# Vermont-NEA

## The Right to Strike, Impositions of "Finality," and Binding Interest Arbitration

Joel. D. Cook, Executive Director

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**Summary**

- **Vermont-NEA continues to be willing to convert to binding interest arbitration school employees' right to strike if the school boards cede as well the right impose finality.**

- **H.318 as Introduced would need substantial changes to make it the acceptable method to accomplish this.**

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# The Collective Bargaining Process by Acronym : O'NIMFS

**O is for Organizing:** To have the right to bargain collectively, there must be a "collection." Several laws confer on employees the right to organize into a union.

**Once a union is in place, each step of the collective bargaining process (including "final" steps) is designed to move the parties closer to each other's positions to bring about an agreement**

**N is for Negotiation:** The parties must negotiate in good faith over

- "**mandatory subjects**" - generally salary, terms and conditions of employment, grievance procedures, and
- "**permissive subjects**" - "any mutually agreed upon matters not in conflict with law." In the current teacher law, teachers may negotiate over matters of local education policy only if "permitted" by their employer.

The parties may not negotiate over "**prohibited subjects**" – matters that would be in conflict with law, such as employee civil rights.

**I is for Impasse:** In the public sector, if the parties can't reach agreement on their own, one or the other may decide and declare that they're at impasse.

**M is for Mediation:** Impasse may trigger voluntary mediation (if it isn't voluntary, it typically won't work anyway). Mediation is simply a human service the purpose of which is to "assist the parties in reconciling their differences and resolving the controversy on terms which are mutually acceptable."

**F is for Fact-finding:** If mediation is bypassed or fails to produce a settlement, either party may trigger mandatory fact-finding. Fact-finding is a non-binding exercise through which the parties submit their positions on matters in dispute, resulting in a fact-finder's recommended "reasonable basis" for settlement.

Fact-finders assess the positions of the parties against such factors as financial ability, comparisons with what employees in similar employment to those in the bargaining unit receive, cost of living, and stability of employment.

**S is for Settlement, Submission, or Strike:**

**Settlement** can occur anytime. If it doesn't, and the parties have complied with all other parts of the process, each has yet another tool to use:

Employees may **strike**, whether or not the school board declares - "imposes" - finality."

The parties may, in some instances must, **submit** their remaining issues in dispute to interest arbitration.

# Three Other Matters of Terminology

**1**

## There is no such thing as an "imposed contract."

- A contract is an *agreement* between two or more parties.
- When a school board "declares" or imposes "finality," it is *dictating* to its employees what the terms and conditions of their employment will be.

That is, the "declaration of finality" is **not an agreement** between the parties and, therefore, cannot be a contract.

It is only an *employment policy* imposed on teachers.

2

## There are two basic categories of labor arbitration: This bill is about interest arbitration.

- **Grievance arbitration**: to resolve disputes over interpretation or implementation of contract provisions
- **Interest arbitration:** to resolve disputes over what contract provisions should be

3

## This bill focuses only on the process of collective bargaining.

- **Collective bargaining process**: the steps involved negotiating an agreement
- **Subjects of bargaining**: the issues negotiated

**This bill is solely about the collective bargaining process.**

# Vermont-NEA

## Vermont Public Employee Collective Bargaining: A Comparison (Vermont law as of FY 2014)

| GENERAL PROVISIONS | | | | | | |
|---|---|---|---|---|---|---|
| **Employment** | **State employees** | **UVM faculty/ staff** | **State colleges faculty/ staff** | **Judiciary employees** | **Municipal employees** | **Teachers** |
| **Governing Labor Relations Act** | 3 VSA Chapter 27 (SELRA) | | | 3 VSA Chapter 28 (JLRA) | 21 VSA Chapter 22 (MERA) | 16 VSA Chapter 57 (TLRA) |
| **Year enacted** | 1969 | | | 1998 | 1973 | 1969 |
| **Employer** | State, excluding legislative and judicial departments | UVM | VSC | Judiciary Department | City, town, etc., fire district, water district, housing authority, political subdivision (including school districts) w ≥ 5 employees | Public school district; independent school receiving public funds |
| **Employer representative (or designee)** | Governor | President | Chancel-lor | Supreme Court | Municipal legislative body* | School board/independent school "equivalent"* |
| **Organized through:** | Vermont Labor Relations Board (VLRB) | | | | VLRB | American Arbitration Association (AAA) |
| **Subjects for bargaining (+ agency fee collection and enforcement)** | All matters relating to the relationship between the employer and employees...to the extent not prescribed or controlled by law | | | | ...wages, hours and conditions of employment (not "issues of managerial prerogative") (§1725(a)) | ...salary, related economic conditions of employment, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with [law](§2004) |

