MEMORANDUM

TO: Senate Education Committee

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

DATE: February 25, 2015

SUBJECT: S.74 – Binding interest arbitration in schools and municipalities

In this memo, I provide (A) some background about the collective bargaining process, and (B) the reasons Vermont-NEA finds the provisions of S.74 as introduced (with one exception) acceptable.

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. The reasons Vermont-NEA finds the provisions of S.74 as introduced (with one exception) acceptable

S.74 is narrowly drawn to address only how continuing negotiation impasses are resolved. Some of our communities describe labor strikes as "*too* disruptive." (The purpose of a strike obviously is to disrupt the normal functioning of the employer and bring about a settlement.) An alternative to strikes and impositions that maintains the balance in the process addresses that concern. S.74 provides that balanced alternative.

S.74 does not otherwise alter the process of collective bargaining. As with strikes and impositions, parties facing binding interest arbitration have every incentive to narrow their differences as much as possible. S.74 leaves the balance of the negotiation process itself in balance.

S.74 addresses non-state public employers/employees, "municipal employees" as well as "teachers." The reason is that a strike by municipal employees (which here extends to all school employees who are not teachers or administrators) or by teachers has the same effect on the functioning of the employer: a strike is a strike, by whomever, just as an imposition is an imposition. Other Vermont unions support the inclusion of municipal employers in S.74.

S.74 retains local decision-making authority in two ways. The process of collective bargaining is between two local parties: the municipal employer or school district and their employees. There is no role for the state to play in actually deciding on the provisions of their contracts.

a. **S.74 ensures that arbitration decisions are locally made.** It does so by means of an arbitration "panel," consisting of one arbitrator selected locally by management and one selected locally by the employees' union, and a third selected by the first two.

b. **S.74 even provides the local electorate the authority to decide not to use binding interest arbitration and adopt instead the rights both to strike and to impose.** The current municipal employees' law, which provides for the right to strike, permits local electorates to replace strikes and impositions with binding interest arbitration. It's been in place in several communities, most notably Rutland City, where the city and its employee unions have used interest arbitration on multiple occasions to resolve their negotiations. S.74 merely reverses the "default" and extends to municipal employees and teachers/administrators. ***It expresses a state public policy preference for arbitration, but permits local communities to adopt the rights to strike and impose in its place.***

S.74 affords the arbitrator broad authority. Some management groups say arbitration is "too conservative," that employers must have the right to "impose" big changes. Leaving aside what that sentiment misses,[1] S.74 permits the arbitrator the greatest latitude in "determining all issues remaining in dispute between the parties," rather than limiting the arbitrator's purview to "last best offers." ***The parties are free to bring their best advocacy to the process without concern the arbitrator will be restricted from deciding based on what is most convincing.***

The one exception. Sec. 9 should be amended or deleted. If the bill were to take effect July 1, 2015, there would be no problem. As drafted (making the effective date July 1, 201**6**), this would permit school boards to impose and deny teachers/administrators the right to strike between now and then. Balance may be restored by moving up the overall effective date or deleting this section.

[1] What that sentiment misses is that "big changes," if they're worthy, are the product of agreement by labor and management. No truly "big changes" have really ever emerged from an imposition. Impositions generally lead to strikes, and strikes (among other things) generally lead to the undoing of impositions.