

S.254

An act relating to union organizing

The House proposes to the Senate to amend the bill as follows:

First: By striking out Sec. 1, 3 V.S.A. § 941 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND
REPRESENTATION

* * *

(c)(1) A petition may be filed with the Board, in accordance with procedures prescribed by the Board:

~~(1)~~ By by an employee or group of employees, or any individual or employee organization purporting to act ~~in~~ on their behalf, alleging by filing a petition or petitions bearing signatures of not less than 30 percent of the employees, that they wish to form a bargaining unit and be represented for collective bargaining, or that the individual or employee organization currently certified as the bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit, or that they are now included in an approved bargaining unit and wish to form a separate bargaining unit under Board criteria for purposes of collective bargaining. The employee, group of employees, individual, or employee organization that files the petition, shall, at

the same time that the petition is filed with the Board, provide a copy of the petition to the employer and, if appropriate, the current bargaining agent.

(2)(A)(i) An employer shall, not more than seven business days after receiving a copy of the petition, file any objections to the appropriateness of the proposed bargaining unit and raise any other unit determination issues with the Board and provide a copy of the filing to the employee, group of employees, individual, or employee organization that filed the petition.

(ii) A hearing shall be held before the Board pursuant to subdivision (d)(1)(B) of this section in the event the employer challenges the appropriateness of the proposed bargaining unit, provided that a hearing shall not be held if the parties stipulate to the composition of the appropriate bargaining unit and resolve any other unit determination issues before the hearing.

(iii) The Board may endeavor to informally mediate any dispute regarding the appropriateness of the proposed bargaining unit prior to the hearing.

(B)(i) Within five business days after receiving a copy of the petition, the employer shall file with the Board and the employee or group of employees, or the individual or employee organization purporting to act on their behalf, a list of the names and job titles of the employees in the proposed

bargaining unit. To the extent possible, the list of employees shall be in alphabetical order by last name and provided in electronic format.

(ii) An employee or group of employees, or any person purporting to act on their behalf, that is seeking to demonstrate that the current bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit shall not be entitled to obtain a list of the employees in the bargaining unit from the employer pursuant to this subdivision (c)(2)(B), but may obtain a list pursuant to subdivision (e)(3) of this section after the Board has investigated its petition and determined that a secret ballot election shall be conducted.

(iii) The list shall be kept confidential and shall be exempt from copying and inspection under the Public Records Act.

(d) The Board, a Board member ~~thereof~~, or a person or persons designated by the Board shall investigate the petition; and do one of the following:

(1) Determine that the petition has made a sufficient showing of interest pursuant to subdivision (c)(1) of this section.

~~(1)(2)(A) If~~ If it finds reasonable cause to believe that a question of unit determination or representation exists, ~~an appropriate hearing shall be scheduled before the Board upon due notice~~ the Board shall schedule a hearing to be held before the Board not more than ten business days after the petition was filed with the Board.

(B) Once scheduled, the date of the hearing shall not be subject to change except as provided pursuant to subdivision (e)(4) of this section. ~~Upon request, the results of the investigation shall be made available by the Board to the petitioners and all intervenors, if any, including the duly certified bargaining representative prior to giving notice of hearing. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven calendar days before the hearing.~~

(C) Hearing procedure and notification of the results of same the hearing shall be in accordance with rules prescribed adopted by the Board, or except that the parties shall only be permitted to submit posthearing briefs within not more than five business days after the hearing if the parties mutually agree to do so or if the Board requests that the parties submit posthearing briefs.

(D) The Board shall issue its decision as soon as practicable and, in any event, not more than five business days after the hearing or the submission of any posthearing briefs.

~~(2)(3) dismiss the petition, based upon the~~ If the Board finds an absence of substantive evidence, it shall dismiss the petition.

(e)(1) Whenever, as a result on the basis of a petition and an appropriate pursuant to subdivision (d)(1) of this section or a hearing pursuant to subdivision (d)(2) of this section, the Board finds substantial interest among

employees in forming a bargaining unit or being represented for purposes of collective bargaining, a secret ballot election shall be conducted by the Board ~~to be taken in such manner as to show~~ not more than 23 business days after the petition is filed with the Board except as otherwise provided pursuant to subdivision (4) of this subsection.