* For negotiations beginning after July 1, 2008, school boards in supervisory unions negotiate with their municipal employees and their teachers at the supervisory union level through a negotiations council (21 V.S.A. §1722(18) and 16 V.S.A. §2001).

| STEPS IN NEGOTIATIONS: "NIMF" | | | | | | |
|---|---|---|---|---|---|---|
| **Negotiations** | ☑ | ☑ | ☑ | ☑ | ☑ | ☑ |
| **Impasse** | ☑ | ☑ | ☑ | ☑ | ☑ | ☑ |
| **Mediation** | Via petition of either party to VLRB (§925(a)) | | | By agreement or by petition to VLRB (§§1018-1019) | **Via petition of either party to Comm. of Labor or Comm. determines public interest so requires (§1731) | By agreement or petition to AAA (§2006) |
| **Fact-finding** | Upon request of either party (§925(b)) | | | Upon request of either party (§1018(c)) | **Following certification by mediator to commissioner that impasse continues (§1731) | Upon request of either party (§2007(a)) |
| **Factors required to be considered by fact-finder** | 1. wage and salary schedules and employee benefits to the extent they are inconsistent with prevailing rates both internally and in commerce and industry for comparable work within the state (*for Judiciary employees*: both within state government as a whole and for comparable work in commerce or industry within the state;)<br>2. work schedules relating to assigned hours and days of the week as they relate to the employee's needs and the general public's requirement for continual service;<br>3. general working conditions as they compare with generally accepted safety standards and conditions prevailing in commerce and industry within the state *(for Judiciary employees*:and within state government.).(§§925(f) and 1018(f)) | | | | *** 1. the lawful authority of the municipal employer/school bd;<br>2. stipulations of the parties;<br>3. the interest and welfare of the public and the financial ability of the municipal employer/school board to pay for increased costs of public services including the cost of labor;<br>4. comparisons of the wages, hours and conditions of employment of the employees involved in the dispute with the wages, hours and conditions of employment of other employees performing similar services in public employment/public schools in comparable communities or in private employment in comparable communities;<br>5. the average consumer prices for goods and services commonly known as the cost of living;<br>6. the overall compensation presently received by the employees including direct wages, fringe benefits; and continuity conditions and stability of employment, and all other benefits received. (21 VSA §1732(d))<br>(*and, for teachers*:7. prior negotiations and existing conditions of other school and municipal employees.) (16 VSA §2025(b)) | |

** In practice, the Commissioner of Labor is rarely, if ever, involved. The parties undertake these parts of the process on their own.

*** There is no explicit reference in TLRA to the factors fact-finders must address. This list is what an arbitrator must address if the parties agree to binding interest arbitration (§2025(b)). In practice, these are also the factors fact-finders actually address.

