The University of Vermont

To: Senate Committee on Economic Development, Housing, and General Affairs
From: Jes Kraus, Chief Human Resources Officer
Date: February 18, 2020
Subj: Summary of Testimony on S.254

Thank you for the opportunity to speak with the committee last Friday about S.254. As I expressed during my testimony, the University has concerns with respect to the privacy of employee information, the timing of hearings, elections, and production of employee lists proposed by the bill, and the prospect of legislating automatic dues deduction and access to new employees on work time, both of which are subjects for bargaining. Per your request, I have summarized these concerns below. Although other employers may have similar concerns with respect to the labor statutes governing other public employees, the concerns expressed herein are specific to the proposed amendments to the State Employees' Labor Relations Act (SELRA). Please feel free to contact me if you have questions or need additional information.

I. EMPLOYEE LISTS AND PRIVACY

The bill proposes that when a union is trying to organize public employees and files a petition with the employer and the Vermont Labor Relations Board (VLRB), the employer would be required to provide a list of all the employees in the union's proposed bargaining unit, including personal information like cell phone numbers, home addresses, and personal email addresses, within ten days after receiving the petition. The effect of this proposal would be to fast track the so-called "excelsior list" (list of employee personal contact information) without an opportunity for the employer to raise any objections to, or the VLRB to review, the appropriateness of the proposed unit. This approach raises several concerns.

A. Lack of Opportunity for the Employer and VLRB to Weigh in

Currently, once a union demonstrates 30% interest among a group of employees it is trying to organize, the VLRB investigates and sets a hearing with the employer and the union. The hearing creates an opportunity, with assistance from the VLRB, to resolve any issues of unit determination. It is not uncommon for unions to include, for example, supervisory or confidential employees, or to propose a bargaining unit that is too broad or over-fragmented. Under the current model, which has functioned well for decades in Vermont, the employer and the union can raise and resolve any disagreements, and the VLRB can ensure that the bargaining unit is an appropriate community of interest consistent with the requirements of SELRA.

After the VLRB determines the appropriate bargaining unit and sets an election, it directs the employer to produce the excelsior list by a specified date prior to the election, so that the union can both verify the list and conduct outreach to the employees eligible to vote. This process is fair to both parties, ensures consistent results with VLRB oversight, and ensures that private employee information is not unnecessarily given to a third party.

B. Employee Privacy

When a union files a petition with the VLRB, it must only demonstrate 30% interest among the employees it seeks to represent to trigger the process described above. This means that even under current practice, as many as 70% of the employees in the proposed unit may not support unionization efforts, and may not want their personal email addresses, home addresses, or cell phone numbers shared with the petitioning union. Further, the University does not require employees to provide cell phone numbers or personal email addresses, and would not be able to provide some of the information that the bill requires.

The University has a significant interest in safeguarding its employees' private information, and in ensuring that it is not arbitrarily shared with third parties. As one of the largest employers in Vermont, many groups and organizations would undoubtedly like access to our employees' personal contact information, and the University is concerned that the process proposed by S.254 – requiring production of private employee information without the employer's ability to raise any objection or the VLRB's ability to review the merits of the petition – seriously jeopardizes our employees' privacy rights.

The University is also concerned that the bill does not allow employees to opt out of having their private address and contact information provided to a third party. As we discussed in the Committee's hearing last Friday, some employees may have legitimate safety concerns with disclosure of their information, especially if they have been the victim of domestic violence or other crimes. This concern is further exacerbated by the fact the bill does not impose any obligation on the part of a petitioning union to safeguard the information. While one union (the VTNEA) testified that they do not share their lists of private employee information, their decision not to do so is only a matter of internal practice. Even if other unions agree with VTNEA's current practice, there is nothing in existing law that would prohibit a change in that practice.

C. Public Availability of Employee Information

There is a wealth of public contact information for University employees available to any union seeking to organize on campus. Unlike most other employers, the University publishes an annual list of base pay, which includes all employees' names, job titles, and salaries. The University also maintains on its website a searchable database of all employees, which provides employee names, business units, job titles, work phone and email addresses. Like all members

of the public, unions can readily access this information, and should have no difficulty communicating with employees through their work email, or by contacting their work phone number. Likewise, nothing prohibits unions from using these resources to contact employees and ask them to share their personal contact information; as should be the case, it is then up to individual employees to decide whether or not they want to share their personal information with the union.