(2) The election shall be conducted so that it shows separately the wishes of the employees in the voting group involved as to the determination of the collective bargaining unit, including the right not to be organized. ~~In order for a~~ The collective bargaining unit to or collective bargaining representative shall be recognized and certified by the Board, ~~there must be~~ upon a majority vote east by those of the employees voting.

(3)(A) The employer shall file with the Board and the other parties a list of the employees in the bargaining unit within two business days after the Board determines that a secret ballot election shall be conducted.

(B) The list shall include, as appropriate, each employee's name, work location, shift, job classification, and contact information. As used in this subdivision (3), "contact information" includes an employee's home address, personal e-mail address, and home and personal cellular telephone numbers to the extent that the employer is in possession of such information.

(C) To the extent possible, the list of employees shall be in alphabetical order by last name and provided in electronic format.

(D) The list shall be:

(i) kept confidential by the Board and all of the parties; and

(ii) shall be exempt from copying and inspection under the Public Records Act.

(E) Failure to file the list within the time required pursuant to subdivision (A) of this subdivision (3) may be grounds for the Board to set aside the results of the election if an objection is filed within the time required pursuant to the Board's rules.

(4) The Board may, upon the request of any party or on its own motion, extend any time period set forth in this subsection or in subsections (c) and (d) of this section for good cause, provided that the election shall be conducted, or, in the event of a mail ballot election, that ballots are mailed to the employees, within not more than 60 calendar days after the date the petition is filed pursuant to subsection (c) of this section. The Board may further extend the time to conduct the election by not more than 30 additional calendar days upon the mutual agreement of the parties or if it determines that extraordinary circumstances have made such an extension necessary.

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(g)(1) In determining the representation of State employees in a collective bargaining unit, the Board shall conduct a secret ballot of the employees within the time period set forth in subdivision (e)(1) of this section, unless the time to

conduct the election is extended pursuant to subdivision (e)(4) of this section,
and certify the results to the interested parties and to the State employer. The
original ballot shall be so prepared as to permit a vote against representation by
anyone named on the ballot. No representative will be certified with less than
a majority of the votes cast by employees in the bargaining unit.

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Second: In Sec. 2, 16 V.S.A. § 1992, in subdivision (a)(2)(B), before the
words “business days” by striking out the word “two” and inserting in lieu
thereof the word “five”

Third: By striking out Sec. 3, 21 V.S.A. § 1724, in its entirety and inserting
in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 21 V.S.A. § 1724 is amended to read:

§ 1724. CERTIFICATION PROCEDURE

(a)(1) A petition may be filed with the Board, in accordance with
~~regulations prescribed~~ rules adopted by the Board:

(~~1~~)(A) By an employee or group of employees, or any individual or
employee organization purporting to act ~~in~~ on their behalf, alleging that not
less than 30 percent of the employees, wish to form a bargaining unit and be
represented for collective bargaining, or assert that the individual or employee
organization currently certified as bargaining agent is no longer supported by
at least 51 percent of the employees in the bargaining unit, or that not less

than 51 percent of the employees now included in an approved bargaining unit wish to form a separate bargaining unit under Board criteria for purposes of collective bargaining. The employee, group of employees, individual, or employee organization that files the petition shall, at the same time that the petition is filed with the Board, provide a copy of the petition to the employer and, if appropriate, the current bargaining agent.

~~(2)~~(B) By the employer alleging that the presently certified bargaining unit is no longer appropriate under Board criteria. The employer shall provide a copy of the petition to the current bargaining agent at the same time that the petition is filed with the Board.

~~(2)~~(A)(i) An employer shall, not more than seven business days after receiving a copy of the petition, file any objections to the appropriateness of the proposed bargaining unit and raise any other unit determination issues with the Board and provide a copy of the filing to the employee, group of employees, individual, or employee organization that filed the petition.

(ii) A hearing shall be held before the Board pursuant to subdivision (d)(1)(B) of this section in the event the employer challenges the appropriateness of the proposed bargaining unit, provided that a hearing shall not be held if the parties stipulate to the composition of the appropriate bargaining unit and resolve any other unit determination issues before the hearing.

