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Interest Arbitration –
Pros, Cons and How Tos

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Interest Arbitration – Pros, Cons and How Tos

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Unlike grievance arbitration where an arbitrator determines whether one party to a collective bargaining agreement has violated that agreement, interest arbitration, also called contract arbitration, involves an arbitrator actually deciding what will be included in the parties’ collective bargaining agreement. While scarcely used in the private sector, more than half of all states have enacted some form of interest arbitration procedure for at least one group of public employees. Interest arbitration is generally used after other methods of resolving a bargaining impasse, such as mediation or fact-finding, prove unsuccessful, although these procedures vary from state to state.

The Employee Free Choice Act (“EFCA”) has sparked curiosity and debate over how interest arbitration would translate to the private sector. EFCA would mandate the use of interest arbitration in the private sector for first labor contracts if the union and the employer are unable to reach agreement within 120 days following the union’s request to bargain. This outline will provide some guidance to parties contemplating including a voluntary interest arbitration provision in a collective bargaining or neutrality agreement, on the issues, questions and procedures that should be considered by parties in crafting such a provision.

I. The Employee Free Choice Act

First introduced in 2003, EFCA (H.R. 800, S. 1041) was passed in the House of Representatives in March 2007 by a vote of 241 to 185.² While the vote in the House actually rejected majority support of the bill there as well (57-49), the cloture vote in the Senate fell short. Clearly, the pending elections may bring about changes in Congress that will turn the EFCA into reality for businesses in the U.S.

As currently drafted, EFCA has three main elements.

1. Card Check

EFCA would require the Board to certify a union after a majority of the company’s workers signs union cards. While EFCA does not eliminate the current formal secret ballot election process, it would clearly put an end to almost all formal representation elections. In its current form, EFCA provides: “if the [National Labor Relations] Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations...the Board

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²http://www.govtrack.us/congress/bill.xpd?bill=h110-800#votes
shall not direct an election but shall certify the individual or labor organization.” EFCA does not permit employees to rid themselves of a union so easily, however, mandating that a secret ballot election is still the only way to decertify a union.

2. First Contract Mediation and Interest Arbitration

Second, EFCA imposes expedited contract negotiations for employers and newly certified unions. The parties must meet within 10 days of the union’s demand to start bargaining. If a first contract is not reached within 90 days of when bargaining commences, either party may request mediation. If no contract is reached within 30 days of the request for mediation, the matter is referred to an arbitration board for mandatory interest arbitration. Interest arbitration would set the terms of the initial contract between an employer and a union, obviously including wages and benefits, but also possibly including other topics typically covered by collective bargaining agreements, such as outsourcing, work scheduling, classifications, work weeks, and premium pay. There is no provision in EFCA allowing either employers or unions to appeal the arbitrator’s ruling, and the contract would last for two years unless amended in writing by the parties. While sometimes used in the public sector, binding interest arbitration is extremely rare in the private sector.

3. Stricter Penalties for Employers

EFCA would significantly increase the penalties for unfair labor practices committed by employers (but not unions) during an organizing drive or during first contract negotiations, as follows:

- The Board would be required to seek a federal court injunction against an employer whenever there was reasonable cause to believe that the employer committed unfair labor practices during the critical time period. EFCA also authorizes the courts to grant temporary restraining orders or other appropriate injunctive relief.

- EFCA also allows employees discharged or discriminated against during an organizing campaign or first contract drive to recover two times back pay as liquidated damages, in addition to the back pay owed, for a total of three times the back pay. Current damages are limited to back pay, less any interim wages earned by an employee if they are hired by another employer.

- Finally, EFCA would allow the Board to order civil fines of up to $20,000 per violation against employers found to have willfully or repeatedly violated employees’ rights during the critical time period. There are currently no civil fines for violations.
II. Method: Final Offer v. Conventional Arbitration

- “Final Offer” interest arbitration requires the arbitrator to adopt the final offer of one of the parties in its entirety. The arbitrator has no discretion to fashion any compromise between the parties’ final offers. There are two types of “final offer” interest arbitration:
  - **Final Offer – Issue By Issue:** Allows the arbitrator the freedom to find in favor of one party on some of the issues and for the other party on the remaining issues. It may encourage parties to keep all issues on the table – even fairly nominal contractual terms – under the realization that they have nothing really to lose. This tends to keep the issues broad in number and may lead to costly and time-consuming proceedings.
  - **Final Offer – Total Package:** The true “winner-take-all” approach to interest arbitration. Each party submits as a complete package its final offer on all issues in dispute, and the arbitrator must adopt one or the other package in its entirety. It may encourage parties to narrow the issues considerably and lead to shorter, more efficient proceedings.
  - **“Nighttime Baseball”:** A variation on final offer interest arbitration, in this type of proceeding, the arbitrator does not know the parties’ final offers. The arbitrator’s post-hearing decision that is closest to the undisclosed (to the arbitrator) party’s last offer will result in that offer being deemed the award of the arbitration.

