

Yankee Institute  
Policy Paper  
Series 2019

vol.4

**UNION  
OVERRIDE**

# Supersedence:

## The Consequences of Government Unions' Special Privileges

Suzanne Bates





# The connection between higher taxes and bad labor law

Connecticut residents are facing another billion dollar-plus tax hike this year – the fourth major tax increase since 2009.<sup>1</sup> Even with this year’s planned tax increase, state budget analysts project the state will slide back into the red as early as 2022.<sup>2</sup>

The key reason Connecticut is stuck in a cycle of tax increases, followed by deficits, followed by tax increases is because of its outsized pension liabilities, which consume a larger and larger portion of the budget every year. While Connecticut in 2017 was spending an already high 22 percent of its budget on pension liabilities, it should have spent 35 percent of that budget in order to cover the full cost, according to a J.P. Morgan report in 2018.<sup>3</sup>

But a state doesn’t run up high pension liabilities in a vacuum. The states with the highest liabilities – Illinois, New Jersey, Hawaii, and Connecticut – all have very strong public-sector unions, with laws giving unions an advantage over individual workers and over the voting public. These laws have allowed unions and their elected enablers to offer government workers pension and other retirement benefits that are far higher than are available to private-sector workers. The laws also have allowed delayed payments to public pension systems, often to make pensions seem less expensive and so more palatable to voters.

In Connecticut the laws governing collective bargaining, binding arbitration, and union organizing all favor public-sector unions over workers, taxpayers, and voters. But the ultimate special benefit given to public-sector unions

is the power of supersedence – giving union contracts dominance over state laws. The supersedence doctrine causes all public-sector collective bargaining agreements at the state or local level to override state law. As we said in “Above the Law,” an earlier publication:

Where, as in Connecticut, a collective bargaining agreement always takes precedence over a statute, it allows an interest group (in the form of a government union) to circumvent the lawmaking process and win monetary or other privileges unavailable to other citizens. In other words, a special interest is essentially rewriting laws to its liking — in a deliberate subversion of the legislative (and democratic) process.<sup>4</sup>

This special privilege is not well known among Connecticut residents or even state lawmakers. As far back as 1996, the Office of Legislative Research (OLR) was writing about how lawmakers were surprised when the laws they wrote did not lead to hoped-for outcomes:

State employee contract provisions may supersede contrary provisions of state laws or regulations that relate to state employee wages, hours, and conditions of employment. To take effect, such contract provisions (called “supersedences”) must be specifically approved by the General Assembly when it approves the contract. This facet of the state collective bargaining law is not well-understood by legislators and others who are frequently surprised when changes in laws governing state employee hours, benefits, parking, or holidays have no effect. Most of these laws are superseded by contract provisions.<sup>5</sup>

Among the laws that have been superseded by contracts are laws governing payments into the pension system, employee overtime, complaints against the police, Freedom of Information (FOI), and the grievance process.

Lawmakers, journalists, and voters should all have a greater understanding of the consequences supersedence has on public life in Connecticut.

## What is supersedence?

An OLR report from 1994 defines supersedence as “provisions of a state employee collective bargaining agreement that prevail over a conflicting state statute or regulation [which] must be approved by the General Assembly.”<sup>6</sup>

State law allows for supersedence for union contracts covering both state and local public-sector workers.<sup>7</sup> The applicable law states:

Where there is a conflict between any agreement or arbitration award...and any general statute or special act, or regulations adopted by any state agency, the terms of such agreement or arbitration award shall prevail.<sup>8</sup>

Contracts that supersede state or local law are supposed to have a supersedence appendix attached, detailing the laws or regulations that have been superseded by the agreement. The relevant state law says:

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...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.<sup>9</sup>

The legislature or local governing body must then approve the contract and supersedence appendix. For years, the legislature did not approve most collective bargaining agreements. According to an OLR report, between 2002 and 2017, only 55 of 189 agreements were approved by both chambers in the General Assembly.<sup>10</sup> Whether the avoidance of voting on these agreements was permissible under state law or the state constitution was under discussion before legislators agreed in 2017 to require themselves to vote on every contract.

