



Collective Bargaining In Vermont

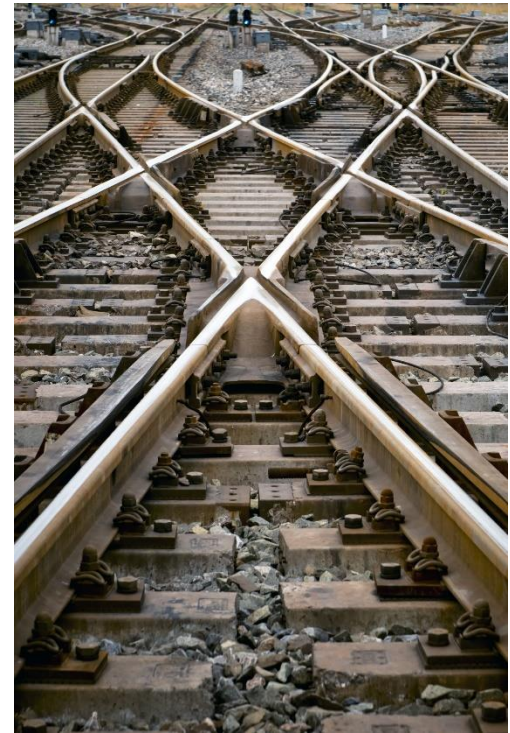
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Outline of Presentation

- Federal Collective Bargaining Laws
- Vermont's Collective Bargaining Laws
- The Vermont Labor Relations Board
- Who Can Collectively Bargain Under Vermont Law?
- Subjects for Bargaining
- The Bargaining Process
- Dispute Resolution



Federal Collective Bargaining Laws

Railway Labor Act of 1926

- Applies to railroads and airlines (1936)

National Labor Relations Act of 1935 (NLRA)

- Applies to most private sector employers and employees doing business in interstate commerce.
- Does not apply to agricultural laborers, domestic workers, or independent contractors.
- Does not apply to state and local public sector workers.

Vermont's Collective Bargaining Laws

Vermont State Labor Relations Act (1967)

- Modeled on the NLRA
- Covers private employers with 5 or more employees who are not engaged in interstate commerce, as defined by NLRA

State Employees' Labor Relations Act (SELRA) (1969)

- Covers most State employees, UVM, Vermont State Colleges, the Defender General's Office, State's Attorneys' offices, and State-paid deputy sheriffs.
- Creates the Vermont Labor Relations Board (VLRB).
- Provides State employees with whistleblower protections

Labor Relations for Teachers Act (LRTA) (1969)

- Covers teachers and administrators at publically funded schools in Vermont, including any independent school "that directly or indirectly receives support from public funds."

Vermont's Collective Bargaining Laws

Municipal Labor Relations Act (MLRA) (1973)

- Covers municipal employees of a municipal employer that employees 5 or more employees.
- Provides unfair labor practice protections for both MLRA and LRTA

Judiciary Employees Labor Relations Act (JELRA) (1998)

- Covers employees of the Vermont Judiciary.

Independent Direct Support Providers Labor Relations Act (2013)

- Covers providers of home and community-based services to individuals under Choices for Care, the Attendant Services Program, the Children's Personal Care Services Program, and the Developmental Disabilities Services Program.
- Bargain with State over a limited list of subjects

Early Care and Education Providers Labor Relations Act (2014)

- Covers licensed or registered child care home providers, and legally exempt child care home providers.
- Bargain with State over a limited list of subjects.

Vermont Labor Relations Board

Created under SELRA.

Has 6 part-time members who sit in 3-person panels for cases that go to a hearing.

Makes bargaining unit determinations.

Conducts representative elections.

Hears unfair labor practice and grievance cases.

Option for resolving bargaining impasse under SELRA and JELRA.

