

S.316

An act relating to child care providers

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) The early education a child receives before school age, particularly before the age of three, has a profound effect on a child's development during this critical stage of life. Investments in the consistency and quality of early education lay a vital foundation for the future cognitive, social, and academic success of Vermont children.

(2) Early education providers should have the opportunity to work collectively with the State to enhance professional development and educational opportunities for early educators, to increase child care subsidy funding to enable more children to receive critical early education opportunities, and to ensure the continual improvement of early education in Vermont.

Sec. 2. 33 V.S.A. chapter 36 is added to read:

CHAPTER 36. EARLY CARE AND EDUCATION PROVIDERS

LABOR RELATIONS ACT

§ 3601. PURPOSE

(a) The General Assembly recognizes the right of all early care and education providers to bargain collectively with the State over matters within the State's control and identified as subjects of bargaining pursuant to subsection 3603(b) of this chapter.

(b) The General Assembly intends to create an opportunity for early care and education providers to choose to form a union and bargain with the State over matters within the State's control and identified as subjects of bargaining pursuant to subsection 3603(b) of this chapter.

(c) Specific terms and conditions of employment, which are the subject of traditional collective bargaining between employers and employees, are outside the limited scope of this chapter.

(d) The matters subject to this chapter are those within the control of the State of Vermont and relevant to all early care and education providers.

(e) Early care and education providers do not forfeit their rights under the National Labor Relations Act, 29 U.S.C. §§ 151–169, or the Vermont State Labor Relations Act, 21 V.S.A. §§ 1501–1624, by becoming members of an organization that represents them in their dealings with the State. The terms and conditions of employment with individual early care and education providers, which are the subjects of traditional collective bargaining between

employers and employees and which are governed by federal law, fall outside the limited scope of bargaining defined in this chapter.

§ 3602. DEFINITIONS

As used in this chapter:

(1) “Board” means the State Labor Relations Board established under 3 V.S.A. § 921.

(2) “Collective bargaining” or “bargaining collectively” means the process by which the State and the exclusive representative of early care and education providers negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this chapter that when reached and funded shall be legally binding.

(3) “Early care and education provider” means a licensed child care home provider, a registered child care home provider, or a legally exempt child care home provider, which is defined by the Legally Exempt Child Care Provider Requirements set forth by the Vermont Department for Children and Families, Child Development Division, who provides child care services as defined in subdivision 3511(3) of this title.

(4) “Exclusive representative” means the labor organization that has been elected or recognized and certified by the Board under this chapter and consequently has the exclusive right under section 3608 of this chapter to

represent early care and education providers for the purpose of collective bargaining and the enforcement of any contract provisions.

(5) "Grievance" means the exclusive representative's formal written complaint regarding an improper application of one or more terms of the collective bargaining agreement.

(6) "Subsidy payment" means any payment made by the State to assist families in paying for child care services through the State's child care financial assistance program.

§ 3603. ESTABLISHMENT OF COLLECTIVE BARGAINING

(a) Early care and education providers, through their exclusive representative, shall have the right to bargain collectively with the State through the Governor's designee.

(b)(1) Mandatory subjects of bargaining are limited to:

(A) child care subsidy reimbursement rates and payment procedures, excluding quality standards and payment schedules associated with the STep Ahead Recognition System (STARS);

(B) professional development;

(C) the collection of dues and disbursement to the exclusive representative;

(D) agency fees and disbursement to the exclusive representative; and

(E) procedures for resolving grievances.

(2) The parties may also negotiate on any mutually agreed matters that are not in conflict with State or federal law.

(c) The State, acting through the Governor's designee, shall meet with the exclusive representative for the purpose of entering into a written agreement.

(d) Early care and education providers shall be considered employees, and the State shall be considered the employer, solely for the purpose of collective bargaining under this chapter. Early care and education providers shall be considered State employees for purposes of collective bargaining. Early care and education providers shall not be considered State employees for any other reason, including for purposes of vicarious liability in tort, unemployment compensation, or workers' compensation. Early care and education providers shall not be eligible for participation in the State Employees Retirement System or the health insurance plans available to Executive Branch employees solely by virtue of bargaining under this chapter.

