§ 716. Grievances and disputes in non-profitmaking hospitals and residential care centers. 1. As used in this section "grievance" means any controversy or claim arising out of or relating to the interpretation, application or breach of the provisions of an existing collective bargaining contract. As used in this section "dispute" means all other controversies, claims or disputes between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center concerning wages, hours, union security, seniority or other economic matters, including, but not limited to, controversies, claims or disputes arising in the course of negotiating, fixing, maintaining, changing or arranging such terms or conditions.

2. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of grievances shall be deemed to include provision for the submission of such grievances, upon the request of either or both parties, to final and binding arbitration pursuant to such rules as may be established from time to time by the board.

3. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of disputes shall be deemed to include provisions for:

(a) the appointment of a fact-finding commission by the board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion efforts to effect a voluntary settlement of the dispute have been unsuccessful. Such fact-finding commission shall have all of the powers and duties, including the power to make recommendations for the settlement of the dispute, as are vested in a board of inquiry by article twenty-two of this chapter; and

(b) the submission of the dispute to final and binding arbitration, pursuant to such rules as may be established from time to time by the

board, by such board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion efforts to effect a voluntary settlement of the dispute have been unsuccessful. The commissioner or the board may submit a dispute to final and binding arbitration pursuant to this paragraph without first submitting it to a fact-finding commission pursuant to the preceding paragraph of this subdivision.

4. In the absence of a collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center, the board and the commissioner may, in the manner and upon the conditions provided in subdivision three of this section, exercise all of the powers vested in them by the provisions of such subdivision of such section.

5. Nothing in this section shall be deemed to affect, impair or alter any collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which was executed prior to July first, nineteen hundred sixty-three, during the term of such contract.

6. (a) A petition under section seven hundred seven of this article involving a non-profitmaking hospital or residential care center shall be filed directly with the appellate division of the supreme court in the department embracing the specified supreme court, and shall be heard upon the certified transcript of the record in the proceeding before the board, without requirement of printing. Such petition shall be heard in a summary manner and have precedence over all other cases in such court. An appeal may be taken to the court of appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules and a preference shall be granted in the hearing thereof on motion of any party thereto.

(b) An application to confirm, modify, correct or vacate an arbitration award made pursuant to the procedure established by this section shall be made in accordance with the provisions of article

seventy-five of the civil practice law and rules, and the provisions of paragraph (a) of this subdivision pertaining to a petition filed thereunder shall apply to an application filed hereunder.

(c) The supreme court shall have jurisdiction, upon such notice as it deems appropriate, to restrain or enjoin any violation of the provisions of this section or section seven hundred thirteen and to grant such other and further equitable relief as may be appropriate. The provisions of section eight hundred seven of this chapter shall not apply to an action or proceeding instituted pursuant to this section or section seven hundred thirteen.

7. The fact-finders and arbitrators appointed pursuant to subdivision three of this section may consider the following standards in arriving at a final arbitration decision in disputes referred to them:

(a) the interest and welfare of the public;

(b) changes in the cost of living as they affect employees' purchasing power;

(c) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings, and the wages, hours and conditions of employment of employees doing the same, similar or comparable work or work requiring the same, similar or comparable skills and expenditures of energy and effort, giving consideration to such factors as are peculiar to the industry involved;

(d) comparison of wages, hours and conditions of employment as reflected in non-profitmaking hospitals and residential care centers in other comparable areas;

(e) the security and tenure of employment with due regard for the effect of technological changes thereon as well as the effect of any unique skills, required training and other attributes developed in the industry and required for the job;

(f) economic factors of the respective parties which are relevant to the arbitration decision;

(g) such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining arbitration or otherwise between the parties or in the industry.

8. Where the validity of a certification of representatives issued by the board has been questioned by a refusal to bargain by a non-profitmaking hospital or a residential care center, the provisions of subdivision three of this section pertaining to fact-finding and arbitration shall not apply unless and until an unfair labor practice charge for refusal to bargain has been filed with the board. If such unfair labor practice charge has been filed, (1) no application made pursuant to section seventy-five hundred three of the civil practice law and rules, or otherwise, shall be granted to stay fact-finding or arbitration under this section; (2) the court shall consolidate the petitions and applications filed pursuant to paragraphs (a) and (b) of subdivision six of this section; and (3) no arbitration award made pursuant to this subdivision shall become effective until there has been a final determination that the labor organization has the right to exclusive representation of the employees in the unit with respect to which such award was made, pursuant to sections seven hundred five and seven hundred seven of this article, provided that nothing herein shall be interpreted to limit the discretion of the arbitrators to make such award retroactive.

9. Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that there may have been a violation of section seven hundred thirteen of this article, the chief executive officer of the non-profitmaking hospital or residential care center involved, or, in the case of a lockout, any affected employee or his certified representative, shall forthwith apply to the supreme court for an injunction against such violation. If such chief executive officer, or employee or his representative, fails or refuses to act as aforesaid, and if the chief executive officer of the city or village in which such hospital or center is located, or the chief executive officer of a town with respect to such hospital or center located in the area of the town outside any village therein, shall, in his discretion, determine that the violation constitutes a threat to the public health, safety and welfare of such city, village or town, as the case may be, such chief executive officer shall so advise in writing the chief legal officer of such city, village or town who shall forthwith apply to the supreme

court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief executive officer, employee or his representative, or chief legal officer, as the case may be, shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law. As used in this paragraph, the term "chief executive officer" shall mean (i) in the case of cities, the mayor, except in those cities having a city manager, it shall mean such city manager; (ii) in the case of villages, the mayor, except in those villages having a president or manager, it shall mean such latter officer; and (iii) in the case of towns, the supervisor or presiding supervisor.