D. Added Work and Time

Under current practice, the VLRB directs employers to produce an excelsior list to a petitioning union in advance of an election. As discussed in greater detail above, production of the list occurs after the employer has had an opportunity to raise any concerns it may have over composition of the bargaining unit, and the VLRB has had an opportunity to resolve any such concerns and determine the appropriate bargaining unit.

Producing the excelsior list is not a simple task for large employers, and ensuring its accuracy requires significant time and resources. Under the approach proposed by the bill, employers could be required to produce multiple lists: initially, a list of the employees identified solely by the union when it petitions the employer and the VLRB that it is seeking to determine interest in the formation of a bargaining unit, then again after the VLRB has reviewed the petition, scheduled a hearing, identified the appropriate unit, and set an election. This approach is inefficient, and imposes additional unreasonable requirements on employers.

II. TIMING

The timelines outlined in the bill for producing excelsior lists, scheduling hearings, and holding elections are both unreasonable and unnecessary. The VLRB is best situated to evaluate how much time the parties might reasonably need to respond to a petition, prepare for a hearing, produce an excelsior list, or hold an election. The timing of any of these may reasonably vary depending on a number of factors, such as the size of the proposed bargaining unit, the number of work locations, and whether one or more unions is seeking to organize the same group of employees.

Understandably, unions are anxious to preserve their ability to organize in the post-*Janus* era. There are undoubtedly employers that might seek to drag out an election process for years with the hope of derailing union organizing efforts. SELRA's applicability, however, is limited to the State of Vermont, Vermont State Colleges (VSC), University of Vermont, Defender General, and State's Attorneys' offices. State employees have been fully organized across several bargaining units for decades, as have been a number of employee units from all of the employers listed above. The University is not aware of any problems with SELRA employers creating substantial delays or obstacles to union petitions or elections.

Of particular concern in the bill is the proposal that an election be conducted within 21 days of the filing of a union petition. In some cases (again, depending on the size of the proposed unit and a number of other factors), 21 days would not allow adequate time for the employer to evaluate the union's petition and submit a meaningful response with respect to the composition of the bargaining unit. Perhaps more importantly, it would limit both the union's and the employer's ability to notify employees of the election, schedule space, and make arrangements for absentee ballots, accessibility needs, etc. Even more disturbing is the proposal in the bill that would invalidate an election in the event that an employer is unable to provide an excelsior list within five days after the VLRB notices an election. As noted in the section above, this is an unreasonably short timeline to provide an extensive list of information, especially for a large employer like the University. The goal for all parties should be production of a list that is as accurate and complete as possible as quickly as possible, not compliance with an arbitrary and unreasonable deadline.

Both the union and the employer have a mutual interest in ensuring that as many employees as possible have an opportunity to have their voices heard in a union election. The bill as proposed would not only hinder employee participation by imposing an unreasonably narrow window to notify employees and facilitate the election process, it would invalidate their votes if the employer is not able to produce a detailed list, including job and personal information for potentially hundreds of employees, within five days. No matter the outcome, a law that invalidates employees' votes because an employer provided an excelsior list in seven days instead of five is the antithesis of democratic unionism.

Specific to UVM, there have been a number of organizing efforts on campus within the last decade. Each effort resulted in a prompt response and cooperation from the University, prompt review by the VLRB, and prompt resolution:

<u>VTNEA and UNITED STAFF – 2012</u>

In 2012, the VTNEA sought to organize a group of administrative and clerical employees, and a second union – United Staff – intervened with sufficient showing of interest to be added to the ballot. The University objected to the composition of the proposed unit as overly fragmented, and asserted that the bargaining unit should also include technical and specialized employees. The VLRB ultimately agreed with the University's position. While VTNEA and United Staff were undoubtedly unhappy with the University's position that the proposed unit was too small, the University raised a number of very real and problematic business concerns articulated in the VLRB's decision. The employer's right to raise legitimate business concerns over the composition of a bargaining unit cannot fairly be viewed as a "delay tactic." It should be noted that in the subsequent 2014 organizing effort, which involved the properly composed unit identified by the VLRB, the University raised no objections.