(e) An early care and education providers' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute; and

(3) prompt arbitration by the Vermont Labor Board to resolve any objections over the agency fee.

(f) Agency fees, if successfully bargained, shall be based on the proportionate amount of subsidies an early care and education provider receives.

§ 3604. RIGHTS OF EARLY CARE AND EDUCATION PROVIDERS

Early care and education providers shall have the right to:

(1) organize, form, join, or assist any union or labor organization for the purpose of collective bargaining without any interference, restraint, or coercion;

(2) bargain collectively through a representative of their own choice;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining;

(4) pursue grievances through the exclusive representative as negotiated pursuant to this chapter; and

(5) refrain from any or all such activities.

§ 3605. RIGHTS OF THE STATE

Nothing in this chapter shall be construed to interfere with right of the State to:

(1) carry out the statutory mandate and goals of the Agency of Human Services and to use personnel, methods, and means in the most appropriate manner possible;

(2) with the approval of the Governor, take whatever action may be necessary to carry out the mission of the Agency of Human Services in an emergency situation;

(3) comply with federal and State laws and regulations regarding child care and child care subsidies;

(4) enforce child care regulations and regulatory processes, including regulations regarding the qualifications of early care and education providers and the prevention of abuse in connection with the provisions of child care services;

(5) develop child care regulations and regulatory processes subject to the rulemaking authority of the General Assembly and the Human Services Board;

(6) establish and administer quality standards under the Step Ahead Recognition system;

(7) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the

federal government or any political subdivision or agency of the State in making an application for any grant; and

(8) refuse to take any action that would diminish the quantity or quality of child care provided under existing law.

§ 3606. BARGAINING UNIT

(a) The bargaining unit shall be composed of licensed home child care providers, registered home child care providers, and legally exempt child care providers, as defined in this chapter, who have an agreement with the Department to accept a subsidy.

(b) Early care and education providers may select an exclusive representative for the purpose of collective bargaining by using the procedures in sections 3607 and 3608 of this chapter.

(c) The exclusive representative of the early care and education providers is required to represent all of the providers in the unit without regard to membership in the union.

§ 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS; HEARINGS; DETERMINATIONS

(a) A petition may be filed with the Board in accordance with regulations prescribed by the Board:

(1) By an early care and education provider or group of providers or any individual or labor organization acting on the providers' behalf:

(A) alleging that not less than 30 percent of the providers in the petitioned bargaining unit wish to be represented for collective bargaining and that the State declines to recognize their representative as the representative defined in this chapter; or

(B) asserting that the labor organization that has been certified as the bargaining representative no longer represents a majority of early care and education providers.

(2) By the State alleging that one or more individuals or labor organizations have presented a claim to be recognized as the exclusive representative defined in this chapter.

(b) The Board shall investigate the petition and, if it has reasonable cause to believe that a question concerning representation exists, shall conduct a hearing. The hearing shall be held before the Board, a member of the Board, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the Board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties, in writing, the results of the election.

(c) In determining whether or not a question of representation exists, the Board shall apply the same regulations and rules of decision-making regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with regulations and rules of the Board.

(e) For the purposes of this chapter, the State may voluntarily recognize the exclusive representative of a unit of early care and education providers if the labor organization demonstrates that it has the support of a majority of the providers in the unit it seeks to represent and no other employee organization seeks to represent the providers.

§ 3608. ELECTION; RUNOFF ELECTIONS

(a) If a question of representation exists, the Board shall conduct a secret ballot election to determine the exclusive representative of the unit of early care and education providers. The original ballot shall be prepared to permit a vote against representation by anyone named on the ballot. The labor organization receiving a majority of votes cast shall be certified by the Board as the exclusive representative of the unit of early care and education providers. In any election in which there are three or more choices, including the choice of “no union,” and none of the choices on the ballot receives a majority, a runoff election shall be conducted by the Board. The ballot shall

provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election shall not be directed if in the preceding 12 months a valid election has been held.