State Employees Labor Relations Act (SELRA)

Provides collective bargaining rights to:

- “any individual employed on a permanent or limited-status basis by the State of Vermont, the Vermont State Colleges, the University of Vermont, the State’s Attorneys’ offices, or as a full-time deputy sheriff paid by the State pursuant to 24 V.S.A. § 290(b), including permanent part-time employees, and an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice...” 3 V.S.A. § 902(5).

Does not provide collective bargaining rights to:

- Employees that are not part of the classified service, except for State Troopers, employees of the Defender General (not attorneys), deputy State’s Attorneys and other employees of State’s attorneys’ offices, and full-time deputy sheriffs paid by the State.
- Employees of the Dept. of Human Resources
- Managerial employees
- Legislative employees and employees of the Lt. Governor
- Certain employees of the Dept. of Finance and Management
- Confidential employees and private secretaries

Labor Relations for Teachers and Administrators Act (LRTA)

Provides collective bargaining rights to:

Teachers: “any person licensed employable as a teacher by the Vermont Standards Board for Professional Educators who is not an administrator.” 16 V.S.A. § 1981(5).

- Includes licensed staff that do not teach, such as school nurses.

Administrators: “any person so licensed by the Vermont Standards Board for professional educators, the majority of whose employed time in a school or a school district is devoted to serving as superintendent, assistant superintendent, assistant to the superintendent, supervisor, principal, or assistant principal.” 16 V.S.A. § 1981(1).

Municipal Labor Relations Act (MLRA)

Provides collective bargaining rights to: “any employee of a municipal employer, including a professional employee.” 21 V.S.A. § 1722(12).

Does not provide collective bargaining rights to:

- elected officials, board and commission members, and executive officers;
- supervisory employees
- probationary employees
- confidential employees
- certified employees of school districts, except in relation to unfair labor practices

Judiciary Employees Labor Relations Act (JELRA)

Provides collective bargaining rights to:

- “any individual employed and compensated on a permanent or limited status basis by the Judiciary Department, including permanent part-time employees and any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of an unfair labor practice.” 3 V.S.A. 1011(8).

Does not provide collective bargaining rights to:

- the Court Administrator;
- managerial, supervisory, or confidential employees
- law clerks, attorneys, administrative assistants or private secretaries for a judge, Justice, or the Court Administrator;
- temporary, contractual, seasonal, or on-call employees, including interns
- probationary employees
- a head of a department or division
- attorneys for the Supreme Court, Court Administrator, or board or commission created by the Supreme Court
- employees paid by the State appointed part-time as a county clerk
- other employees in positions determined to be “sufficiently inconsistent with the spirit and intent of this chapter to warrant exclusion.”

Subjects for Bargaining SELRA

“All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters that are prescribed or controlled by statute.” 3 V.S.A. § 904.

- wages, salaries, benefits, and reimbursement practices
- minimum hours per week
- working conditions
- overtime compensation
- leave compensation
- reduction-in-force procedures;
- grievance procedures, including whether final step will be an appeal to VLRB or binding arbitration, or both
- terms of coverage and amount of employee financial participation in insurance programs,
 - Does not include employees of State's Attorneys or deputy sheriffs paid by the State
- rules for personnel administration, except exemptions from the classified service, and rules relating to applicants and probationary employees

Subjects for Bargaining LRTA

Can bargain in relation to:

- Salary
- Related economic conditions of employment
- Procedures for processing complaints and grievances relating to employment
- Any mutually agreed upon matters not in conflict with the statutes and laws of the State of Vermont. 16 V.S.A. § 2004.

Cannot bargain in relation to health care benefits or coverage other than stand-alone vision and dental benefits.

- Health benefits are bargained on a Statewide basis by the Commission on Public School Employee Health Benefits

Subjects for Bargaining MLRA

Can bargain in relation to:

- Wages
- Hours
- Conditions of Employment

Municipal school employees cannot bargain in relation to health care benefits or coverage other than stand-alone vision and dental benefits.

Subjects for Bargaining

JELRA

“All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law” 3 V.S.A. § 1013.