(iii) The Board may endeavor to informally mediate any dispute regarding the appropriateness of the proposed bargaining unit prior to the hearing.

(B)(i) Within five business days after receiving a copy of the petition, the employer shall file with the Board and the employee or group of employees, or the individual or employee organization purporting to act on their behalf, a list of the names and job titles of the employees in the proposed bargaining unit. To the extent possible, the list of employees shall be in alphabetical order by last name and provided in electronic format.

(ii) An employee or group of employees, or any person purporting to act on their behalf, that is seeking to demonstrate that the current bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit shall not be entitled to obtain a list of the employees in the bargaining unit from the employer pursuant to this subdivision (a)(2)(B), but may obtain a list pursuant to subdivision (e)(3) of this section after the Board has investigated its petition and determined that a secret ballot election shall be conducted.

(iii) The list shall be kept confidential and shall be exempt from copying and inspection under the Public Records Act.

(b) The Board, a Board member ~~thereof~~, or a person or persons designated by the Board shall investigate the petition; and do one of the following:

(1) Determine that the petition has made a sufficient showing of interest pursuant to subdivision (a)(1)(A) of this section.

~~(1)(2)(A) If it finds reasonable cause to believe that a question of unit determination or representation exists, an appropriate hearing shall be scheduled before the Board upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than 14 calendar days before the hearing. the Board shall schedule a hearing to be held before the Board not more than ten business days after the petition was filed with the Board.~~

(B) Once scheduled, the date of the hearing shall not be subject to change except as provided pursuant to subdivision (e)(4) of this section.

(C) Hearing procedure and notification of the results thereof of the hearing shall be in accordance with rules prescribed adopted by the Board or, except that the parties shall only be permitted to submit posthearing briefs within not more than five business days after the hearing if the parties mutually agree to do so or if the Board requests that the parties submit posthearing briefs.

(D) The Board shall issue its decision as soon as practicable and, in any event, not more than five business days after the hearing or the submission of any posthearing briefs.

~~(2)(3) dismiss the petition, based upon the~~ If the Board finds an absence of substantive evidence it shall dismiss the petition.

* * *

(e)(1) In determining the representation of municipal employees in a collective bargaining unit, the Board shall conduct ~~a~~ an election by secret ballot of the employees and certify the results to the interested parties and to the employer. The election shall be held not more than 23 business days after the petition is filed with the Board except as otherwise provided pursuant to subdivision (4) of this subsection.

(2) The original ballot shall ~~be so prepared as to~~ permit a vote against representation by anyone named on the ballot. No representative will be certified with less than a 51 percent affirmative vote of all votes cast. ~~In the case where~~ If it is asserted that the certified bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit and there is no attempt to seek the election of another employee organization or individual as bargaining representative, there shall be at least 51 percent negative vote of all votes cast to decertify the existing bargaining agent.

(3)(A) The employer shall file with the Board and the other parties a list of the employees in the bargaining unit within two business days after the Board determines that a secret ballot election shall be conducted.

(B) The list shall include, as appropriate, each employee's name, work location, shift, job classification, and contact information. As used in this subdivision (3), "contact information" includes an employee's home address, personal e-mail address, and home and personal cellular telephone numbers to the extent that the employer is in possession of such information.

(C) To the extent possible, the list of employees shall be in alphabetical order by last name and provided in electronic format.

(D) The list shall be:

(i) kept confidential by the Board and all of the parties; and

(ii) shall be exempt from copying and inspection under the Public Records Act.

(E) Failure to file the list within the time required pursuant to subdivision (A) of this subdivision (3) may be grounds for the Board to set aside the results of the election if an objection is filed within the time required pursuant to the Board's rules.

(4) The Board may, upon the request of any party or on its own motion, extend any time period set forth in this subsection or in subsections (a) and (b) of this section for good cause, provided that the election shall be conducted, or, in the event of a mail ballot election, that ballots are mailed to the employees, within not more than 60 calendar days after the date the petition is filed pursuant to subsection (c) of this section. The Board may further extend the

date to conduct the election by not more than 30 additional calendar days upon the mutual agreement of the parties or if it determines that extraordinary circumstances have made such an extension necessary.

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