| HOW NEGOTIATIONS ARE RESOLVED: SETTLEMENT OR ? | | | | | | |
|---|---|---|---|---|---|---|
| **Settlement** | ☑ | ☑ | ☑ | ☑ | ☑ | ☑ |
| **Strike** | | | | | | |
| **Permitted** | No | | | | Yes (§1730) | Yes (§2010) |
| **Limited (not sooner than 30 days following delivery of fact-finding report)** | | | | | If dispute is submitted to binding arbitration or if strike "will endanger the health, safety or welfare of the public." (§1730(3)) | If dispute is submitted to binding arbitration or if strike "poses a clear and present danger to a sound program of school education which in the light of all relevant circumstances it is in the best public interest to prevent." (§§2021(c), 2010) |
| **Prohibited** | Yes (§903(b)) | | | Yes (§1012(b)) | No | No |
| **Binding Interest Arbitration** | | | | | | |
| **Permitted** | | | | By advance agreement §1019(a) | By parties' agreement (§1733(a)) | By parties' agreement (§2021) |
| **Required: where there is no right to strike** | Labor Relations Board selects the more reasonable single package offered last by each party or the fact-finder's recommendation if both are "unreasonable and likely to produce undesirable results" or have a long-lasting negative impact on relationships (§925(j))**** | | | If before LRB: last best offer (§1018(i)). If before arbitrator: via agreement (§1019(d)) | If adopted by a referendum vote of the municipality (no statutory limit on arbitrator's authority) (§1733(a)) | Last best offer single package or issue by issue, by agreement of parties (§2021(b)) |
| **Who arbitrates** | VLRB (§925(i)) | | | VLRB or arbitrator | 3-person panel (§1733(b)) | Individual selected by parties or via AAA (§2022(a)) |
| **Limits of authority** | Recommen-dation to Legislature | Labor Board decision is final | | | None: "power to determine all issues in dispute…" | As established by agreement of the parties (§2023) |

****Our statute does not refer to this process as "arbitration." The VLRB proceeding is substantially the same as an arbitration proceeding.

## Binding Arbitration in Current Municipal Employees Law

**21 V.S.A. § 1733. Arbitration**

**(a) Nothing herein shall prevent the legislative body of a municipal employer and the exclusive bargaining agent from voluntarily submitting a contract impasse to final and binding arbitration or for the municipality by a referendum vote from adopting binding arbitration procedures, in the following form:**

**The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment as defined by this chapter.**

# "TEACHERS ON STRIKE"

## The Vermont Journal, June 9, 1911

**All the grade teachers, six in number, of the Swanton High and Graded School have tendered their resignations to the superintendent, Mrs. Harriet M. Ide, on the ground of inadequate salaries and the unwillingness of the Board to allow them a small increase asked.**

**Those who resigned were Miss Celia Corbett, Miss Pearl Butterfield, Miss Elsbeth Neibel, Miss Grace Fitzsimmons, Miss Blanche Blake and Miss Hazel Stone. All are teachers of experience, three having taught over 10 years, one over six years and two for shorter terms...**

# Vermont school employee strikes

## Teachers

1. Champlain Valley Union High School (September 5-8, 1978)
2. Burlington (September 6-12, 1978)
3. Chester (April 4-18, 1979)
4. Rutland (August 30-September 7,1979)
5. Burke (June 4, 1980)
6. Poultney (May 7-9, 1984)
7. Hinesburg (April 3-June 26, 1985)
8. Colchester (September 3-6, 1985)
9. Addison Northwest (February 25-March 3, 1987)
10. Barre (January 12-20, 1989)
11. Winooski (February 13-15 1989)
12. North Country Union (May 8-12 1989)
13. Addison Northwest (December 6, 1989-January 3, 1990)
14. Fair Haven Graded School (April 25-26, 1990)
15. Georgia (June 1-5, 1990)
16. Windham Northeast (December 5-10, 1990)
17. Southwest Vermont (September 1-4, 1992)
18. Oxbow (March 25-April 1, 1993)
19. Hyde Park (March 25 - April 2, 1999)
20. Orleans Central (May 19-24, 2005)
21. Colchester (October 10-23, 2005)
22. Barre (December 9-19, 2005)
23. Chittenden East (May 4-9, 2006)
24. Southwest Vermont (October 19-31, 2011)
25. Rutland Southwest (April 4-11, 2012)

## Support Staff

1. Hyde Park (March 25 - April 2, 1999)

Note: There have been approximately the same number of impositions of finality by school boards as there have been strikes by teachers. Some, but not all, impositions of finality and strikes stemmed from the same negotiation.