- “Conventional” interest arbitration requires the arbitrator to evaluate the parties’ proposals and fashion an award the arbitrator deems appropriate in light of various criteria – often statutory, in the public sector – and under all of the given circumstances. This is typically viewed as the ultimate compromise, as arbitrators often “split the baby” and select portions of each party’s proposal when crafting the award. Some schemes even allow the arbitrator the discretion to award more than the union is demanding or less than the employer is offering. Parties may avoid this method in light of the considerable discretion granted to arbitrators, or may limit the number of issues subject to this method, as often neither party is completely satisfied with the result achieved by the arbitrator’s compromise. One of the risks of “conventional” arbitration is that there is little incentive for the parties to negotiate or moderate their respective positions prior to arbitration. Also, the decision is truly taken out of the parties’ hands, as the arbitrator has virtually unlimited discretion to craft an award.

- **“Hybrid” approach:** Depending on the characterization of a proposal or contract term as “economic” or “non-economic,” the above-noted methods of arbitration can be combined and modified to create a “hybrid” approach. For instance, final offer interest arbitration may be adopted for all economic items, while conventional arbitration may be used for all non-economic items.
III. Identification of the Issues

- Private sector interest arbitration is (so far) not governed by statute, and thus it may be as expansive or limited in scope as the parties desire to make it. Usually the status of the parties’ current negotiations, including mediation, defines the issues that remain open and ripe for decision through interest arbitration. The parties’ tentative agreements also may serve to limit further the number of issues in dispute at interest arbitration.

- A determination should be made as to whether the arbitrator has the ability to reopen items tentatively agreed upon by the parties in the interest of crafting a fair award.

- Economic v. Non-Economic Items: As noted above, the characterization of items as economic or non-economic in nature may drive the method of the arbitrator’s decision, either compelling the adoption of one party’s final offer or evaluating both proposals as the arbitrator deems appropriate.

IV. Selection of the Decision-Maker

- EFCA merely states that the Federal Mediation and Conciliation Service (“FMCS”) will refer a first contract dispute to an “arbitration board.” There is no guidance on the composition of this arbitration board.

- Will there be one arbitrator or an arbitration panel and how will the arbitrator(s) be chosen? Many states’ interest arbitration laws provide for tripartite boards comprised of one member selected by the employer, one member selected by the union and one neutral member. Others simply use one arbitrator chosen in the same fashion as a grievance arbitrator.

- What qualifications must the arbitrator or members of the arbitration panel have? Prior interest arbitration experience? Experience in the employer’s industry? National Academy of Arbitrators membership?

V. Arbitral Criteria

- The parties may stipulate to the specific criteria that will guide the arbitrator in reaching a decision, and the relative weight to be afforded each criteria. In the public sector, where interest arbitration is prevalent, criteria are typically established by statute, and include the following:
  - Parties’ stipulations
  - Comparison of wages, hours and conditions of employment of the employees at issue with those who perform similar work in the private and public sector in comparable communities
  - Parties’ past agreements
- Financial ability of the employer to meet the costs of the award (rate-making process)
- Cost of living
- Overall compensation of employees at issue, including wages, vacations, holidays, health insurance benefits, and pensions
- Characteristics of the particular trade or profession involved
- Effect of the award on the standard of services provided
- Interests and welfare of the public
- “Catch-all” provision, which allows the arbitrator to consider other factors that are normally or traditionally considered in the determination of wages, hours and conditions of employment through voluntary collective bargaining, in either private or public sector employment

- Private sector interests obviously vary greatly, and the decisional criteria in private sector interest arbitration may include additional factors relating to company profitability, competitiveness, and productivity standards not relevant to the public sector.

- Arbitrators tend to view comparability as the most important factor in evaluating parties’ final offers and proposals at interest arbitration. This includes both (a) internal comparability within the employer’s workforce and personnel policies, and (b) external comparability, which in the public sector involves a comparison of wages and other terms and conditions of employment within comparable communities and local governments, but in the private sector may include private sector employers providing similar services and products in similar geographical areas.

- First contract interest arbitrations (such as those contemplated under EFCA) pose unique challenges in that there is no past contract or bargaining history between the parties to consider. Essentially, the arbitrator will be writing the parties’ first contract for them. In such situations, the arbitrator may be asked to consider the parties’ past practices with regard to wages, benefits and work rules, with the party seeking to change a past practice typically bearing the burden of proof.

VI. Hearing Procedures

- Establishment of ground rules: These typically are reached prior to the onset of the hearing. Items generally addressed include an identification of the arbitrator or panel, procedural aspects of the hearing itself, including whether a court reporter will be used and whether it will be open to the public, and a brief identification of the issues presented and comparability factors to be used.
• **Agreement on comparables:** Parties may identify and stipulate to the comparability factors as part of the establishment of the ground rules, prior to the hearing. Agreement on comparability prior to the hearing establishes a key decisional factor against which the final offers and proposals will be evaluated, and grants the parties the ability to strategically plan the presentation of evidence and arguments in light of that factor. Parties may need to litigate comparability is agreement cannot be reached.