It is unclear if local lawmakers are voting on supersedence appendices. A quick spot-check of contracts in five municipalities turned up zero supersedence appendices attached to the contracts, but the appendices may have been produced, voted on, but not made public.<sup>11</sup> This issue requires further exploration.

## Other states

Connecticut is the only state in New England to allow such broad supersedence powers. An OLR paper published in 2017 compared Connecticut’s laws to the other states in New England. According to the report, only Connecticut and Massachusetts allowed supersedence, and in Massachusetts the provisions that can be superseded are specified in statute.<sup>12</sup> New York does not address the matter in state law.<sup>13</sup> We have been unable to find a state that affords public-sector collective-bargaining agreements such broad power to override state law.

## Consequences of supersedence

The power of supersedence doesn’t just affect the budget, it also contributes to the difficulty in managing the state’s public-sector workforce. In the United States we give the civil service an extraordinary amount of power

over our lives. In exchange we ask them to be accountable to elected lawmakers and the laws and regulations approved on our behalf.

This is why giving public-sector union contracts the power to supersede, or override, state law and local ordinances is so hazardous. The laws enacted on our behalf are intentionally passed in a deliberative manner. This can be slow and frustrating. There are many competing interests at play – including the interests of the individuals who work for the government. Their voices are just as important as every other citizen's, and their needs and opinions should be taken into account by lawmakers. But what supersedence does – along with Connecticut's other government union-friendly laws – is elevate the needs and voices of public sector workers above the voices of other Connecticut residents.

The evidence of this unequal treatment is all around us. Recent examples of public sector workers' misbehavior include:

- Professors at a public university sexually harassed students for years before their behavior was revealed.<sup>14</sup>
- Nurses who were fired for abusing mentally ill patients at a public hospital were re-hired, only to be arrested for again abusing patients.<sup>15</sup>
- A police officer who on camera used profanity, threatened violence, and told an immigrant to leave the country was fired and then re-hired after the union took the city to court.<sup>16</sup>

There is a connection between these incidents and supersedence. All of these workers were covered by contracts that superseded relevant portions of state law – laws that were put in place to protect residents, but that were overridden by collectively bargained agreements.

## Supersedence in the SEBAC contract

The laws superseded by the latest contract between the state and the State Employees Bargaining Agent Coalition (SEBAC) – a coalition of all of the unions that represent state employees that bargains over pensions, health care, and general work rules – include:<sup>17</sup>

- Conn. Gen. Stat. § 5-259 and 259(a), which determine the health insurance plan for employees, and that the plan will be competitively selected;
- Conn. Gen. Stat. § 5-154 (f), 5-161, 5-156(c), 5-192(u), 5-162(h), 5-192(s), which determine state employee pensions including employee contributions, erroneous pension payments, and cost of living adjustments;
- Conn. Gen. Stat. § 5-169, 5-192(p), which determine disability retirement;
- Conn. Gen. Stat. § 5-278(e), which determines what can be superseded;
- Conn. Gen. Stat. § 5-247, 5-248(a)(b), which determine sick leave and payments for sick leave, and family and medical leave;
- Conn. Gen. Stat. § 5-175(b), 5-187(b)(c), which determine time limits for purchase of service credits, and optional purchase of hazardous duty service credits by judicial marshals;
- Conn. Gen. Stat. § 5-196(24), 5-200(k)(m), which redefine state service, and limits who the Office of Policy and Management can set salary schedules for, and the requirement for OPM to maintain salary schedules;
- Conn. Gen. Stat. § 5-213, which terminates longevity payments for certain employees;
- Conn. Gen. Stat. § 5-230, which determines working test periods;

- Conn. Gen. Stat. § 5-239, which gives the state the power to transfer employees when necessary;
- Conn. Gen. Stat. § 5-241, which determines the order of layoffs;
- and Conn. Gen. Stat. § 5-248i, which lays out telecommuting and work-at-home programs.

These are the laws that were superseded by the amendments to the SEBAC agreement. The original SEBAC deal, which was negotiated in 1989, and all subsequent amendments should have been approved along with relevant supersedence appendices. Those appendices are not readily accessible.

It might behoove the legislature (or individual legislators) to ask for a master list of all laws superseded by SEBAC in its entirety, and for a list of laws superseded by individual bargaining-unit agreements as well. We should at least know what laws are being superseded, when they were agreed to, under what authority, whether the supersedence was properly approved, and what effects they are having on the people of Connecticut.