§ 3609. POWERS OF REPRESENTATIVES

The exclusive representative shall be the exclusive representative of all the early care and education providers in the unit for the purposes of collective bargaining and the resolution of grievances.

§ 3610. NEGOTIATED AGREEMENT; FUNDING

(a) If the State and the exclusive representative reach an agreement, the Governor shall request from the General Assembly an appropriation sufficient to fund the agreement in the next operating budget. If the General Assembly appropriates sufficient funds, the negotiated agreement shall become effective and binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly and shall become effective and legally binding in the next fiscal year.

(b) Collective bargaining agreements shall be for a maximum term of two years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall

be filed with the Board. Upon the filing of such consent, an agreement may be supplemented, cancelled, or renegotiated.

(c) The agreement shall terminate at the expiration of its specified term. 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.

(d) In the event the State of Vermont and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract that, as amended, shall remain in effect until a new contract is finalized and funded by the General Assembly.

(e) The Board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party. In the event a complaint is made by either party to an agreement, the Board shall proceed in the manner prescribed in section 3612 of this chapter relating to the prevention of unfair labor practices.

§ 3611. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If after a reasonable period of negotiation, the exclusive representative and the State reach an impasse, the Board upon petition of either party may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the Board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement. A mediator shall be of high standing and not affiliated with either labor or management.

(b) If after a minimum of 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the Board that the impasse continues.

(c) Upon the request of either party, the Board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the Board shall appoint a fact finder who shall be a person of high standing and shall not be affiliated with either labor or management. A member of the Board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the Board. Upon request of either party or of the fact finder, the Board may issue

subpoenas of persons and documents for the hearings and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from mediating the dispute at any time prior to issuing recommendations.

(f) In making a recommendation, the fact finder shall consider whether the proposal increases the amount and quality of care provided to children and families in a manner that is more affordable for Vermont families and citizens and whether the subsidies provided are consistent with federal guidance.

(g) Upon completion of the hearings, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be paid equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the Board for approval. The Board shall provide a copy of approved fact-finding costs to each party with its order apportioning one-half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt

of the order. Approval by the Board of the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 15 days after transmittal of findings and recommendations, each party shall submit to the Board its last best offer on all disputed issues as a single package. Each party's last best offer shall be filed with the Board under seal and shall be unsealed and placed in the public record only when both parties' last best offers are filed with the Board. The Board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine that selection's cost. The Board shall not issue an order under this subsection that is in conflict with any law or rule or that relates to an issue that is not a mandatory subject of collective bargaining. The Board shall determine the cost of the agreement selected and recommend to the General Assembly its choice with a request for appropriation. If the General Assembly appropriates sufficient funds, the agreement shall become effective and legally binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated

changes shall become effective and binding at the beginning of the next fiscal year.

§ 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and all early care and education providers and their representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under this chapter and to settle all disputes, whether arising out of the application of those agreements or growing out of any disputes concerning those agreements. However, this obligation does not compel either party to agree to a proposal or make a concession.

(b) It shall be an unfair labor practice for the State to:

(1) interfere with, restrain, or coerce early care and education providers in the exercise of their rights under this chapter or by any other law, rule, or regulation;

(2) dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

(3) discriminate against an early care and education provider because of the provider's affiliation with a labor organization or because a provider has filed charges or complaints or has given testimony under this chapter;

(4) discriminate against an early care and education provider because the provider has taken actions such as signing a petition, grievance, or affidavit that demonstrates the provider's support for a labor organization;

(5) refuse to bargain collectively in good faith with the exclusive representative;

(6) discriminate against an early care and education provider based on race, color, religion, ancestry, age, sex, sexual orientation, gender identity, national origin, place of birth, or marital status, or against a qualified disabled individual; or

(7) request or require an early care and education provider to have an HIV-related blood test or discriminate against a provider on the basis of HIV status of the provider.

(c) It shall be an unfair labor practice for the exclusive representative to:

(1) Restrain or coerce early care and education providers in the exercise of the rights guaranteed to them under this chapter or by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership provided such rules are not discriminatory.