• **Respective burdens of proof:** Parties can stipulate to what burden of proof should be applied to each issue. The party seeking to alter the status quo under an existing collective bargaining agreement typically carries a significantly high burden of proof. Interest arbitrators are not inclined to award “breakthroughs” during interest arbitration and grant to a party that which it would not likely have secured through voluntary collective bargaining and negotiation. In general, the party seeking to change the status quo with respect to a particular term has the burden of proof on that issue. To the extent the parties cannot agree on the respective burdens of proof, this may be left to the arbitrator for decision.

• **Presentation of evidence:** Evidence may be submitted in the form of documentary evidence and/or narrative format. Interest arbitrations generally involve a combination of the two, with significant reliance on documentary evidence. Parties also may agree to certain facts in the form of stipulations, which helps narrow the scope of the proceeding itself.

• **Authority of arbitrator:** This may be limited or expansive in scope. It may address whether the arbitrator may act as a mediator at certain points in the process. It also typically includes the deadline for the arbitrator to issue an award, and the final and binding nature of the award. The parties also may request that the arbitrator issue a draft opinion for review that can be considered for further mediation or negotiations prior to the issuance of a final award. The parties also may address whether the arbitrator can compel, pursuant to subpoena, the appearance of witnesses and production of documents.

• **Pre-hearing conference:** It is highly recommended that the parties conduct an in-person pre-hearing conference with the arbitrator to discuss the above-listed procedural considerations. To the extent the parties cannot agree on procedures, the pre-hearing conference in and of itself may constitute a pre-arbitration hearing regarding what standards should be adopted. To the extent possible, the procedures and standards should be determined prior to the presentation of evidence on the merits.

• **Other potential issues:** Will the hearing be open to the public and/or other employees? Are there strategic advantages to conducting the proceedings in public as opposed to closed session?
VII. Post-Hearing Procedures

- **Briefing:** It is common in grievance arbitrations for the parties to submit post-hearing briefs. Interest arbitrations may involve pre- and/or post-hearing briefing. Issues to be considered generally include limitations on briefing such as time or page limits.

- **Review of the decision:** Can the decision be reviewed or challenged by one or both of the parties? What body would be responsible for reviewing that award? Some states’ interest arbitration statutes provide for review by the governor or a state court.

VIII. Other Considerations

- **Strikes and Lock-outs:** It is fairly common in the public sector that the use of impasse arbitration be limited to employees that do not have the right to strike (for example, police officers and fire fighters do not have the right to strike in many states). In the private sector, however, employees generally have the right to strike and employers have the right to lock out employees. Should some limitations be placed upon those rights in the agreement to use interest arbitration? EFCA does not speak to the use of these economic weapons.

- **Automatic v. Remedial Access to Interest Arbitration?:** Should the use of interest arbitration be limited to where one or both parties has engaged in bad faith bargaining or other unfair labor practices during the course of negotiations?

- **Timely Procedure:** Although many state laws provide for quick arbitration procedures, in reality, interest arbitration is a lengthy and often costly process. For example, Michigan’s statute provides that an arbitration panel will be selected within 3 weeks, the first hearing held within 15 days and all hearing concluded within 30 days of when they began. A 2007 study found that on average it took 15 months from the date the request for arbitration was filed until the parties finally received a decision.\(^3\) Parties should also consider the costs of the procedure and include those arrangements within the agreement. For example, it is fairly common for the party requesting arbitration to pay the fee to request an arbitration panel. Other costs and fees may include the arbitrator’s fee and the costs of a court reporter and transcripts.

- **Risk:** Although it often seems to be the case (to the management bar at least), the union does not always prevail in interest arbitrations. Both sides face risk in using the procedure. The City of Chicago and Fraternal Order of Police, Lodge No. 7, recently proceeded to interest arbitration regarding their successor collective bargaining agreement:

  - The parties engaged in extensive contract negotiations regarding a number of complex matters, including police officer compensation, health insurance and

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Negotiations began in June 2007, and ultimately more than seventy-four bargaining sessions were held, with more than 1000 proposals exchanged between the parties. Although the parties’ negotiations culminated in significant accomplishments, including agreements regarding new work schedules and retiree health care benefits, the City and the Lodge were unable to reach full agreement on all outstanding issues and reached

In February 2010, the parties submitted written pre-hearing briefs addressing the arguments in support of their respective final offers. On February 24, and March 4, 2010, the parties’ representatives made oral presentations and presented witness testimony in further support of their final offers.

Pursuant to the impasse resolution process agreed to by the parties, final offer interest arbitration – requiring the arbitrator to adopt the final offer of one of the parties in its entirety, or even issue by issue – was not a governing principle. Instead, the Arbitrator evaluated the parties’ proposals and issued an award deemed appropriate in light of the various statutory criteria set forth in the Illinois Public Labor Relations Act. Following the conclusion of both the briefing and hearing stages of the parties’ interest arbitration proceeding, the Arbitrator issued his decision on April 16, 2010.