## Supersedence and the state checkbook

There are a number of provisions in earlier SEBAC agreements or individual bargaining-unit agreements that govern how the state must pay and reimburse state employees. For example, laws governing the following have been superseded:

- How overtime can be used by workers;
- How overtime is used in pension calculations;
- How meals and mileage are reimbursed; and
- How much sick leave time is reimbursed when an employee leaves state service.

Another example of runaway spending arising from supersedence is the ability of state workers to take unlimited paid administrative leave during investigations. In one case, a worker was on paid administrative leave for 69 weeks, costing the state \$81,500 in salary, even though state law says an employee can only be on paid administrative leave for 15 days.<sup>18</sup>

The most egregious example – and the saddest – is that state law requires lawmakers to make full payments into the pension system every year, but that provision was overridden by the SEBAC agreement.<sup>19</sup>

## Supersedence and government transparency

One of the most infamous cases of the damaging effects of supersedence is the example of Joshua Perlstein, a theater professor at Central Connecticut State University (CCSU), who for years was accused of sexual harassment by multiple students. These accusations were kept secret, despite the state's FOI laws covering personnel records, because CCSU's contract with its professors' union had a provision that superseded state FOI laws.

This raised the ire of the Connecticut Council on Freedom of Information, which has called for an end to supersedence because of the law's effects on transparency.<sup>20</sup> Because of the provision in the union contract, reporters from the CCSU student newspaper, *The Recorder*, could not get access to Perlstein's personnel file to see what actions the university took to protect students.<sup>21</sup>

Professors aren't the only ones receiving an exemption from the state's FOI law. The most recent contract between the state and the state's corrections union closes grievance hearings to the public.<sup>22</sup>

# Residents unhappy; workers unhappy

Greater union power through supersedence has not led to greater worker happiness. This is not unexpected to those who believe increased union power comes at the expense of individual worker freedom. One of the unintended consequences of strong labor laws such as supersedence appears to be worker unhappiness and distrust of state government.

Connecticut residents are among the least likely to trust their state government. According to a 2016 Gallup poll, 60 percent of Connecticut residents were not confident in their government. Only 39 percent expressed confidence.<sup>23</sup>

But it isn't just Connecticut residents who are unhappy with the status quo. Connecticut's public employees also appear to be unhappy. Another Gallup poll showed only 28 percent of public employees in Connecticut – including all state and local workers – were actively engaged at work, while 21 percent were actively disengaged. Another 52 percent were labeled “not engaged.”<sup>24</sup>

Connecticut was in the top five in the nation for the most actively disengaged public workers and had among the worst ratios of actively engaged to actively disengaged. Actively disengaged employees are, according to Gallup, “[not] just unhappy at work; they're busy acting out their unhappiness. Every day these workers undermine what their engaged coworkers accomplish.”<sup>25</sup>

The cost of this disengagement isn't just employee dissatisfaction. “Engaged employees drive innovation and move their workplaces forward. Actively disengaged workers do the opposite, costing their states millions of dollars and interfering with government goals.”<sup>26</sup>

Supersedence makes it harder for the state to shed “bad apples” – or actively disengaged employees – because union contracts nullify laws that bring greater transparency to the grievance process or that govern how employees move through the arbitration process.

Supersedence also makes it more difficult for the state to respond when cases such as the abuse of state psychiatric patients at Whiting Forensic Hospital occur.<sup>27</sup> Even if lawmakers rewrite state law to require greater transparency and accountability from the state workforce, contracts put in place before those laws were written would immediately nullify them.

Anecdotally, when incompetent state government has emerged, many state employees have complained in comment sections on news websites and on social media about bad managers. But in Connecticut, most managers are also unionized. They have the same high level of job protection as rank-and-file workers. As of March 2018, of the approximately 50,000 state employees, 94 percent were unionized.<sup>28</sup> This level of unionization and the power given to public-sector unions by lawmakers has made managing Connecticut's civil service incredibly difficult.