## Organizational Positions Regarding Binding Interest Arbitration

| | | |
|---|---|---|
| 1992 | Vermont-NEA and Vermont School Boards Association oppose mandatory binding interest arbitration legislation (S.331 as Introduced). Both parties agree to voluntary approach, leading to enactment of subchapter 4 of 16 V.S.A. Chapter 57.<br><br>Its first provision (16 V.S.A. §2021(a)) :<br><br>Arbitration shall only occur if the recognized organization [the union] and the school board agree in writing to submit to binding arbitration for one or more issues remaining in dispute.[1] | Sponsored by Sens. Mike Metcalf (R. Essex-Orleans, a teacher and union member) and Jeb Spaulding (D. Washington). Both served on the Senate Education Committee, the latter as chair. |
| 1996 | Vermont-NEA adopts the following resolution:<br><br>Vermont-NEA supports the use of mandatory binding interest arbitration for final settlement of contract disputes between local Associations and school boards if the parties cannot mutually resolve their differing positions within the legally mandated time limits.<br><br>Furthermore, the Association believes that mandatory binding interest arbitration should replace the legal right of teachers to strike only if the right of school boards to impose terms and conditions of employment is eliminated. | Context: A lull in teacher strikes; introduction of 3 bills to require binding arbitration for municipal employment (H.370, H.657, and H.807) |
| 1999 (or 2000) | Vermont School Boards Association adopts the following resolution:<br><br>"Binding Interest Arbitration. Vermont law currently allows the electorate of local school districts to choose binding interest arbitration as the final step in contract negotiations. State law should not be amended to impose binding interest arbitration on local districts in their negotiations with any school staff." | Context: following passage of bills in the House in one session and the Senate in the next requiring binding arbitration for municipal employment (H.213 in 1998; S.90 in 1999) |

[1] The present law refers to "one or more of the school boards" rather than just "the school board." That is because of the adoption in 2007 of "supervisory union bargaining," requiring all school boards within a supervisory union, along with local school employee unions, to negotiate together.

# H.318: Vermont-NEA's Position

1. If Vermont's school boards agree to move away from impositions of finality (without attempted inroads into actual subjects of negotiation), Vermont-NEA will not object to moving to binding interest arbitration.

> This is made more difficult in light of the broader anti-labor environment, particularly outside Vermont, and the fundamental place of the right to strike in labor history.

2. If binding interest arbitration is made mandatory in the Teacher Labor Relations Act, it should extend as well to the Municipal Employees Relations Act

3. The arbitrator[s] should not be the Labor Relations Board but individuals selected by mutual consent of the parties or through the well-established process of the American Arbitration Association.

4. The "as Introduced" version of H.318 presents multiple concerns and should be struck in its entirety:

- It extends only to TLRA (regarding teachers and administrators in schools) but should extend as well to MERA (municipal employees, including most non-teacher school employees).
- It mistakenly refers to "imposed contracts."
- It changes the well-established timeframe following fact-finding the parties use to attempt to resolve matters in dispute.
- It refers to the fact-finding "commission," which should be "committee."
- It directs that the VLRB, rather than person or persons selected by the parties or the AAA, shall be the arbitrator, conferring more authority over local (school and municipal) employers and employees than is acceptable.
- It also fails to acknowledge there is legitimacy to a concern about "local control" by conferring decision-making authority on a state entity and not permitting the local parties to decide together on whom to confer that authority.
- It unnecessarily narrows the authority of the arbitrator to decide issues as a "single package," where current laws are less prescriptive but certainly effective.
- It would repeal the law permitting the granting of injunctions, on the mistaken assumption that it applies only to strikes by teachers.
- Consistent with directing the VLRB to act as arbitrator, it would repeal all provisions of the current binding arbitration provisions of title 16.
- The effective date would need to be changed, and it could be made to apply to negotiations pending on it.

A proposed strike-all is on the next 3 pages.

# Proposed Substitution for H.318 as Introduced

Subject: …This bill proposes to substitute binding interest arbitration for (a) the right of teachers and school administrators to strike and of school boards to impose finality and (b) the right of municipal employees to strike.

An act relating to substituting binding interest arbitration for the right of public employees to strike and that of any public employers to impose finality.

It is hereby enacted by the General Assembly of the State of Vermont:

**- Teachers Labor Relations Act -**

Sec. 1. 16 V.S.A. §2021 is amended to read:

(a) Arbitration shall ~~only~~ occur **either where an impasse continues for 20 days after a fact-finding report has been made public under subsection 2007(d) of this title or** if the recognized organization and one or more of the school boards agree in writing to submit to binding arbitration for one or more issues remaining in dispute. An agreement to accept binding interest arbitration may not be revoked and shall apply only to the parties to the arbitration.