A total of twelve issues were the subject of the parties’ final offers and the final interest arbitration award. Chief among these issues were officer compensation, and the parties could not have been farther apart on this issue. The City’s final offer proposed a total of 5% wage increases over a five-year term, whereas the Lodge sought 19.25% over a four-year contract term. Evaluating all of the relevant factors, and considering the status of the national and local economies, the Arbitrator awarded 10.41% increases over the life of a five-year contract term.

The Lodge, having passed on an earlier proposal by the City of 16% over five years, found itself with a significantly reduced compensation package following the conclusion of interest arbitration.

The Lodge’s final offers also included significant increases in officer duty availability pay and uniform allowance, neither of which was adopted by the Arbitrator, who instead awarded modest increases in duty availability pay and no increase whatsoever in the uniform allowance.

Operationally, the City also sought and garnered significant changes in terms of officer discipline, changes that were opposed by the Lodge. While the Lodge proposed no change to officer discipline in its final offer, the City proposed new procedures for random drug and alcohol testing for officers, mandatory testing following the discharge of a weapon, and audio recording of officer statements provided in the context of disciplinary investigations – all of which were awarded by the Arbitrator.
- This recent interest arbitration proceeding recognized the problems currently facing the City and other units of local government – namely, the problem of severely declining revenues as a result of a global economic recession that resounded on the national, state and local levels.

- Given the striking differences between the economic proposals submitted by the Lodge and the wage and benefits package ultimately awarded by the Arbitrator, it is clear that interest arbitration does not always guarantee a “win” for unions.
Sample Private Sector Interest Arbitration Provision

The following is a sample procedure, taken from the current contract between SMACNA (Sheet Metal and Air Conditioning Contractors Association) – Cleveland Chapter and the Sheet Metal Workers, for breaking deadlocks that arise in negotiations for a new contract or under a wage-benefit reopener. Disputes not settled by arbitrators at the local level are submitted to a national joint adjustment board. Parties may appear at a hearing before that board, and may file briefs. The decision of the board is final and binding upon the parties.4

SMACNA-Cleveland
and
Sheet Metal Workers
Expires April 30, 2013

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this Agreement as set forth in the preceding sections of this Article [Grievance Procedure], any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this Agreement shall be settled as hereinafter provided:

(a): Should the negotiations for a renewal of this Agreement or negotiations regarding a wage/fringe reopener become deadlocked in the opinion of the Union representative(s) or of the Employer(s) representative(s), or both, notice to that effect shall be given to the National Joint Adjustment Board.

If the Co-Chairmen of the National Joint Adjustment Board believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a Panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such Panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the Co-Chairmen of the National Joint Adjustment Board shall be promptly so notified without recommendation from the Panel representatives. Should the Co-Chairmen of the National Joint Adjustment Board fail or decline to appoint a Panel member or should notice of failure of the Panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

In addition to the mediation procedure set forth above and as an alternative thereto, the Co-Chairmen of the National Joint Adjustment Board may each designate a member to serve as a Subcommittee and hear the dispute in the local area. Such Subcommittees shall function as arbitrators and are authorized to resolve all or part of the issues. They are not, however, authorized to deadlock and the matter shall be heard by the National Joint Adjustment Board in the event a Subcommittee is unable to direct an entire resolution of the dispute.

4 Collective Bargaining Negot.& Cont. (BNA) 8:2121 – 8:2121
The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b): Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits shall also be exchanged between the parties and filed with the National Joint Adjustment Board at least twenty-four (24) hours in advance of the hearing.

(c): The National Joint Adjustment Board shall have the right to establish time limits, which must be met with respect to each and every step or procedure contained in this Section. In addition, the Co-Chairmen of the National Joint Adjustment Board shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, facsimile or telephone notification.

(d): Unless a different date is agreed upon mutually between the parties or is directed by unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

SECTION 9. Employers not contributing to the Industry Fund of the United States (IFUS) will be assessed a fee to be determined periodically by the Administrator of the National Joint Adjustment Board. Proceeds will be used to reimburse IFUS for costs of arbitration under the provisions of Article X [Grievance Procedure].

SECTION 10. In addition to the settlement of disputes provided for in Sections 1 through 8 of this Article, either party may invoke the services of the National Joint Adjustment Board to resolve disputes over the initial establishment of terms for specialty addenda, if the provisions of Article X have been adopted in their entirety, and without modification.

