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S.72

Introduced by Senators Mullin, Balint, Baruth, and Sirotkin

Referred to Committee on Government Operations

Date: February 10, 2015

Subject: Executive; State labor relations; binding arbitration

Statement of purpose of bill as introduced: This bill proposes to permit binding arbitration under the State Employees Labor Relations Act.

An act relating to binding arbitration for State employees

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

~~Sec. 1. 3 V.S.A. § 926 is amended to read:~~

§ 926. GRIEVANCES

(a) The ~~board~~ Board shall hear and make a final determination on the grievances of all employees who are eligible to appeal grievances to the ~~board~~ Board. Grievance hearings at the ~~board~~ Board level shall be conducted in accordance with the rules and regulations ~~promulgated~~ adopted by the ~~board~~ Board. The right to institute grievance proceedings extends to individual employees, groups of employees, and collective bargaining units.

(b) A collective bargaining agreement may provide for binding arbitration as the final step of a grievance procedure. An agreement that includes a

~~1 binding arbitration provision shall also include the procedure for conducting~~
2 the grievance arbitration proceedings and the following provisions:

3 (1) The parties shall mutually agree on an arbitrator from a list of
4 arbitrators provided by the American Arbitration Association or the Federal
5 Mediation and Conciliation Service. An arbitrator chosen or appointed under
6 this section shall have no authority to add to, subtract from, or modify the
7 collective bargaining agreement.

8 (2) An acknowledgement of arbitration that provides substantially the
9 following:

10 ACKNOWLEDGEMENT OF ARBITRATION

11 (The parties) understand that this agreement contains an agreement that
12 the final step of the grievance process shall be binding arbitration. After the
13 effective date of this agreement, no grievance may be brought to the Vermont
14 Labor Relations Board and no lawsuit concerning any grievance may be
15 brought unless it involves a question of constitutional rights, civil rights, or the
16 enforcement of an arbitration award.

17 (c) This section shall not apply to labor interest arbitration, which as used
18 in this chapter means the method of concluding labor negotiations by means of
19 a disinterested person to determine the terms of a labor agreement.

20 (d) A party may apply to the arbitrator for a modification of an award if the
21 application is made within 30 days after delivery of a copy of the award to the

1 ~~applicant. An arbitrator may modify an award only if the arbitrator finds any~~

2 one of the following:

3 (1) There was an evident miscalculation of figures or an evident mistake
4 in the description of any person, thing, or property referred to in the award.

5 (2) The award was based on a matter not submitted to the arbitrator, and
6 the award may be corrected without affecting the merits of the decision on the
7 issues submitted.

8 (3) The award was imperfect in form and the award may be corrected
9 without affecting the merits of the controversy.

10 (e) A party may apply to the Civil Division of the Superior Court for
11 review of the award provided the application is made within 30 days after
12 delivery of a copy of the award to the applicant or, in the case of a claim of
13 corruption, fraud, or other undue means, the application is made within 30 days
14 after those grounds are known or should have been known. The Civil Division
15 of the Superior Court shall vacate an arbitration award based on any of the
16 following:

17 (1) The award was procured by corruption, fraud, or other undue means.

18 (2) There was partiality or prejudicial misconduct by the arbitrator.

19 (3) The arbitrator exceeded his or her power or rendered an award
20 requiring a person to commit an act or engage in conduct prohibited by law.

1 ~~(d) There was an absence of substantial evidence on the record as a~~
2 ~~whole to support the award.~~

3 (f) The ~~board~~ Board shall hear and make a final determination on the
4 grievances of all retired individual employees of the University of Vermont,
5 groups of such retired individuals, and retired collective bargaining unit
6 members of the University of Vermont. Grievances shall be limited to those
7 relating to compensation and benefits that were accrued during active
8 employment but are received after retirement. ~~For the purposes of~~ As used in
9 this subsection, "grievance" means an allegation of a violation of a collective
10 bargaining agreement, employee handbook provision, early retirement plan,
11 individual separation agreement or other documented agreement, or rule or
12 regulation of the University of Vermont.

13 Sec. 2. EFFECTIVE DATE

14 ~~This act shall take effect on passage~~

Sec. 1. 3 V.S.A. § 926 is amended to read:

§ 926. GRIEVANCES

(a) The ~~board~~ Board shall hear and make a final determination on the grievances of all employees who are eligible to appeal grievances to the ~~board~~ Board. Grievance hearings at the ~~board~~ Board level shall be conducted in accordance with the rules and regulations ~~promulgated~~ adopted by the ~~board~~ Board. The right to institute grievance proceedings extends to individual employees, groups of employees, and collective bargaining units.

(b) A collective bargaining agreement may provide for binding arbitration as a final step of a grievance procedure, rather than a hearing by the Board. An agreement that includes a binding arbitration provision shall also include the procedure for selecting an arbitrator.

(c) If a collective bargaining agreement provides for binding arbitration as a final step of a grievance procedure, the agreement may also establish:

(1) procedural rules for conducting grievance arbitration proceedings;

(2) whether grievance arbitration proceedings will be confidential; and

(3) whether arbitrated grievance determinations will have precedential value.

(d) An arbitrator chosen or appointed under this section shall have no authority to add to, subtract from, or modify the collective bargaining agreement.

