed.¹⁵ If not, the Board can order a hearing.¹⁶ The party complained about (employer or union) has the right to appear at the hearing and provide a defense; it appears that the Board acts as a prosecutor. From

⁶ CONN. GEN. STAT. § 5-272(d) (2024).

⁷ CONN. GEN. STAT. § 7-474(g) (2024).

⁸ CONN. GEN. STAT. § 10-153d (2024). Subsection (b) of the statute provides as follows:

(1) “hours” shall not include the length of the student school year, the scheduling of the student school year, the length of the student school day, the length and number of parent-teacher conferences and the scheduling of the student school day, except for the length and the scheduling of teacher lunch periods and teacher preparation periods and (2) “other conditions of employment” shall not include the establishment or provisions of any retirement incentive plan authorized by [CONN. GEN. STAT. § 10-183jj (2024)] or the development or adoption of teacher evaluation and support programs, pursuant to [CONN. GEN. STAT. §10-151b (2024)].

Id.

⁹ CONN. GEN. STAT. § 7-473b (2024).

¹⁰ *Id.*

¹¹ CONN. GEN. STAT. § 7-473c(b)(2) (2024).

¹² CONN. GEN. STAT. § 7-473c(d)(9) (2024).

¹³ CONN. GEN. STAT. § 7-473c(d)(12) (2024).

¹⁴ *See generally* CONN. GEN. STAT. § 5-276a (2024).

¹⁵ CONN. GEN. STAT. § 7-471(5) (2024).

¹⁶ *Id.*

there, the Board will issue its decision in writing. The Board has broad remedial authority in addition to requiring the offending party to cease and desist:

(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 [interest arbitration], resulting from the negotiations in which the refusal to bargain occurred.¹⁷

LAW ENFORCEMENT OFFICER BILL OF RIGHTS

Connecticut does not have a LEOBOR statute.

AGENCIES

Connecticut State Board of Labor Relations (CSBLR)

- **Statutes:** § 5-273 to -275; §7-471

Information about the CSBLR is available on their website (linked [here](#)).

Board Members:

- Barbara Collins¹⁸
- Katherine C. Foley¹⁹
- Ann F. Bird (alternate)
- Susan Meredith (alternate)
- Ellen M. Carter (alternate)
- Thomas P. Clifford III (alternate)

It is important to note that these are all relatively new appointments. The former two Board members each served for about 25 years.²⁰

¹⁷ CONN. GEN. STAT. § 7-471(5)(B) (2024).

¹⁸ Barbara Collins is a union lawyer. *See* Barbara J. Collins, LINKEDIN, <https://www.linkedin.com/in/barbara-j-collins-a89b0610/> (last visited Oct. 3, 2024).

¹⁹ I was unable to find any information on Katherine Foley.

²⁰ Patricia Low was on the Board from 1977-2018 most recently as chair. Wendella Ault Battey, was on the Board for 27 years and in 2022 was appointed to be Director of Labor Relations for City of New Haven.

COMMON LAW OF MANDATORY SUBJECTS

In General

Whether a particular employer decision is a mandatory subject of bargaining (MSB) is determined through a balancing test, weighing the effect of the change on employee's terms and conditions against how central the subject is to the operation of the agency.²¹ Put another way, managerial decisions "at the core of entrepreneurial control" are not mandatory subjects.²² To show a unilateral change based on a changed practice, the union needs to prove a "fixed practice" by presenting evidence of both the prior practice and the new one.²³ Unlike all other categories of employees, teachers must show a bargaining unit wide practice, not just a particular school.²⁴ The statutory definition of an MSB will prevail over a municipal code or charter "[e]ven if the agreement appears to be in conflict with certain Charter provisions or civil service rules."²⁵

Discipline and Oversight.

In the area of discipline, the general rules are similar as between police and non-police units, but there are distinctions that suggest the Commission is more willing to consider safety rules to be MSB in the police context.