Such a dispute may be submitted upon the request of either party any time that local negotiations for such an Agreement have been unsuccessful. Such a dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules established and modified from time to time by said Board. The unanimous decision of said Board shall be final and binding upon the parties. There shall be no strike or lockout over such a dispute.
Quick Guide to State Interest Arbitration Laws

Some states have multiple laws applying to public sector employees. In each state, only the main statute is discussed, however, citations have been provided to all applicable laws.5

ALABAMA
Impasse Procedure—No provision
References—Ala. Code §§ 11-43-143, 25-7-1 to 25-7-54, 36-1-4.2 to 36.1-4.4

ALASKA
Impasse Procedure—Mediation: ALRA can appoint a mediator on its own initiative or at the request of one of the parties to resolve an impasse. Arbitration: Arbitration is mandatory for employees prohibited from striking (police, fire, hospital and correctional institution employees) if mediation has failed. It also is mandatory for those employees who have a limited right to strike, if the strike has been enjoined by a court and mediation has failed. Parties also can voluntarily submit a dispute to arbitration.

ARIZONA
Impasse Procedure—Either party may request nonbinding mediation. A decision by the governor to accept, reject, or modify any mediated agreement or proposed compromise shall be binding.

ARKANSAS
Impasse Procedure—No provision
References—Ark. Const. amend. 34; Ark. Code Ann. §§ 11-3-301 to 11-3-304, 19-4-1602.

CALIFORNIA
Impasse Procedure—Mediation: If an agreement is not reached within a reasonable period of time, the parties can mutually agree to appoint a mediator or either party can request PERB to appoint a mediator. Mediation and arbitration services also are provided through the State Mediation and Conciliation Service.

COLORADO

Impasse Procedure—Either the governor's designee or the employees' representative may request appointment of a mediator in the event of an impasse in negotiating a “partnership agreement.” The mediator may make nonbinding written recommendations to the parties for resolution of the impasse. Mandatory interest arbitration for employees of government “authorities” if collective bargaining reaches an impasse and the Director of the Colorado Department of Labor denied the employee group the right to strike.


CONNECTICUT

Impasse Procedure—Mediation: After contract negotiations have begun and both parties request it, the State Board of Mediation and Arbitration can appoint a mediator to assist the parties' negotiations. The mediator must be approved by both parties. Arbitration: Arbitration can be initiated by one or both parties 90 days after the start of negotiations, in the case of a contract renewal, or after a reasonable period of negotiation, in the case of a first-time contract. The arbitration is final and binding on the parties, unless rejected by the legislature.


DELAWARE

Impasse Procedure—Mediation: After a reasonable period of negotiations, the parties can voluntarily submit to mediation if no agreement has been reached. However, if no agreement is reached 60 days prior to the expiration of the current agreement or 60 days after negotiations began for a first-time contract, the board must be notified immediately. If the parties do not voluntary submit to mediation and less than 30 days remain on the contract or more than 90 days of negotiations have been conducted in the case of a first-time contract, a mediator will be appointed at the request of either party. Binding Interest Arbitration: If mediation fails to settle the impasse, the parties jointly or individually can petition the board to initiate binding interest arbitration.


DISTRICT OF COLUMBIA

Impasse Procedure—Mediation, fact-finding, advisory arbitration, injunctions, binding arbitration, and final, best-offer binding arbitration can all be used to resolve impasses. PERB chooses the impasse resolution method after consultation with the parties. However, specific impasse resolution procedures are invoked when the issue at impasse is compensation. An automatic impasse can be declared and mediation invoked by any party if no agreement has been reached after 180 days of bargaining or if bargaining did not begin 90 days before the expiration of the current contract. If mediation fails to resolve the impasse within 30 days, a board of arbitration is established to conduct a final, best-offer binding arbitration.

References—D.C. Code Ann. §§ 1-601.1 to 1-603.1, 1-605.1 to 1-605.4, 1-617.1 to 1-617.3, 1-618.1 to 1-618.17.
FLORIDA
Impasse Procedure—Mediation: After a reasonable period of negotiations, either or both parties can voluntarily submit to mediation if no agreement has been reached. Mediation and fact-finding are not permitted in disputes involving career service employees, but the parties may proceed directly to a legislative resolution. Fact-Finding: If a mediator has not been appointed or if either party requests, PERC will appoint a special master who will hold hearings and issue a recommended decision on all issues within 15 days of the last hearing. The decision is deemed to be accepted by both parties, unless they specifically reject all or any part of it. Legislative Resolution: If either party rejects the special master's report or if the parties agree to waive the appointment of the special master, the impasse is submitted to the legislature for resolution. If the agreement imposed by the legislature is not ratified by union members, the legislatively imposed provisions are effective only for the remainder of the fiscal year. The legislature cannot impose preambles, recognition clauses, or duration clauses.

GEORGIA
Impasse Procedure—No provision.