(e) Any collective bargaining agreement that contains a binding arbitration provision pursuant to this section shall include an acknowledgement of arbitration that provides substantially the following:

ACKNOWLEDGEMENT OF ARBITRATION

(The parties) understand that this agreement contains a provision for binding arbitration as a final step of the grievance process. After the effective date of this agreement, no grievance, submitted to binding arbitration, may be brought to the Vermont Labor Relations Board. An employee who has declined representation by the employee organization or whom the employee organization has declined to represent or is unable to represent, shall be entitled, either by representing himself or herself or with the assistance of independent legal counsel, to appeal his or her grievance to the Vermont Labor Relations Board as the final step of the grievance process in accordance with the rules and regulations adopted by the Board.

(f) This section shall not apply to labor interest arbitration, which as used in this chapter means the method of concluding labor negotiations by means of a disinterested person to determine the terms of a labor agreement.

(g) A party may apply to the arbitrator for a modification of an award if the application is made within 30 days after delivery of a copy of the award to the applicant. An arbitrator may modify an award only if the arbitrator finds any one of the following:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.

(2) The award was based on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted.

(3) The award was imperfect in form and the award may be corrected without affecting the merits of the controversy.

(h) A party may apply to the Civil Division of the Superior Court for review of the award provided the application is made within 30 days after delivery of a copy of the award to the applicant or, in the case of a claim of corruption, fraud, or other undue means, the application is made within 30 days after those grounds are known or should have been known. The Civil Division of the Superior Court shall vacate an arbitration award based on any of the following:

(1) The award was procured by corruption, fraud, or other undue means.

(2) There was partiality or prejudicial misconduct by the arbitrator.

(3) The arbitrator exceeded his or her power or rendered an award requiring a person to commit an act or engage in conduct prohibited by law.

(i) The ~~board~~ Board shall hear and make a final determination on the grievances of all retired individual employees of the University of Vermont, groups of such retired individuals, and retired collective bargaining unit members of the University of Vermont. Grievances shall be limited to those relating to compensation and benefits that were accrued during active employment but are received after retirement. ~~For the purposes of~~ As used in this subsection, "grievance" means an allegation of a violation of a collective bargaining agreement, employee handbook provision, early retirement plan, individual separation agreement or other documented agreement, or rule or regulation of the University of Vermont.

Sec. 2. 3 V.S.A. § 904 is amended as follows:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include:

* * *

(7) grievance procedures, including whether an appeal to the Vermont Labor Relations Board or binding arbitration, or both, will constitute the final step in a grievance procedure;

* * *

Sec. 3. 3 V.S.A. § 928 is amended as follows:

§ 928. RULES AND REGULATIONS

* * *

(b) Notwithstanding the provisions of subsection (a) of this section, rules and regulations adopted by the ~~board~~ Board as they relate to grievance appeals shall provide:

(1) ~~All~~ If a collective bargaining agreement provides that an appeal to the Board will constitute the final step in the grievance procedure, all employees and other persons authorized by this chapter shall have the right to appeal to the ~~board~~ Board in accordance with the rules and regulations of the ~~board~~ Board.

* * *

Sec. 4. 3 V.S.A. § 941 is amended as follows:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(i) The Board, by rule, shall prescribe a uniform procedure for the resolution of employee grievances submitted through the collective bargaining machinery. ~~The~~ If the collective bargaining agreement does not provide that binding arbitration will be the final step of the negotiated grievance procedure pursuant to section 926 of this chapter, the final step of ~~any~~ the negotiated grievance procedure, if required, shall be a hearing and final determination by the Board. Grievance hearings conducted by the Board shall be informal and not subject to the rules of pleading procedure, and evidence of the courts of the State. Any employee or group of employees included in a duly certified bargaining unit may be represented before the Board by ~~their~~ its bargaining representative's counsel or designated executive staff employees or by any individual the Board may permit at its discretion.

* * *

Sec. 5. 3 V.S.A. § 975 is amended as follows:

§ 975. ENFORCEMENT AND PREEMPTION

* * *

(b) A ~~state~~ State employee who files a claim of retaliation for protected activity with the Vermont ~~labor relations board~~ Labor Relations Board or through binding arbitration under a grievance procedure or similar process available to the employee may not bring such a claim in ~~superior court~~ Superior Court.

* * *

Sec. 6. 3 V.S.A. § 1001 is amended as follows:

§ 1001. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

* * *

(c) Any dispute concerning the amount of a collective bargaining service fee may be grieved as set forth in the collective bargaining agreement through either an appeal to the ~~state labor relations board~~ Vermont Labor Relations Board in accordance with the ~~board's~~ Board's rules concerning grievances, or through binding arbitration.

Sec. 7. 3 V.S.A. § 1002 is amended as follows:

§ 1002. ENFORCEMENT

(a) Orders of the ~~board~~ Board or an arbitrator issued under this chapter may be enforced by any party or by the ~~board~~ Board by filing a petition with the Superior Court in Washington ~~superior court~~ County or the ~~superior court~~ Superior Court in the county in which the action before the ~~board~~ 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~~ Court determines that the ~~board~~ Board or arbitrator 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~~ Board or arbitrator's order or any part of it was not granted, or that a ~~board~~ Board order was affirmed on appeal in pertinent part by the ~~supreme court~~ Supreme Court or that an arbitrator's order was affirmed on appeal in pertinent part by the Superior Court, the ~~court~~ Court shall incorporate the order of the ~~board~~ Board or arbitrator as a judgment of the ~~court~~ Court. There is no appeal from that judgment except that a judgment reversing a ~~board~~ decision by the Board or an arbitrator on jurisdiction may be appealed to the ~~supreme court~~ Supreme Court.

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Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.