MEMORANDUM

TO: House Education Committee

FROM: Joel D. Cook, Executive Director, Vermont-NEA

DATE: March 17, 2015

SUBJECT: Compromise approach regarding teacher strikes and school board impositions – ** actual binding arbitration if adopted by the local electorate **

A. Some background about the collective bargaining process ("O'NIMFS")

Organizing: Collective bargaining is a process between an employer and its employees who have organized for the purpose and selected an "exclusive representative," or union.

Negotiations: The overall process from beginning to end, but formally the initial stage through which the parties develop ground rules and offer proposals and counterproposals. *Each step in the process is designed to help the parties narrow their differences*.

Impasse: The point, if any, at which the parties acknowledge the need for third-party help in resolving remaining differences.

Mediation: A voluntary process triggered by agreement of the parties through which a mediator works with them to help determine how close they can actually come to resolving remaining differences.

Fact-finding: A mandatory process triggered by either party through which they present their remaining issues in dispute, with supporting information and argument, to a fact-finding panel (or individual) who provides a non-binding recommendation to them regarding a most reasonable basis on which to reach agreement.

Settlement – Strike/imposition – Submission:

Settlement: The parties agree and put all issues in contract form. May occur at any time in the process.

Strike/imposition: The parties fail to agree and the employees choose to strike and/or the employer chooses to impose terms and conditions of employment (not a "contract"). May occur no sooner than 30 days following receipt of fact-finding report.

- The purpose of a strike: to induce the employer to resume negotiations
- The purpose of an imposition: to terminate negotiations without a collective bargaining agreement

Submission: The parties agree or are required to submit their dispute to an arbitration panel (or individual) for a final and binding decision on issues remaining in dispute. That decision and all issues to which the parties agreed form the contract between them.

B. Vermont-NEA position regarding the right of teachers to strike and of school boards to impose finality

Vermont-NEA's long-held position

- Since 1995, Vermont-NEA has expressed willingness to accept binding interest arbitration as a substitute for the right of teachers to strike and the right of school boards to impose finality.
- We have acted favorably on that position in legislative discussions ever since, including particularly 1999 and 2007.
- It is not a position universally embraced by Vermont-NEA members, and it is not favored by management organizations.

Perspective

People concerned about strikes typically describe them as "too disruptive." What follows may not change that perception and the numbers certainly could be refined.

The total number of strike days in local districts (without including the 1985 aberration that was *Hinesburg*) is about 150, over more than 40 years, over more than 250 districts. The number of required student attendance days each year is 175. The "disruption" ratio is 150 / (40 x 175 x 250) = 150/1,750,000 = 8.57 thousandths of 1%. A single snow day that blankets the state exceeds that 40+ year total.

Two alternative paths that might be acceptable

1. **Real arbitration.** This path is significantly different from H.76. It would do the following:
   - trades strikes/impositions for actual arbitration (that is, there is *no* state labor board jurisdiction);
   - extends to municipal (including non-teachers in schools) employees;
   - does not limit the range of arbitrator(s) decisions;
   - makes no change otherwise in the substance or process of collective bargaining; and
   - permits local electorates to shift from arbitration to strikes/impositions if they, locally, want (contrast this in a bit with the approach in Option 2).

The primary overt argument against this approach: Under it, the state deprives local communities of the right to make their own decisions.

2. **Local opt-in to real arbitration.** This path, described on the next page would simply do this:

   If a local community doesn't want strikes/impositions, it could vote to require arbitration instead.

If the state confers on local communities the right to make the decision in favor of local real arbitration, the argument that the state should not force local communities to give up the right to make their own decisions disappears.

C. An approach that should work: Let your own community decide

Under this approach, if a local community doesn't want strikes or impositions, it could vote to require arbitration instead.

In our Municipal Employees Relations Act (21 V.S.A. § 1733(a)), a local electorate may "adopt arbitration procedures" via referendum. Several communities have done so (most notably Rutland City). That approach could be added to the Teacher Labor Relations Act.

The basic provision would add to the current "voluntary" law and read:

(a) Arbitration shall occur if…

(1) **The electorate of the school district has, pursuant to subsection (b) of this section, voted to require the parties to submit to arbitration if an impasse continues for 20 days after a fact-finding report has been made public pursuant to section 2007(d) of this title, or**

(2) 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~~ **, in which case the** agreement to accept binding ~~interest~~ arbitration may not be revoked and shall apply only to the parties to the arbitration.

Subsection (b), mimicking the municipal employee provision, would read:

(b) Nothing in this section shall prevent the electorate of the school district by a referendum vote from requiring the parties to submit their unresolved issues to final and binding arbitration…

Multiple other provisions would need slight amendments to conform to this additional route to arbitration.

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Other issues to address to make this approach acceptable:

Actual arbitration

- **This proposal leads to actual binding arbitration.**
- The approach in H.76 is not arbitration. The Labor Relations Board does not arbitrate and is not a locally determined decision-maker.

Local determinations

- **This proposal has the local parties selecting the arbitrator[s].**
- H.76 requires the parties to use a state board of gubernatorial appointees.

Arbitrator "authority"

- **This proposal allows the arbitrator(s) to decide remaining issues in dispute based on consideration of multiple factors.**
- H.76 would restrict the decision-maker to choose one party's set of offers or the others as an entire "package," with no discretion.