HAWAII
Impasse Procedure—Voluntary Mediation: The Hawaii Labor Relations Board can appoint mediators to assist in dispute resolution if so requested by either party within 20 days of an impasse. Fact-Finding: The board can appoint a fact-finding panel if an impasse continues for 20 days. The fact-finding panel can make recommendations for resolving disputes and must submit its findings and any recommendations within 60 days after its appointment. If the impasse continues for 10 days after the fact-finding panel submits its report, the board shall appoint a mediator to assist the parties in voluntary resolution of the impasse. Arbitration: If the impasse continues for 60 days after the fact-finding panel submits its report, the parties can mutually agree to submit the dispute to arbitration. Separate impasse resolution procedures cover some bargaining units. At any time, the parties may agree on an alternative impasse procedure.

IDAHO
Impasse Procedure—No provision.

ILLINOIS
Impasse Procedure—Mediation and Arbitration: Mediation of grievances or contract disputes can be requested from the state or local labor relations boards. Special mediation and arbitration procedures for security employees, peace officers, and firefighters are outlined at 5 Ill. Comp. Stat. Ann. 315/14. Fact-Finding: If mediation fails to settle an impasse, the parties jointly can petition the board to initiate fact-finding. Within 45 days of being appointed, the fact-finder must issue a written report of findings and recommendations to the union, employer, and community newspapers. The findings are not binding.

INDIANA
Impasse Procedure—School Employees: Bargaining impasses may be resolved by fact-finding, mediation, or binding arbitration.
References—State Employees: Exec. Order dated 01/11/05; Teachers: Ind. Code Ann. §§ 20-7.5-1-1 to 20-7.5-1-14.

IOWA
Impasse Procedure—The parties can negotiate on impasse procedures. Mediation: In the absence of an impasse agreement, a mediator can be appointed at the request of either party. Mediation must begin at least 120 days before the budget submission date. Fact-Finding: If mediation is unsuccessful, a fact-finder can be appointed within 10 days of the mediator's appointment. A written report and recommendations are due within 15 days of the fact-finder's appointment. The report is made public if the impasse is not resolved within 10 days after it is submitted. Arbitration: If the impasse remains unresolved, the parties can continue to negotiate or either party can request binding arbitration. Separate arbitration procedures cover firefighters.

KANSAS
Impasse Procedure—Mediation: If a memorandum of agreement does not contain an impasse procedure or if the procedure fails to resolve an impasse, PERB can become involved—on its own initiative or at the request of either party—and request the appointment of a mediator. Fact-Finding: PERB can request the appointment of a fact-finding board for impasses that continue for seven days after a mediator's appointment. The board must present its findings and recommendations to the parties within 21 days of appointment. If the impasse continues seven days after the report is submitted to the parties, the board can make the report public. The report must be made public if the dispute is not resolved within 14 days of being submitted to the parties. If an impasse involves a local government employer and is not resolved within 40 days of the board's appointment or at least 14 days before a budget submission date, the board submits its findings to the employer's governing body for resolution.

KENTUCKY
Impasse Procedure—Firefighters and local police or their employers may request the Labor Cabinet to conduct fact-finding and mediation.
LOUISIANA
Impasse Procedure—No provision.

MAINE
Impasse Procedure—Mediation: Either party to a dispute, the executive director of the MLRB, or the MRLB can request mediation. Fact-Finding: If mediation fails to settle the impasse, the parties can jointly request the MLRB to initiate fact-finding. The panel's findings are submitted only to the parties and the MLRB executive director. If the parties have not resolved the impasse within 30 days after the panel has submitted its findings, the findings can be made public. Arbitration: If the parties have not resolved the impasse within 45 days after the fact-finding panel has submitted its findings, the parties can jointly agree to binding arbitration or separately request the services of an arbitration panel.

MARYLAND
Impasse Procedure—No provision.

MASSACHUSETTS
Impasse Procedure—Mediation: After a reasonable period of negotiations, either party can petition the Board of Conciliation and Arbitration to determine whether an impasse exists. If the board finds that an impasse exists, the board must appoint a mediator to assist in resolving the impasse, or the parties can select a mediator of their own choosing. Fact-Finding: If mediation fails to resolve the impasse, either party can petition the board to begin fact-finding procedures, or the parties can agree to select a fact-finder of their own choosing. Fact-finders are authorized to mediate and make recommendations for resolving the impasse. They must submit their findings and recommendations to the board and both parties within 30 days after the record is closed. If the impasse still is unresolved, the board makes the report public within 10 days after its receipt. If the impasse continues after the fact-finder's report is made public, the disputed issues are returned to the parties for further negotiation. Arbitration: The parties can waive fact-finding and instead petition the board to appoint an arbitrator. The arbitration award is binding on the parties and the appropriate legislative body.
MICHIGAN
Impasse Procedure—The parties must notify the Employee Relations Commission, at least 60 days before the expiration date of their collective bargaining agreement, of the status of their negotiations. The commission can appoint a mediator if a dispute remains unresolved 30 days after initial notification. Act 312 provides for binding interest arbitration for police and fire employees. The parties select an arbitrator and each side selects a delegate. This panel hears the arguments of each side and then writes a binding award that is the new collective bargaining agreement for the parties. Michigan also has fact-finding for non-police and fire employees but the decision is a recommendation and is not binding.

