

**From:** Noonan, Tim [mailto:Tim.Noonan@state.vt.us]  
**Sent:** Monday, February 09, 2015 12:22 PM  
**To:** Ron Wild  
**Subject:** RE: collective bargaining and the ability to pay

The Municipal Employee Relations Act includes ability to pay as a criterion in fact finding and arbitration. It provides that, "(i)n reaching his or her conclusions and recommendations, the fact finder shall give weight to the following factors: . . . (3) the interest and welfare of the public and the financial ability of the municipal employer to pay for increased costs of public services including the cost of labor". 21 V.S.A. Section 1732(d). If the municipal employer and union submit their negotiations dispute to arbitration, the arbitrator is required to give weight to ability to pay. 21 V.S.A. Section 1733(c).

The Teachers Labor Relations Act does not specifically list factors which a fact finder should consider in making his or recommendations. Arbitration "shall only occur" under the Teachers Act "if the recognized organization and one or more of the school boards agree in writing to submit to binding arbitration". 16 V.S.A. Section 2021(a). If the parties do so agree, "both parties may present evidence regarding the financial capacity of the school district", and the arbitrator "shall give weight to" this factor, "plus . . . (t)he interest and welfare of the public and the financial ability of the school board to pay for increased costs of public service including the cost of labor." 16 V.S.A. Section 2025(a), (b)(3).

The State Employees Labor Relations Act lists three factors which a fact finder shall consider, "among others", in making a recommendation. 3 V.S.A. Section 925(f). The employer's ability to pay is not listed as one of the factors. If the negotiations dispute remains unresolved after the fact-finding process, the Act provides that each party shall submit its last best offer on all disputed issues to the Labor Relations Board. 3 V.S.A. Section 925(i). In considering which offer to select in a state government dispute, the Board indicated that it would not consider ability to pay. The Board stated: "We do this not only because there is no statutory direction that we consider (ability to pay), but also because ability in this case is a political, rather than a financial, issue." The Board further stated : "It is up to the Vermont General Assembly to determine the funds it wishes to make available to support State government." Vermont State Employees' Association and State of Vermont, 15 VLRB 107, 113 (1992).

The Judiciary Employee Relations Act lists three factors which a factfinder “shall consider” in making a recommendation. The employer’s ability to pay is not listed as one of the factors. 3 V.S.A. Section 1018(f). If the negotiations dispute remains unresolved after the fact-finding process, the Act provides that each party shall submit its last best offer on all disputed issues to the Labor Relations Board for a final and binding decision. There is no listing of factors for the Board to consider in making this decision. 3 V.S.A. Section 1018(i). Alternatively, the parties may agree in advance to submit disputes to arbitrator. The Act provides that an arbitrator “shall consider” the same three factors to be considered by a factfinder. 3 V.S.A. Section 1019.

The Independent Direct Support Providers Labor Relations Act lists several factors which a factfinder “shall consider” in making a recommendation. The employer’s ability to pay is not listed as one of the factors. 21 V.S.A. Section 1636(f). If the negotiations dispute remains unresolved after the fact-finding process, the Act provides that each party shall submit its last best offer on all disputed issues to the Labor Relations Board for a decision. There is no listing of factors for the Board to consider in making this decision. Then, the Vermont General Assembly determines whether to appropriate sufficient funds to implement the Board decision. 21 V.S.A. Section 1636(i).

The Early Care and Education Providers Labor Relations Act lists factors which a factfinder “shall consider” in making a recommendation. The employer’s ability to pay is not listed as one of the factors. 33 V.S.A. Section 3611(f). If the negotiations dispute remains unresolved after the fact-finding process, the Act provides that each party shall submit its last best offer on all disputed issues to the Labor Relations Board for a decision. There is no listing of factors for the Board to consider in making this decision. Then, the Vermont General Assembly determines whether to appropriate sufficient funds to implement the Board decision. 33 V.S.A. Section 3611(i).

Please contact me if there are any further questions.

Tim Noonan