While the Board will describe discipline as an MSB,²⁶ in the non-police context, the Commission often relies on a sub-rule that eliminates many disciplinary rules from bargaining:

the adoption of reasonable procedural measures designed to enforce existing rules or conditions of employment ordinarily will not itself constitute a mandatory subject of bargaining unless the procedural measure alters the rule . . . it is designed to enforce.²⁷

Using this subjective gloss, the Commission has been quite inhospitable to many MSB claims. For example, in the non-police context the Commission found that a rule limiting computer uses and an "absence control policy were not MSBs"²⁸ but a nepotism policy was an MSB.²⁹

²¹ *W. Hartford Educ. Ass'n, Inc. v. DeCourcy*, 295 A.2d 526, 535-36 (Conn. 1972) (teacher case); *Town of Newtown*, Dec. 4732, 4 (2014) (police case finding a change in command structure at an incident employment with "the extent of the employer's need for unilateral action without negotiation to serve or preserve an important policy decision" (quoting *City of Hartford*, Dec. 4719, 6 (2014))); *Town of Middlebury*, Dec. 5003, 8-9 (2018).

²² *W. Hartford Educ. Ass'n, Inc.*, 295 A.2d at 535.

²³ *Portland Bd. of Educ.*, Dec. 1670 (1978) (exists in both police and non police).

²⁴ *Compare Plainfield Bd. of Educ.*, Dec. 4131 (2006) (single school is not enough); *with State of Conn.*, Dec. 3806 (2001) (specific agency is sufficient).

²⁵ *City of Bridgeport*, Dec. 4013 at 5 (2004).

²⁶ *Matter of Russell Library*, Dec 5240, 2022 WL 6149988 (2022).

²⁷ *State of Conn. And CSEA, SEIU, Local 2001*, Dec. 4440 (2010).

²⁸ *State of Connecticut*, Dec. 4440 (2010) (computer); *City of Waterbury*, Dec. 4238 (2007).

²⁹ *Waterbury Bd. of Educ.*, Dec. 4337 (2008) (because the policy "has the potential to affect wages, foreclose the possibility of promotion or transfer, or lead to demotion or termination.")

In the police context, however, the Commission seems to factor safety into this formula allowing it to view the MSB more expansively, holding that requiring officers to engage the safety on their firearms was an MSB³⁰ and requiring officers to administer CPR to overdosing civilians was also an MSB.³¹

In the area of surveillance, the Commission's decisions are difficult to reconcile. In the non-police context, while surveillance of a single desktop computer was not an MSB,³² surveillance of the entire workplace is,³³ as is video and audio recording of a supervisor.³⁴ By contrast, the Commission held in 2019 that the implementation of body worn cameras for police was not an MSB and, indeed, had no substantial effect on officer privacy because the officer being in public had "little or no legitimate expectation of privacy."³⁵

Reassignment and Skimming.

The Commission's rules here are broad and inconsistently applied. First, the Commission holds, "the topics of job content and job specifications for EEs in the bargaining unit are, under most circumstances, mandatory subjects over which the parties are obligated to bargain."³⁶ And it also holds, "the power to reassign EEs to other duties which are concededly within [their] job descriptions is fundamental to the operation of any public agency and therefore falls within the category of managerial power."³⁷ Thus, the outcome of these cases seems to depend on the Commission's subjective opinion as to the value of the job.³⁸

Subcontracting.

The Commission in general is not hospitable to claims that subcontracting is an MSB. In the last 20 years, these cases have arisen solely in the public safety context, though not always in police bargaining units. The general rule is consistent; there are three elements which the union must prove:

1. Work in question is bargaining unit work;
2. The subcontract or transfer of work varied significantly in kind or degree from what had been customary under past practice; and
3. Demonstrable adverse effect on bargaining unit.³⁹

³⁰ *City of Ansonia*, Dec. 2995 (1992).

³¹ *City of Shelton*, Dec. 5132 (2020)

³² *Town of Rocky Hill*, Dec. 3565 (1998).

³³ *City of Stamford*, Dec. 4345 (2008)

³⁴ *City of Hartford*, 4719 (2014).

³⁵ *Town of Trumbull*, Dec. 5091, 12 (2019).