- wages, salaries, benefits, and reimbursement practices
- minimum hours per week
- working conditions
- overtime compensation
- leave compensation
- reduction-in-force procedures
- grievance procedures
- terms of coverage and amount of employee financial participation in insurance programs
- rules for personnel administration
- enforcement of employees’ obligation to pay the collective bargaining service fee



The Bargaining Process

The Duty to Bargain

When a union is certified as the exclusive representative of a bargaining unit, the employer has a duty to bargain with it over the subjects for bargaining that are set forth in the relevant labor relations act.

The two sides must bargain in good faith.

- Participating actively in a manner that indicates a present intention to find a basis for agreement.
- Does not require concessions, provided that a firm position on a subject is taken for good reasons and not to frustrate bargaining.

What is bad faith bargaining?

- Evaluated based on the totality of a party's conduct.
- Includes:
 - Efforts to short-cut the process.
 - Attempts to undermine the authority of the bargaining representative.
 - Attempts to avoid settlement altogether.
 - Violation of "ground rules," including the unilateral disclosure of confidential proposals.

When Do We Start?

SELRA: “Negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time within one year next preceding the expiration date upon the request of either party and may be commenced at any time previous thereto with the consent of both parties.” 3 V.S.A. § 982(f).

LRTA: “The teacher or administrator organizations holding exclusive negotiating rights shall make a request for commencement of negotiations . . . no later than 120 days prior to the earliest school district annual meeting conducted within the supervisory union.” 16 V.S.A. § 2003.

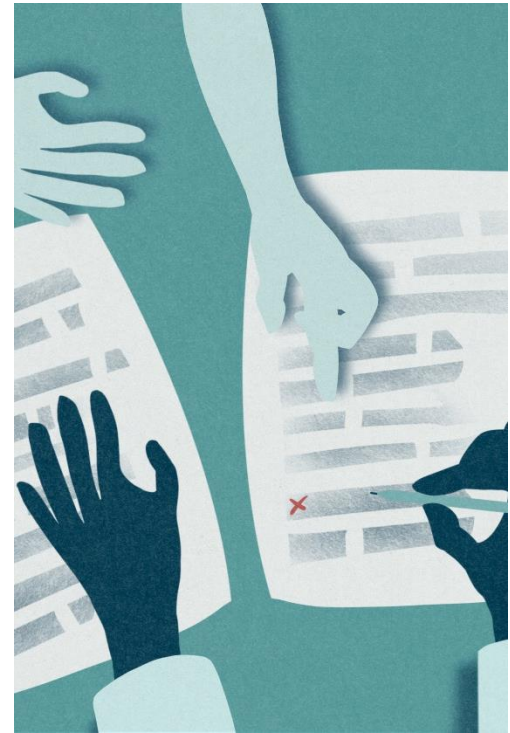
JELRA: “Upon request of either party, negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time during the year preceding the expiration date of the agreement. Negotiation may be commenced at any time before that time with the consent of both parties.” 3 V.S.A. § 1036(e).

Dispute Resolution

Each labor relations act includes a process for resolving disputes after the parties reach impasse.

The various means for resolution that may be provided for are:

- Mediation
- Fact-Finding
- Arbitration or a hearing before the Vermont Labor Relations Board
- The “Hammers:” Contract Imposition and Strike



Mediation

All four of the labor relations acts specify mediation as the first step to resolve an impasse.

Mediation is voluntary.

Under SELRA and JELRA, the mediator is appointed by the VLRB. 3 V.S.A. §§ 925 and 1018.

Under MLRA, the mediator is appointed by the Commissioner of Labor, who may elect to serve as the mediator. 21 V.S.A. § 1731.

Under LRTA, the parties jointly agree on the mediator, or if they cannot agree, request mediation from the American Arbitration Association or its designee. 16 V.S.A. § 2006.

Fact-Finding

Fact-finding is a process in which a neutral third-party collects evidence from the parties in dispute, makes findings, and recommends a basis for the parties to resolve the dispute.

- Fact finders conduct hearings, and in some cases may issue subpoenas and take testimony under oath.