MINNESOTA
Impasse Procedure—Mediation: Either party can petition the commissioner of the Bureau of Mediation Services for mediation assistance. The commissioner also can mediate a dispute on his or her own initiative. Arbitration: In disputes involving essential employees, either party can petition for binding arbitration by filing a written request with the other party and the commissioner. The request must specify the items that the party wishes to submit to binding arbitration. If the parties are unable to agree on which items are to be submitted to binding arbitration, the commissioner is authorized to make that determination. In disputes involving nonessential employees, either party can petition for arbitration. The request must specify the items to be submitted to arbitration and whether final-offer, total-package or final-offer, item-by-item arbitration is requested.

MISSISSIPPI
Impasse Procedure—No provision.
References—Miss. Const. art. 7, § 198-A; Miss. Code Ann. § 71-1-47.

MISSOURI
Impasse Procedure—No provision.

MONTANA
Impasse Procedure—Mediation: If an agreement is not reached within a reasonable period of time, the parties must request mediation assistance from the Board of Personnel Appeals. Fact-Finding: Either party can request the board to appoint a fact-finder following the expiration of an existing agreement or 30 days after an exclusive representative has been certified. The board also can appoint a fact-finder on its own initiative. Arbitration: The parties can voluntarily agree to submit any or all issues to final and binding arbitration. Special arbitration procedures apply to firefighters.
NEBRASKA
Impasse Procedure—At the start of negotiations, the parties must select a fact-finder, also known as a special master, to mediate disputes. Any unresolved issues are submitted to the special master for settlement. Although the special master’s rulings are binding, they can be appealed to the Commission of Industrial Relations.

NEVADA
Impasse Procedure—Mediation: A request for mediation can be made jointly at any time before July 1, or separately after July 1 but before July 5. Fact-Finding: If mediation has failed to resolve the dispute by Aug. 1, either party can request fact-finding. If the parties are unable to agree on whether the fact-finder's recommendations should be binding, either party can request that a panel be formed to make that decision.

NEW HAMPSHIRE
Impasse Procedure—Mediation: Either party can request mediation assistance at impasse or within 90 days before the budget submission date from the PELRB. Fact-Finding: If mediation is not successful in resolving an impasse within 50 days before the budget submission date, a fact-finder can be appointed at the request of either party or on PELRB's initiative. If the fact-finder’s recommendations are rejected by either party, the report is submitted to the appropriate legislative body, which votes to accept or reject any part of the report. Negotiations on any unresolved issues can be reopened.

NEW JERSEY
Impasse Procedure—Mediation: Either party can request mediation from PERC. Fact-Finding: If mediation efforts are unsuccessful, PERC is authorized to recommend or invoke fact-finding. Arbitration: The parties can voluntarily submit a dispute to arbitration. Mandatory binding interest arbitration for firefighters and police officers when requested by one of the parties and approved by PERC.

NEW MEXICO
Impasse Procedure—Mediation: If impasse occurs, either party may request mediation from the Public Employee Labor Relations Board. Arbitration: If the mediator believes mediation services are no longer helpful, either party may request formation of an arbitration panel.
References—N.M. Stat. Ann. §§ 10-7E-1 to 10-7E-26, 50-2-2; Family Child Care Providers: § 50-4-33.

NEW YORK
Impasse Procedure—An impasse is said to exist if the parties are unable to reach an agreement by 120 days before the end of the employer's fiscal year. Impasse procedures are negotiable.
Mediation: In the absence of a written impasse procedure, the board can provide mediation assistance on its own initiative or at the request of either party. Fact-Finding: If mediation fails to resolve the impasse, the board must appoint a fact-finder. If the dispute is not resolved at least 80 days before the end of the fiscal year, the fact-finder must submit its report to the parties. Reports are made public within five days after submission. The board can take whatever steps it considers appropriate to resolve any remaining issues.


NORTH CAROLINA
Impasse Procedure—No provision.
References—N.C. Gen. Stat. §§ 95-78 to 95-84, 95-97 to 95-100, 143-3.3(g).

NORTH DAKOTA
Impasse Procedure—The parties are not required to accept the recommendations of any mediation board as binding.

OHIO
Impasse Procedure—If an impasse exists 50 days before a contract's expiration date, either party can request intervention from the State Employment Relations Board. The board must appoint a mediator if the impasse is unresolved 45 days before the expiration date. If the impasse remains unresolved 31 days before the expiration date, the board must appoint a fact-finder. Alternatively, the parties can select a dispute resolution procedure that is mutually acceptable.
References—Ohio Rev. Code Ann. §§ 4117.01-4117.23.

OKLAHOMA
Impasse Procedure—Municipal Employees: Impasses not resolved through mediation must be jointly submitted for binding arbitration. School Employees: If no agreement is reached by the first day of school, an impasse has been reached. Either party may declare an impasse before that time. Items causing the impasse are submitted to a three-person fact-finding committee for resolution. Firefighters and Police Officers: Issues unresolved within 30 days of bargaining may be submitted for arbitration at the request of either party.