## Looking ahead

While it would be difficult to end supersedence with immediate effect, because of how entangled collectively bargained contracts are with state law, it would be both easy and prudent to pass legislation that revokes this override power from any contracts, contract amendments, or contract extensions agreed to in the future by any method. Supersedence is undemocratic and leads to poor outcomes for state residents and state employees. Eliminating it will improve transparency, representative governance, and the state's finances.

At the very least, lawmakers and those in the news and information industry should persistently shine a light on the contracts that erode protections for state residents and that push government into the dark.

*Yankee Institute would be eager to work with citizens, journalists, legislators, and all other interested parties to bring a managed and prudent end to the democracy-destroying doctrine of supersedence. We remain constantly committed to working with everyone who shares our dedication to ensuring that Connecticut can prosper and all its people thrive. We report regularly on our work and on the state of the state throughout the year on our web site: [YankeeInstitute.org](http://YankeeInstitute.org). Meanwhile, watch for additions to Yankee Institute's 2019 Policy Paper Series in coming weeks and months.*





# Endnotes

- <sup>1</sup> Fitch, Marc. “Connecticut’s Major Tax Increases Show A Lot of Pain For Not Much Gain,” Yankee Institute, March 1, 2018. <https://yankeeinstitute.org/2018/03/01/connecticuts-major-tax-increases-show-a-lot-of-pain-for-not-much-gain/>
- <sup>2</sup> Governor Ned Lamont, “A Path Forward: Three Year Budget Report,” February 20, 2019, p.1. [https://portal.ct.gov/-/media/OPM/Budget/2020\\_2021\\_Biennial\\_Budget/Outyear\\_Final.pdf?la=en](https://portal.ct.gov/-/media/OPM/Budget/2020_2021_Biennial_Budget/Outyear_Final.pdf?la=en)
- <sup>3</sup> Cembalest, Michael. “The Arc and the Covenants 4.0: The State of the States 2018,” J.P. Morgan Private Bank, October 9, 2018.
- <sup>4</sup> Brannick, Priya Abraham and F. Vincent Vernuccio. “Above the Law,” Yankee Institute, February 2018. p. 15
- <sup>5</sup> Office of Legislative Research, “State Employees: Questions and Answers.” 96-R-0006, February 1, 1996.
- <sup>6</sup> Office of Legislative Research, “Glossary of Labor Terms and Acronyms,” A-94-R-1079.
- <sup>7</sup> Collective Bargaining for State Employees, Conn. Gen. Stat. § 5-278(e), [https://www.cga.ct.gov/current/pub/chap\\_068.htm#sec\\_5-278](https://www.cga.ct.gov/current/pub/chap_068.htm#sec_5-278); Teacher Negotiation Act, Conn. Gen. Stat. § 10-153d(b), <http://www.ctdol.state.ct.us/csblr/stat10-153a.pdf>; Municipal Employees Relations Act, Conn. Gen. Stat. §7-474(f), <http://www.ctdol.state.ct.us/csblr/stat7-467.pdf>.
- <sup>8</sup> Collective Bargaining for State Employees, Conn. Gen. Stat. § 5-278(e), [https://www.cga.ct.gov/current/pub/chap\\_068.htm#sec\\_5-278](https://www.cga.ct.gov/current/pub/chap_068.htm#sec_5-278)
- <sup>9</sup> Collective Bargaining for State Employees, Conn. Gen. Stat. § 5-278(b)(1), [https://www.cga.ct.gov/current/pub/chap\\_068.htm#sec\\_5-278](https://www.cga.ct.gov/current/pub/chap_068.htm#sec_5-278). Italics added.
- <sup>10</sup> Office of Legislative Research, “Collective Bargaining Agreements Presented to the General Assembly 2002-2017,” 2017-R-0111, May 23, 2017.
- <sup>11</sup> Contracts from Hartford, Stamford, Waterbury, Avon, and New Haven were reviewed.
- <sup>12</sup> Office of Legislative Research, “State Employee Union Contract Supersedence Laws,” 2017-R-0356, December 21, 2017.
- <sup>13</sup> Above the Law, p. 27.
- <sup>14</sup> Powell, Chris. “State employee contracts can nullify state law,” Journal Inquirer, April 18, 2018. [https://www.journalinquirer.com/public/state-employee-contracts-can-nullify-state-law/article\\_701b82c0-42a0-11e8-b786-03688113e22d.html](https://www.journalinquirer.com/public/state-employee-contracts-can-nullify-state-law/article_701b82c0-42a0-11e8-b786-03688113e22d.html)
- <sup>15</sup> Fitch, Marc. “The Fitch Files: Whiting Hospital Was Forced to Rehire Employees Terminated For Abuse,” Yankee Institute, March 28, 2018. <https://yankeeinstitute.org/2018/03/28/the-fitch-files-whiting-hospital-was-forced-to-re-hire-employees-terminated-for-abuse/>
- <sup>16</sup> Associated Press. “City ordered to rehire cop fired for berating immigrant,” April 11, 2018. <https://www.wtnh.com/news/connecticut/fairfield/city-ordered-to-rehire-cop-fired-for-berating-immigrant/1113614894>
- <sup>17</sup> SEBAC 2017 Agreement between State of Connecticut and State Employees Bargaining Agent Coalition. Received from Office of Policy and Management through Freedom of Information request.
- <sup>18</sup> Fitch, Marc. “Connecticut state worker under investigation earns \$81,500 while on paid leave,” Yankee Institute, July 12, 2017. <https://yankeeinstitute.org/2017/07/12/connecticut-state-worker-under-investigation-earns-81500-while-on-paid-leave/>
- <sup>19</sup> Fitch, Marc. “Connecticut Law Requires Full Funding of Pensions, SEBAC Overrode It,” Yankee Institute, September 26, 2018. <https://yankeeinstitute.org/2018/09/26/connecticut-law-requires-full-funding-of-pensions-sebac-overrode-it/>
- <sup>20</sup> Savino, Mike. “CCSU Report Illustrates Why Connecticut’s FOI Law Is Only As Good As Its Exemptions,” CT-NewsJunkie, January 24, 2019. [https://www.ctnewsjunkie.com/archives/entry/20190124\\_op-ed\\_report\\_illustrates\\_why\\_ct\\_foi\\_law\\_is\\_only\\_as\\_good\\_as\\_exempt/#.XEogxw\\_GMM4.twitter](https://www.ctnewsjunkie.com/archives/entry/20190124_op-ed_report_illustrates_why_ct_foi_law_is_only_as_good_as_exempt/#.XEogxw_GMM4.twitter)
- <sup>21</sup> Powell, Chris. “State employee contracts can nullify state law,” Journal Inquirer, April 18, 2018. [https://www.journalinquirer.com/public/state-employee-contracts-can-nullify-state-law/article\\_701b82c0-42a0-11e8-b786-03688113e22d.html](https://www.journalinquirer.com/public/state-employee-contracts-can-nullify-state-law/article_701b82c0-42a0-11e8-b786-03688113e22d.html)

