

## The Waterbury Teachers' Interest Arbitration Award...Are We Heading Back to the "Hard Zero"?

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### Working Together

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The 2018-19 season for certified Connecticut teacher and administrator contract negotiations is just about officially in the books. While a handful of contracts have yet to be reported, this year's certified negotiation season could end with exactly one true interest arbitration award for certified teacher and administrator bargaining units.

The Waterbury teachers' interest arbitration award (copy available [here](#)) was issued on January 17, 2019 by a three-person arbitration panel. Pursuant to the Teacher Negotiation Act, the award is now pending before the City's Board of Aldermen, the City's legislative body, which has the authority to reject the award by a two-thirds majority vote and send it to a second arbitration panel. If not, the January 17, 2019 award will probably stand as the only disputed certified interest arbitration award to come out of the 2018-19 negotiation season.

The Waterbury award is interesting for a number of reasons, but is perhaps most noteworthy because the arbitration panel (by a two-to-one vote and with a rare written dissent by the dissenting arbitrator) awarded the Waterbury Board of Education a "hard zero" for the 2019-20 school year. As a result, next year Waterbury teachers will stay exactly where they are in terms of wages and will not receive either a general wage increase ("GWI") or salary schedule step-increase.

Is the Waterbury award the start of a new trend? Are we back to the era where boards of education can expect to get at least one hard zero per three year contract? Is Connecticut's economic picture so gloomy and future ECS funding so precarious that we can expect zeros as the norm going forward?

Probably not.

The Waterbury award needs to be understood in the context of Connecticut public-sector binding interest arbitration, which requires arbitration panels to choose between the last best offers ("LBO") submitted by the parties. Arbitrators are statutorily bound by the Teacher Negotiation Act (and Municipal Employees Relations Act) to choose between the two offers submitted by the parties. They cannot "split the baby" -- it's one or the other. Often this constraint looms large over an award.

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This seems to be especially true in Waterbury. For the 2019-20 school year, the Board of Education proposed "no general wage increase over the salary schedule for the 2018-19 school year." (The Board's LBO did not affirmatively state that there would be no step-movement for 2019-20, which became a significant point of contention in the award.) The Waterbury Teachers Association's LBO proposed a 2.25% GWI without step-movement.

In awarding the LBO of the Board of Education, the panel chair emphasized that the arbitrators lacked the authority to simply award a GWI figure they deemed appropriate and were instead bound to pick between the offers submitted:

The Chair believes strongly that the evidence on the financial capability of Waterbury would support, and the teachers deserve, a modest salary increase for 2019-2020. In the Chair's opinion the zero last best offer of the Board is too low but the 2.25% last best offer from the Association is too high. . . . The statute commands that the Panel select one of the two last best offers. And, on balance, given our appropriate statutory constraints, the financial capability of Waterbury favors the last best offer of the Board.

Waterbury Award, p. 28.

The panel's award of a zero-percent GWI for 2019-20 thus seemed to be less about whether a hard zero was appropriate and more about the fact that the Union's LBO of 2.25% appeared to be too high. As the comment above suggests, the arbitration panel likely would have awarded a total salary increase somewhere between 0% and 2.25% if such an offer was on the table, either in the form of a lower GWI or some combination of GWI and step-movement had GWI and step-movement been split into separate issues. Notably, the arbitration panel awarded the Board's LBO of a salary and insurance premium cost-share reopener in the second and third years of the contract.

Every interest arbitration case turns on its own merits. While there are certainly some common considerations that impact virtually every community in Connecticut (the overall health of the state and national economy, the state budget, etc.) other features are unique. Waterbury and Greenwich, for instance, obviously differ in their ability to pay board of education employees.

By the same token, as the Waterbury case illustrates, an arbitration award cannot be understood just by looking at the final GWI or final contract language awarded by the arbitration panel. Interest arbitration is a choice between last best offers and this feature of the process needs to be taken into consideration in evaluating whether past arbitration awards provide meaningful guidance in future negotiations or arbitrations.

**Tags:** Municipal Employees, Teacher Negotiation Act