(2) Cause or attempt to cause the State to discriminate against an early care and education provider or to discriminate against a provider.

(3) Refuse to bargain collectively in good faith with the State.

(4) Threaten to or cause a provider to strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

(d) Early care and education providers shall not strike or curtail their services for which they receive State payment in recognition of a picket line of any employee or labor organization.

(e) Complaints related to this section shall be made and resolved in accordance with procedures set forth in 3 V.S.A. § 965.

§ 3613. ANTITRUST EXEMPTION

The activities of early care and education providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded State action immunity under applicable federal and State antitrust laws. The State intends that the “State action” exemption to federal antitrust laws be available only to the State, to early care and education providers, and to their exclusive representative in connection with these necessary activities. Exempt activities shall be actively supervised by the State.

§ 3614. RIGHTS UNALTERED

(a) This chapter does not alter or infringe upon the rights of:

(1) a parent or legal guardian to select and discontinue child care services of any early care and education provider;

(2) an early care and education provider to choose, direct, and terminate the services of any employee that provides care in that home; or

(3) the Judiciary and General Assembly to make programmatic modifications to the delivery of State services through child care subsidy programs, including standards of eligibility for families, legal guardians, and providers participating in child care subsidy programs, and to the nature of services provided.

(b) Nothing in this chapter shall affect the rights and obligations of private sector employers and employees under the National Labor Relations Act, 29 U.S.C. §§ 151–169, or the Vermont State Labor Relations Act, 21 V.S.A. §§ 1501–1624. The terms and conditions of employment with individual early care and education providers, which are the subjects of traditional collective bargaining between employers and their employees and which are governed by federal laws, fall outside the limited scope of bargaining defined in this chapter.

§ 3615. RULES AND REGULATIONS

The Board shall make and may amend and rescind and adopt such rules and regulations consistent with this chapter as may be necessary to carry out the provisions of this chapter.

§ 3616. APPEAL

(a) Any person aggrieved by an order or decision of the Board issued under the authority of this chapter may appeal on questions of law to the Supreme Court.

(b) An order of the Board shall not automatically be stayed pending appeal. A stay must first be requested from the Board. The Board may stay the order or any part of it. If the Board denies a stay, then a stay may be requested from the Supreme Court. The Supreme Court or a single justice may stay the order or any part of it and may order additional interim relief.

§ 3617. ENFORCEMENT

(a) Orders of the Board issued under this chapter may be enforced by any party or by the Board by filing a petition with the Civil Division of the Superior Court of Washington County or in the Civil Division of the Superior Court in the county in which the action before the Board originated. The petition shall be served on the adverse party as provided for service of process under the Vermont Rules of Civil Procedure. If, after hearing, the Court determines that the Board had jurisdiction over the matter and that a timely appeal was not filed or that an appeal was timely filed and a stay of the Board order or any part of it was not granted or that a Board order was affirmed on appeal in pertinent part by the Supreme Court, the Court shall incorporate the order of the Board as a judgment of the Court. There is no appeal from that judgment except that a judgment reversing a Board decision on jurisdiction may be appealed to the Supreme Court.

(b) Upon filing of a petition by a party or the Board, the Court may grant such temporary relief, including a restraining order, as it deems proper pending formal hearing.

(c) Orders and decisions of the Board shall apply only to the particular case under appeal, but any number of appeals presenting similar issues may be consolidated for hearing with the consent of the Board. The Board shall not modify, add to, or detract from a collective bargaining agreement by any order or decision.

Sec. 3. NEGOTIATIONS; EARLY CARE AND EDUCATION PROVIDERS

The State's cost of negotiating an agreement pursuant to 33 V.S.A. chapter 36 shall be borne by the State out of existing appropriations made to it for administrative expenditures by the General Assembly. These costs shall not be funded by appropriations made for benefit payments.

Sec. 4. SEVERABILITY OF PROVISIONS

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage, except for Sec. 2, 33 V.S.A.
§ 3603(b)(1)(D) (bargaining for agency fees) which shall take effect on
February 15, 2015.