[03688113e22d.html](#)

<sup>22</sup> Corrections (NP-4) Bargaining Unit Contract Between the State of Connecticut and Council 4 of the American Federation of the State, County and Municipal Employees, Effective July 1, 2016 to June 30, 2021. p. 19. [https://www.local1565.org/system/files/np4\\_cba\\_2016-2021\\_complete\\_final.pdf](https://www.local1565.org/system/files/np4_cba_2016-2021_complete_final.pdf)

<sup>23</sup> Jones, Jeffrey. "Illinois Residents Least Confident in Their State Government," Gallup, February 17, 2016. <https://news.gallup.com/poll/189281/illinois-residents-least-confident-state-government.aspx>

<sup>24</sup> Gallup. "State of Local and State Government Workers' Engagement in the U.S.," 2016. <https://news.gallup.com/reports/193067/state-local-state-government-workers-engagement-2016.aspx>

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Fitch, Marc. "The Fitch Files: Whiting Hospital Was Forced to Rehire Employees Terminated For Abuse," Yankee Institute, March 28, 2018. <https://yankeeinstitute.org/2018/03/28/the-fitch-files-whiting-hospital-was-forced-to-re-hire-employees-terminated-for-abuse/>

<sup>28</sup> Fitch, Marc. "Ninety-four percent of Connecticut state workforce is union-controlled," Yankee Institute, March 16, 2018. <https://yankeeinstitute.org/2018/03/16/ninety-four-percent-of-connecticut-state-workforce-is-union-controlled/>



