

## Cheryl Ewen

---

**From:** Nancy Lynch <[NLynch@VSEA.ORG](mailto:NLynch@VSEA.ORG)>  
**Sent:** Tuesday, April 05, 2016 3:47 PM  
**To:** Cheryl Ewen  
**Subject:** FW: Threatened ULP re: legislation

This addresses out attorney's perspective on the ULP issue being discussed right now.... I am happy to speak to this, or read it for the committee....

---

**From:** Tim Belcher  
**Sent:** Wednesday, March 30, 2016 11:29 AM  
**To:** Steve Howard; Vincent (Hot Mail) Illuzzi; Nancy Lynch; Thomas Abdelnour; Michelle Salvador; Margaret Crowley  
**Cc:** Gary Floadley; Gretchen Naylor  
**Subject:** Threatened ULP re: legislation

I understand that the administration has alleged that we have violated the preamble of the agreement by supporting legislation that would protect Risk Management from privatization. I haven't seen their legal argument, so can only guess as to what they are claiming, but I am confident that they are incorrect.

The preamble states:

"whereas neither party will request the legislature to pass legislation that fundamentally alters or nullifies and provision of the agreement."

This language waives both the state and VSEA's right to petition the government under the 1<sup>st</sup> Amendment, so needs to be read narrowly. As a general rule, a waiver of a constitutional right needs to be clear and unmistakable. The language is also bilateral: whatever it prohibits applies to both sides equally. Since it is ambiguous, past practice can be considered as a way to interpret the parties' intent.

Generally, this language would prohibit either party from submitting legislation to directly change the terms of a contract. If we wanted to get birthdays as a holiday but couldn't get the state to agree to put it in the agreement, we can't submit legislation to make birthdays a holiday for state workers. It also prohibits the state from submitting budget legislation that would reduce our members' pay, or eliminating good time overtime.

In this case, we have not asked the Legislature to directly modify any specific provision of the contract. Instead, I am assuming that the State is relying on the Management Rights Articles, which says:

2. Consistent with statutory authority the State may contract out work as provided in paragraph 3 of this Article and may discontinue services or programs, in whole or in part.

In this provision, we are acknowledging the state's right to contract out and to eliminate services, and waiving our right as a union to challenge the state's decisions under the agreement or under SELRA. We have not waived our right to challenge those decisions in the legislature or any other forum. The provision itself recognizes that the state's rights are subject to "statutory authority," which implies that the legislature can weigh in. If the Legislature can act in this arena, presumably both parties can participate in the legislative process.

Past practice supports our view that the Management Rights Article does not waive our right to support or even propose legislation that relates to the privatization or the elimination of specific state services. We do this all the time. Last year we submitted or proposed legislation to limit cuts to the VVH, PSAPs, CCHSVt, to name a few.

Finally, if the state wants to file a grievance or an unfair labor practice, they are free to do so. This is an unsettled area of law, so perhaps some clarity would be beneficial. Our right to petition the government on behalf of our members is too important for us to shy away from a threatened fight. The charge would be against VSEA, however, and not the legislature.

Timothy Belcher  
General Counsel  
Vermont State Employees Association  
155 State St  
Montpelier, VT 05602

802-223-5247, ext. 319  
802-262-1319 (direct line)  
[tbelcher@vsea.org](mailto:tbelcher@vsea.org)

This email message and any attachments are attorney-client privileged and may contain confidential information. Any distribution, copying, or disclosure of this information is strictly prohibited. If you are not the intended recipient of this email, please notify the sender of the error and delete the message immediately. The unintended release of the information contained in this email does not constitute a waiver of the attorney-client privilege.