SELRA:

- If impasse is not resolved in a reasonable time (15+ days) after the appointment of a mediator the VLRB appoints a fact finder mutually agreed upon by the parties.
- If the parties do not agree, the VLRB may appoint a neutral third party as fact finder. 3 V.S.A. § 925(b).

LRTA

- If mediation is not requested or is unsuccessful, either party may request that any or all issues in dispute be submitted to fact-finding.
- Each party selects a member of fact-finding committee and those two members select a neutral, third member.
- Fact-finders must issue report recommending a reasonable basis for settlement within 30 days of all members being appointed.
- If the parties cannot reach agreement within 10 days after report is issued, the report is made public. 16 V.S.A. § 2007.

Fact-Finding

MLRA

- If impasse is not resolved in a reasonable time (15+ days) after the appointment of a mediator the Commissioner of Labor appoints a fact finder.
- Fact-finder must issue report recommending a reasonable basis for settlement within 30 days of all members being appointed.
- If the parties cannot reach agreement within 10 days after report is issued, the report is made public. 21 V.S.A. § 1732.

JELRA

- If impasse is not resolved in a reasonable time (15+ days) after the appointment of a mediator the VLRB appoints a fact finder mutually agreed upon by the parties.
- If the parties do not agree, the VLRB may appoint a neutral third party as fact finder. 3 V.S.A. § 1018.

VLRB Hearing

SELRA and JELRA

- If dispute resolved 20 days after fact-finder issues report (+ up to 30 additional days if parties mutually agree) the parties must submit a last best offer on all issues in dispute to the VLRB.
- Offers are made public when both have been submitted to the VLRB.
- Within 30 days the VLRB will hold at least one hearing and will choose one of the last best offers in its entirety without any amendment. 3 V.S.A. §§ 925 and 1018.

Arbitration

LRTA

- Parties may agree to proceed to binding arbitration on one or more issues at any time after impasse is reached.
- Parties mutually agree on the arbitrator, or may request that the AAA appoint one.
- Parties agree on whether the arbitrator will select a party's last best offer on all issues as a package, or will select a party's last best offer on each individual issue.
- Strikes are prohibited after parties agree to arbitration. 16 V.S.A. ch. 57, subch. 4.

MLRA

- Municipalities may adopt an arbitration procedure, or parties may mutually agree to arbitration. In municipalities that have adopted arbitration, the parties may agree to skip fact-finding.
- Arbitration panel is formed if parties cannot resolve dispute within 20 days after fact-finder's report becomes public.
- Panel consists of one member chosen by each party, and a third member agreed on by the first two members or, if they cannot agree, selected by the Superior Court.
- Panel decides all disputed issues by majority vote. 21 V.S.A. § 1733.

Arbitration

SELRA and JELRA

- Alternative to hearing in front of the VLRB
- If dispute resolved 20 days after fact-finder issues report (+ up to 30 additional days if parties mutually agree) the parties must submit a last best offer on all issues in dispute to an arbitrator that is mutually agreed on by the parties or selected by the American Arbitration Association.
- Offers are made public when both have been submitted to the arbitrator.
- Within 30 days the arbitrator will hold at least one hearing and will choose one of the last best offers in its entirety without any amendment. 3 V.S.A. § 925 and 1018.



The “Hammers”

Contract Imposition:

- Permitted under LRTA after parties have completed mediation and fact-finding, followed by a 30-day “cooling off” period.

Strikes

- Permitted under LRTA after parties have completed mediation and fact-finding, followed by a 30-day “cooling off” period.
- Permitted under MLRA following a 30-day “cooling off” period after fact-finding, provided parties have not agreed to binding arbitration and it will not “endanger the health, safety, or welfare of the public.” 21 V.S.A. § 1730.
 - Public safety employees cannot strike.
- Prohibited under SELRA. 3 V.S.A. § 903(b).
- Prohibited under JELRA. 3 V.S.A. § 1012(b).



Any Questions?