OREGON
Impasse Procedure—Mediation: The parties can jointly petition the ERB at any time for mediation assistance. However, if only one party seeks assistance, at least 150 days must have elapsed since the start of negotiations. Either party can declare an impasse after 15 days of mediation, or the mediator can declare an impasse at any time. Within seven days after an impasse is declared, each party must submit its final offer to the mediator who makes the offers public. If no agreement is reached in 30 days, the employer can implement all or part of its final offer, and the employees can strike (see “Strikes,” below). Fact-Finding: The parties can jointly
request that a fact-finder be appointed within 30 days after the final offers have been made public. If no agreement has been reached 30 days after the fact-finder's report is made public, the employer can implement all or part of its final offer, and the employees can strike. Arbitration: The parties can agree at any time during the impasse to submit unresolved issues to final and binding arbitration. Where the right of public employees to strike is prohibited, binding arbitration to resolve labor dispute is required.


PENNSYLVANIA
Impasse Procedure—Mediation: If no agreement is reached between the parties within 21 days after negotiations have begun or 150 days before the budget submission date and the parties have not used mediation, the Pennsylvania Bureau of Mediation must be notified. Fact-Finding: If agreement is not reached within 20 days after mediation has begun or no later than 130 days before the budget submission date, the bureau must notify the PLRB, which can decide to appoint a fact-finder. If no agreement is reached within 10 days of receiving the fact-finder's report, it is made public. Arbitration: Submitting disputes to binding arbitration is voluntary. Arbitration is mandatory for prison and mental hospital guards and court personnel. Act 111 (43 P.S. 217.1) prevents police and firefighters from striking, however, it does provide for compulsory binding interest arbitration in the case of impasse. One of the parties must notify the other in writing of the issues in dispute and request the appointment of a board of arbitration. An arbitration board is composed of three individuals, one appointed by the union, one appointed by the municipality and the third agreed upon by both parties. A request for arbitration must be made at least 110 days before the start of the fiscal year.


RHODE ISLAND
Impasse Procedure—Mediation: If the parties are unable to reach agreement within 30 days from the date of their meeting, either party can request mediation assistance from the director of the Department of Labor and Training or from any other source. If mediation fails to resolve the dispute or if mediation is not requested, either party can request that any unresolved issues be submitted to arbitration. Provisions for compulsory mediation also are provided. Fact-Finding: Unresolved issues are submitted to the SLRB for conciliation and fact-finding. The fact-finder must issue a report if all impasses are not resolved within 10 days. Arbitration: The parties have five days to consider the fact-finder's recommendations. Any unresolved issues are submitted to binding arbitration.

SOUTH CAROLINA
Impasse Procedure—No provision.
References—S.C. Code Ann. §§ 8-11-83, 8-17-310 to 8-17-380, 41-7-10 to 41-7-90; County and Local Employees: 8-17-110 to 8-17-160.

SOUTH DAKOTA
Impasse Procedure—If the parties are unable to resolve a labor dispute, either party can request the intervention of the Department of Labor. Such a request must be mailed within 10 days after notifying the other party in writing that an impasse exists.
References—S.D. Codified Laws §§ 3-18-1 to 3-18-17, 60-8-3 to 60-8-8.

TENNESSEE
Impasse Procedure—No provision.

TEXAS
Impasse Procedure—No provision.

UTAH
Impasse Procedure—No provision.
References—Utah Code Ann. §§ 34-32-1, 34-34-1 to 34-34-17.

VERMONT
Impasse Procedure—Mediation: If the parties are unable to resolve a labor dispute, one or both parties can request mediation assistance from the Labor Relations Board. Fact-Finding: If the mediator is unable to resolve the dispute within 15 days of appointment, the board may appoint a fact finder. Other: If the dispute is unresolved 20 days after the fact finder has issued its report, or within a mutually agreed upon time frame not to exceed 30 additional days, each party must submit as a single package its last best offer on all unresolved issues to the board, which has 30 days to select one offer in its entirety. If the board is not satisfied with the offers, it may select the fact finder's recommendation.

VIRGINIA
Impasse Procedure—No provision.
WASHINGTON
Impasse Procedure—Impasse procedures include mediation, fact-finding, and arbitration.

WEST VIRGINIA
Impasse Procedure—No provision.

WISCONSIN
Impasse Procedure—Mediation: The Employment Relations Commission can appoint a mediator to act in a labor dispute, on its own initiative or at the request of either party. Fact-Finding: If mediation is unsuccessful in resolving the dispute, the parties jointly can petition the commission to initiate fact-finding and make recommendations. Within 30 days of receiving the fact-finder's report, each party must notify the other and the commission of its acceptance or rejection, in whole or in part, of the fact-finder's recommendations.

WYOMING
Impasse Procedure—No provision.