(b) The parties may mutually agree to accept binding interest arbitration at any time after impasse is reached. If the parties have neither accepted all recommendations of a fact-finder nor reached an independent agreement on all issues in dispute, either the school board or the recognized organization may request binding interest arbitration by written notice to the other party. **If an impasse continues for 20 days after a fact-finding report has been made public under subsection 2007(d) of this title, the parties shall submit to binding interest arbitration.** The parties shall mutually agree on one of the following limitations on the jurisdiction of the arbitrator:

(1) Arbitration under which the award is confined to a choice between one of the following single packages:

(A) The last best offer of the school board.

(B) The last best offer of the recognized organization.

(2) Arbitration under which the award is confined to a choice between one of the following on an issue-by-issue basis:

(A) The last best offer of the school board.

(B) The last best offer of the recognized organization.

(c) A strike, which shall have the same meaning as provided in 21 V.S.A. § 1722(16), shall be prohibited if it occurs after both parties have voluntarily submitted a dispute to final and binding arbitration or after a decision or award has been issued by the arbitrator. A school board may petition for an injunction or other appropriate relief from the superior court within the county wherein such strike in violation of this section is occurring or is about to occur.

(d) If any provision of this subchapter is inconsistent with any other provision of law governing arbitration, this subchapter shall govern.

**- Municipal Employees Relations Act -**

Sec. 2. 21 V.S.A. §1733 is amended to read:

~~(a)~~ **Unless a municipality has voted to permit municipal employee bargaining units to strike, the legislative body of the municipal employer and the exclusive bargaining agent shall submit to final and binding arbitration any employment contract impasse that continues after the parties have complied with sections 1731 and 1732 of this title.** Nothing ~~herein~~ **in this section** shall prevent the legislative body of a municipal employer**, in a municipality that has voted to permit municipal employee bargaining units to strike,** and the exclusive bargaining agent from voluntarily submitting a contract impasse to final and binding arbitration ~~or for the municipality by a referendum vote from adopting binding arbitration procedures, in the following form:~~

~~The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment as defined by this chapter.~~

(b) Where an impasse continues for 20 days after a fact finder has made a report public under section 1732(e) of this title, **the parties shall submit the contract impasse to binding arbitration and** a three-member arbitration panel shall be formed as follows:

Each party to the impasse shall select one member of the panel and state its final offer on all disputed issues on the twentieth day following publication of the fact finder's report. The two members *[~~so selected~~]* shall**,** within five days, select the third member of the panel to serve as *[~~chairman~~]* chair. If the two members fail to select a third member of the panel within five days, **then, within three additional days, they shall submit to the selection process of the American Arbitration Association or the Federal Mediation and Conciliation Service,** ~~the third member shall be appointed by the superior court for the county in which the municipality is situated, upon petition of either party, and notice to the other party~~. Within *[~~thirty~~]* **30** days of the appointment of the *[~~chairman~~]* **chair**, the panel shall decide

by majority vote all disputed issues involving wages, hours, and conditions of employment as defined by this chapter, and this award shall become an agreement of the parties.

* * *

(f) If a municipality has *[~~voted to adopt binding arbitration procedures~~]* **not voted to permit municipal employee bargaining units to strike**, the legislative body of the municipal employer and the exclusive bargaining agent may agree to proceed directly from mediation to binding arbitration without submitting the dispute to fact-finding. The decision to proceed directly to binding arbitration may be made at any reasonable time during the mediation process but no less than 30 days after appointment of the mediator under section 1731 of this title. The arbitration panel shall be selected as provided in subsection (b) of this section, with each party to the impasse selecting one member of the panel and stating its final offer on the twentieth day after the agreement to proceed directly to arbitration is reached, and the two members so selected selecting the third member within five days. **Each side shall bear the cost of the arbitrator selected by it and shall share equally the cost of the third arbitrator.**

Sec. 3. REPEAL

§ 2008 of Title 16 (finality of school board decisions) is repealed.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, ~~2013~~ **2015** ~~and apply to negotiations beginning on or after that date for collective bargaining agreements for fiscal year 2015 and after~~.