³⁶ *State of Connecticut*, Dec. 2052 (1981) (secretarial unit)

³⁷ *City of Hartford*, Dec. 1810 (1979) (police); *New Haven Bd. of Educ.*, Dec. 4539 (2011) (quoting *City of Bridgeport*, Dec. 1485 (1977) (non-police))

³⁸ Compare *City of Bridgeport*, Dec. 5016 (2018) (Reassignment of training duties to a different employee was not a MSB because those duties were within the job class of recipient. Clear irritation about officers claiming overtime for this.), with *City of Danbury*, Dec. 4975 (2017) (assignment of employee to Internal Affairs was MSB because employer failed to pay at a sufficiently high rate).

³⁹ *City of Bridgeport*, Dec. 4706 (2014)

Element two generally provides the basis for the Commission to find no MSB.⁴⁰ The one case in which the Commission found the subcontracting to be an MSB occurred in a police unit. There, the Department moved “wholesale” the SWAT function from the Town of East Hartford to a regional provider.⁴¹ However, in a similar instance of moving non-police dispatch to a regional provider, the Commission found no MSB.⁴²

Duties

Changes or additions to duties are often challenged as MSBs with the unions arguing that they add workload or impinge on safety. According to the Connecticut Supreme Court, employee workloads are conditions of employment and a MSB.⁴³ In the non-police context (mostly teachers), in the past 20 years, the Commission almost never finds a workload impact sufficient to establish an MSB, going out of their way to get to these results.⁴⁴ The Commission is also skeptical of workload-based MSB in the police context, but it is far more open to safety-based MSB for police saying that “we have been especially sensitive to the question of danger to police officers.”⁴⁵

⁴⁰ *Town of Wallingford*, Dec. 3865 (2002) (transfer of night shift dispatching work from the police bargaining unit to a civilian bargaining unit did not vary from past practice because the civilian unit performed the day and evening shift dispatch); *City of Bridgeport*, Dec. 4386 (2009) (transfer of Park police work was MSB because varied significantly from past practice because of former secondary role of city police).

⁴¹ *Town of East Hartford*, Dec. 3853-A. (2004).

⁴² *Town of Middlebury*, dec. 4756 (2014).

⁴³ *W. Hartford Educ. Ass’n, Inc. v. DeCourcy*, 295 A.2d 526, 535 (Conn. 1972) (class size and teaching load are MSB). For a police decision, see also *City of Hartford*, Dec. 4113 (2006) (“Workload is a condition of employment.”).

⁴⁴ *Compare Millford Bd. of Educ.*, Dec. 4574 (2012) (new computer system to prepare IEP reports did not have a substantial impact on workload because of the “unreasonable employee reaction” to the new system), and *Bridgeport Bd. of Educ.*, Dec. 4556 (2011) (new computer system for teachers to prepare IEP reports did not have substantial impact on workload because teachers seem to have “acclimatized” to the system), and *Vernon Bd. of Educ.*, Dec. 4552 (2011) (increase in class size was not a MSB because insufficient evidence that their workloads were substantially increased), and *New Haven Board of Educ.*, Dec. 4539 (2011) (library media specialists assigned to teach classes not MSB because evidence supported conclusion that their workloads were not substantially increased), and *Plainfield Bd. of Educ.*, Dec 4131 at 3 (2004) (increasing the hours required to perform early morning safety patrols from 3 hours to 15 hours was not a MSB because teachers in other schools within the BU did more hours, thus no established practice), with *Region 16 Bd. of Educ.*, Dec. 4270 (2007) (increasing the number of students assigned to special education teachers was an MSB).

⁴⁵ *City of Shelton*, Dec. 5132, 8 (2020) (quoting *State of Connecticut*, Dec. 4953, 7 (2017)) (administering Narcan did not impose substantial safety risks but requiring the administration of CPR did); *City of Bridgeport*, Dec. 4651 (2013) (assigning patrol officers “violent crime reduction initiative” patrols did not affect safety because, although sergeant testified as to increased risk “no evidence to support its claim that increased physical contact results in greater incidence of injury”); *City of New Haven*, Dec. 5250 (2022) (creation of Compassionate Allies Saving Our Streets did not justify interim relief because the union only proved *possible* safety impact); *State of Connecticut*, Dec. 4953 (2017) (the Commission first recognized that potential MSB safety issues are raised by reducing police staffing of a tribal casino and then *sua sponte* found the whole issue moot because in the intervening time the legislature moved policing away from State Patrol)