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S.72

Introduced by Senators Mullin, Balint, Baruth, and Sirotkin

Referred to Committee on

Date:

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, unless a collective bargaining agreement provides for specific
procedural rules governing the conduct of such proceedings. The right to
institute grievance proceedings extends to individual employees, groups of
employees, and collective bargaining units.

1 (b) A collective bargaining agreement may provide for binding arbitration
2 as ~~the~~ a final step of a grievance procedure, rather than a hearing by the Board.
3 An agreement that includes a binding arbitration provision shall also include
4 the procedure for ~~conducting the grievance arbitration proceedings and the~~
5 following provisions:selecting an arbitrator.

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

8 (1) procedural rules for conducting grievance arbitration proceedings;

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

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

12 ~~(1) The parties shall mutually agree on an arbitrator from a list of~~
13 ~~arbitrators provided by the American Arbitration Association or the Federal~~
14 ~~Mediation and Conciliation Service.~~

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

18 ~~(2e) Any collective bargaining agreement that contains a binding~~
19 ~~arbitration provision pursuant to this section shall include A~~an

20 acknowledgement of arbitration that provides substantially the following:

21 ACKNOWLEDGEMENT OF ARBITRATION

1 (The parties) understand that this agreement contains an ~~an agreement~~
2 ~~provision that for binding arbitration as a the~~ final step of the grievance process
3 ~~shall be binding arbitration.~~ After the effective date of this agreement, no
4 ~~grievance, submitted to binding arbitration,~~ may be brought to the Vermont
5 ~~Labor Relations Board and no lawsuit concerning any grievance may be~~
6 ~~brought unless it involves a question of constitutional rights, civil rights, or the~~
7 ~~enforcement of an arbitration award.~~ Employees who have declined employee
8 organization representation or who an employee organization has declined to
9 represent or cannot represent, shall be entitled, either by representing himself
10 or herself or with the assistance of independent counsel, to bring his or her case
11 to the Vermont Labor Relations Board as the final step of the grievance
12 process, in accordance with the rules and timelines established by the Board.

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

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

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

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

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

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

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

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

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

17 ~~(4) There was an absence of substantial evidence on the record as a~~
18 ~~whole to support the award.~~

19 (fi) The ~~board~~ Board shall hear and make a final determination on the
20 grievances of all retired individual employees of the University of Vermont,
21 groups of such retired individuals, and retired collective bargaining unit

1 members of the University of Vermont. Grievances shall be limited to those
2 relating to compensation and benefits that were accrued during active
3 employment but are received after retirement. ~~For the purposes of~~ As used in
4 this subsection, “grievance” means an allegation of a violation of a collective
5 bargaining agreement, employee handbook provision, early retirement plan,
6 individual separation agreement or other documented agreement, or rule or
7 regulation of the University of Vermont.

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

9 **§ 904. SUBJECTS FOR BARGAINING**

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

15 * * *

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

19 * * *

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

21 **§ 928. RULES AND REGULATIONS**

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(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, and, if applicable, procedural rules governing the conduct of grievance proceedings before the Board that are contained in the agreement.

* * *

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

1 the Board. Grievance hearings conducted by the Board shall be informal and
2 not subject to the rules of pleading procedure, and evidence of the courts of the
3 State. Any employee or group of employees included in a duly certified
4 bargaining unit may be represented before the Board by ~~their~~ its bargaining
5 representative's counsel or designated executive staff employees or by any
6 individual the Board may permit at its discretion.

7 * * *

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

9 § 975. ENFORCEMENT AND PREEMPTION

10 * * *

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

16 * * *

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

18 § 1001. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

19 * * *

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

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

8 § 1002. ENFORCEMENT

9 (a) Orders of the ~~board~~ Board or an arbitrator issued under this chapter may
10 be enforced by any party or by the ~~board~~ Board by filing a petition with the
11 Superior Court in Washington ~~superior court~~ County or the ~~superior court~~
12 Superior Court in the county in which the action before the ~~board~~ Board
13 originated. The petition shall be served on the adverse party as provided for
14 service of process under the Vermont Rules of Civil Procedure. If, after
15 hearing, the ~~court~~ Court determines that the ~~board~~ Board or arbitrator had
16 jurisdiction over the matter and that a timely appeal was not filed, or that an
17 appeal was timely filed and a stay of the ~~board~~ Board or arbitrator's order or
18 any part of it was not granted, or that a ~~board~~ Board order was affirmed on
19 appeal in pertinent part by the ~~supreme court~~ Supreme Court or that an
20 arbitrator's order was affirmed on appeal in pertinent part by the Superior
21 Court, the ~~court~~ Court shall incorporate the order of the ~~board~~ Board or

1 ~~arbitrator~~ as a judgment of the ~~court~~ Court. There is no appeal from that
2 judgment except that a judgment reversing a ~~board~~ decision by the Board or an
3 arbitrator on jurisdiction may be appealed to the ~~supreme court~~ Supreme Court.

4 * * *

5 | Sec. 28. EFFECTIVE DATE

6 | This act shall take effect on passage.