

HOW DOES LAST BEST OFFER INTEREST ARBITRATION WORK WHEN THE STATE HAS NOT ADOPTED ITS BUDGET?

Education Law Notes

10.12.2017

According to the State Department of Education, approximately 100 Connecticut school districts are scheduled to engage in negotiations with teacher and/or administrator bargaining units by the end of December, 2017. As those of you who are familiar with the Teacher Negotiation Act understand, these contracts are supposed to be resolved by agreement, or through last best offer arbitration, in time for the town to adopt its budget for the following fiscal year, FY 2019. “Such negotiations shall commence not less than 210 days prior to the budget submission date.” Conn. Gen. Stat. Section 10-153d(b). How on earth can the parties to such negotiations engage in any kind of meaningful dialogue concerning an employer’s ability to pay salary increases, for example, without knowing the amount of State education funding it will receive for fiscal year 2019? For many of these districts, it cannot be sanely accomplished. Perhaps if you are in a district that has historically received very little Educational Cost Share (“ECS”) funding from the State, a settlement can be reached because of such little reliance upon the State’s contribution to the funding equation. For numerous others, the ultimate State education funding allocation plan will have a profound impact upon the evidence to be submitted during the arbitration and the criteria to be weighed by the arbitration panel. As Conn. Gen. Stat. Section 10-153f(c)(4) indicates:

In arriving at a decision, the arbitrators or single arbitrator shall give priority to the public interest and the financial capability of the town or towns in the school district, including consideration of other demands on the financial capability of the town or towns in the school district. In assessing the financial capability of the town or towns, there should be an irrebuttable presumption that a budget reserve of 5% or less is not available for payment of the cost of any item subject to arbitration under this chapter. The arbitrators or single arbitrator shall further consider, in light of such financial capability, the following factors

The statute then goes on to list five factors to be considered in the light of such financial capability.

The Connecticut School Finance Project (“CSFP”), on October 3, 2017, <http://ctschoolfinance.org/formula-analyses> published a helpful updated analysis of the two education funding proposals that have been proposed thus far, and compared them to fiscal year 2017 funding. The funding proposals are the Democrat Proposed Budget FY 2018 Funding (Sept. 15), and the Republican Proposed Budget FY 2018 Funding (Sept. 15). On August 22, 2017, the Connecticut School Finance Project had previously published its analysis of the Revised Executive Order Resource Allocation Plan: State Education Funding <http://ctschoolfinance.org/>

pullcom.com  @pullmancomley

BRIDGEPORT 203.330.2000	HARTFORD 860.424.4300	SPRINGFIELD 413.314.6160	WAKEFIELD 401-360-1533	WATERBURY 203.573.9700	WESTPORT 203.254.5000	WHITE PLAINS 914.705.5355
-----------------------------------	---------------------------------	------------------------------------	----------------------------------	----------------------------------	---------------------------------	-------------------------------------

HOW DOES LAST BEST OFFER INTEREST ARBITRATION WORK WHEN THE STATE HAS NOT ADOPTED ITS BUDGET?

assets/uploads/files/Revised-Executive-Order-Resource-Allocation-Plan-Analysis.pdf. Let's consider the stark differences encountered by the first Board of Education to commence teacher contract arbitration this year, the New Milford Board of Education. According to the Connecticut School Finance Project Analysis Of Education Funding Proposals, October 3, 2017, this community received \$12,631,069 in fiscal year 2017. Under the Democrat Proposed Budget FY 2018 Funding, **it will lose \$1,717,973 or 13.6%** of the amount it received in FY 2017. Under the Republican Proposed Budget FY 2018 Funding **it will receive an increase of \$125,123**. However, since there is no budget in place, and since the Governor's October 1 deadline has passed, the Revised Executive Order Resource Allocation Plan: State Education Funding is presently the default FY 2018 plan. Under Table 3 of that CSFP analysis, Estimated Town-by-Town Net Change In Total State Education Funding For FY 2018, **instead of receiving the \$12,631,069 in State education funding received in FY 2017, New Milford would see its State education funding reduced by \$10,638,474, a reduction of more than 84%**. The Connecticut School Finance Project includes a caveat in its analysis relevant to Table 3: "It is important to note that the projected reductions in this column only take into consideration reductions in state education aid and do not necessarily mean a district would see a reduction in its overall funding. For example, should the General Assembly not pass a budget before the proposed cuts in the Revised Executive Order Resource Allocation Plan are implemented, some towns may decide to replace some or all of the reduced or eliminated state education funds with additional funding from local property taxes or use their budget reserves to make a one-time payment." (Analysis, 8/22/17, page 9.) It should be kept in mind that the funding being analyzed pertains to FY 2018 and the current school year, i.e., 2017-18. Whatever measures may be required to get through the current fiscal/school year, such as a one-time payment from budget reserves, where will the money come from for the second year of this biennial budget, FY 2019?

The thirty lowest performing districts in the state, known as the Alliance Districts, each receive a grant under the Revised Executive Order Resource Allocation Plan, equal to their FY 2017 ECS grant, after rescissions. Eight-five towns will receive no ECS grant under such a plan, and the remaining fifty-four "non-Alliance" towns will receive between 10% and 60% of their FY 2017 ECS grant. (Analysis, 8/22/17, page 3.) Yet, as the Connecticut School Finance Project's helpful analysis indicates, the legislature could pass a budget at any time, and once signed by the Governor, it will supersede the Revised Executive Order Resource Allocation Plan, *supra* page 2.

A Possible Solution

The choice is between submitting last best offers in arbitration based upon wildly uncertain economic forecasts, or postponing such negotiations until after a biennial budget is adopted. Unlike the Municipal Employee Relations Act, the Teacher Negotiation Act does not permit the parties to postpone the implementation of arbitration. However, the parties could resolve what they can during the statutory timeframe for negotiations, and enter into a memorandum of understanding that they will reopen the contract

HOW DOES LAST BEST OFFER INTEREST ARBITRATION WORK WHEN THE STATE HAS NOT ADOPTED ITS BUDGET?

for negotiations regarding salary related issues once a budget has been adopted. Midstream arbitration provisions contained in the Act (Conn. Gen. Stat. Section 10-153f(e)) provide a dispute resolution solution. After the parties have attempted to negotiate, if they are unsuccessful, they would enter into mediation and on the fourth day following such mediation, or on the fiftieth day following the date of commencement of negotiations, if no settlement is reached, they would commence midstream arbitration equivalent to the one they bypassed by agreement.

If you find your school district forced into last best offer salary arbitration, despite the apparent lunacy of the present situation, perhaps these quotes from two great minds of the 20th century may provide some solace:

“As far as laws of mathematics refer to reality, they are not certain; and as far as they are certain, they do not refer to reality.” – Albert Einstein

“I took a test in Existentialism. I left all the answers blank and got 100.” – Woody Allen

Posted in Teachers

Tags: Arbitration, CT State Department of Education (CSDE), Teacher Negotiation Act