



Vermont State Employees' Association

155 State Street, Montpelier, VT 05602;

Phone: (802) 223-5247

Fax: (802) 223-4035 E-mail: vsea@vsea.org

Website: www.vsea.org

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The Honorable Maida F. Townsend
115 State Street
Montpelier, Vermont 05633

Dear Representative Townsend:

I write in response to allegations made by the Department of Human Resources to this Committee that VSEA is committing an unfair labor practice by advocating for changes to the statute governing privatization of state work. This inflammatory claim is without any legal merit. This Department has made this claim in the past regarding other legislation, but has never tested its legal theory before the Vermont Labor Relations Board. Since this matter affects VSEA's First Amendment right to petition the government for redress of grievances, VSEA cannot stand by and permit this misinformation.

The Preamble of the collective bargaining agreement provides the "during the life of this Agreement, the parties agree that neither the State nor the Association will request the Legislature to pass legislation which alters or nullifies any provision of this Agreement." This provision applies to the express terms of the negotiated agreement, and provides that neither side will attempt a legislative end-run around the bargaining process. For example, if the parties negotiate a \$100 uniform allowance, the Union cannot ask the legislature to increase the allowance to \$150. Nor can the Governor request legislation to reduce that allowance to \$50. The issue of privatization is addressed in the Management Rights Article of the contract, and provides the union with some limited rights to notice and consultation in some situations. None of those limited rights would be changed by the proposed legislation. There is no conflict, so VSEA cannot be said to be advocating to "alter or nullify" any term of the agreement.

In addition, that provision is written to explicitly reference the applicable statutes. In other words, whatever rights are implicated in the agreement are explicitly subordinate to the rights provided by law. That provision does not freeze the statute, but merely references external law. If enacted, the contract will remain the same. This is comparable to a contract provision requiring holiday pay for all legal holidays. Such a provision would not prevent either party from advocating for a legislative change to this or that legal holiday in general.

While the Department's allegation lacks merit, at most it would bar advocacy for legislation that took effect during the term of the current agreement. That agreement expires June 30, 2018. If this is a matter of concern, the Committee could address the issue with an amendment that would provide that the law would not affect any contract in effect at the time of enactment. A similar approach was adopted in 21 V.S.A. § 484 (d)(2), permitting the law to take effect after the expiration of then-existing agreements.

Sincerely,



Tim Belcher,
General Counsel, Vermont State Employees' Association

cc: The Honorable Robert LaClair
The Honorable Warren F. Kitzmiller
The Honorable Jessica Brumsted
The Honorable Dennis J. Devereux
The Honorable John Gannon
The Honorable Marcia Gardner
The Honorable James Harrison
The Honorable Patti J. Lewis
The Honorable Tristan Toleno
The Honorable Cynthia Weed