11/19/11	University Staff Union/NEA Petition filed with VLRB
1/20/12	United Staff filed petition to intervene
1/26/12	UVM filed response
1/27/12	VLRB notified parties that United Staff met required showing of interest
3/16/12	Parties agreed to list of excluded employees
3/16 and 3/29/12	VLRB hearings held
4/30/12	VLRB issues decision dismissing position

VSEA AND UNITED STAFF – 2014

Subsequent to the 2012 organizing efforts outlined above, the VSEA filed its own petition for the same group of employees previously organized by VTNEA. United staff was also on the ballot for this election.

9/25/14	Petition filed with VLRB
10/7/14	Parties agreed to list of excluded employees
11/06/14	VLRB Notice of Election sent
12/16 and 12/17/14	Election held

TEAMSTERS – 2019

Similar to its concerns with the unit proposed by VTNEA and United Staff in 2012, the University asserted that a separate bargaining unit for sergeants would cause over fragmentation and create additional administrative burdens. However, the University suggested instead (and the Teamsters agreed) adding the sergeants to the existing unit of police officers.

2/14/19	Teamsters filed petition with VLRB to represent police sergeants
3/6/19	UVM filed a response objection to separate bargaining unit for sergeants
4/1/19	Parties agreed to add sergeants to existing unit of police officers
4/26/19	Election held

As clearly indicated in the timelines above, the University has been very prompt in its response to union petitions. Likewise, the VLRB has independently evaluated each petition, and established fair and reasonable timelines for the parties, which the University readily adhered to. Even in the instance where the University raised legitimate unit determination issues and a second union intervened, the entire process – from filing of the initial petition to issuance of a VLRB decision – was complete within approximately five months.

Abandoning the VLRB's discretion to manage the process related to union petitions in favor of arbitrary and legislatively mandated timelines will endanger the ability of both parties to ensure a fair and reasonable process, and to benefit from the VLRB's expertise in determining appropriate bargaining units.

III. AUTOMATIC DUES DEDUCTION AND ACCESS TO EMPLOYEES ON WORK TIME

In theory and in practice, the University has no objection to electronic dues deduction or to allowing unions to have reasonable access to new employees in their bargaining unit during the orientation process. The University has bargained provisions with respect to both of these issues in all of its collective bargaining agreements. Which is exactly the concern: under SELRA, the subjects for bargaining are broad. The method and means by which dues are deducted and the scope of access to new employees on work time are both subjects for bargaining. While the legislature's efforts are undoubtedly well-intended, both unions and employers should be equally concerned with inviting the legislature into their collective bargaining agreements.

During testimony last Friday, there was some discussion comparing the need to legislate these current proposed issues with the legislative mandate for agency fee in 2007. However, the past need for agency fee legislation is not an apt comparison. There are no First Amendment concerns with the method of dues deduction or allowing access to new union employees during the orientation process. But more importantly, the items in question have already been negotiated into both State Employee and UVM contracts. Even if both are very important to unions in the post-*Janus* era, there is no demonstrable need for legislative involvement in collective bargaining agreements on items that were already successfully negotiated by the parties.

I cannot caution enough the slippery slope that these proposals cause for unions and employers alike. Would the legislature be willing to mandate the state employee health plan's participation in OneCare? Would it be willing to legislatively mandate employee background checks to enhance the safety of students on campus, if requested by UVM or the Vermont State Colleges? By opening the door on these somewhat innocuous issues, the legislature runs the risk that unions and employers alike will present each session with a range of subjects that they were not able to successfully win through the collective bargaining process. This seems like an unreasonable level of risk for things that have already been successfully negotiated.

In the event that the legislature does determine to include these items in the bill, the University has several additional concerns. With respect to meeting with new union employees, requiring the meeting to occur during new employee orientation is problematic, since new employee orientation is for all employees, not all of whom are represented by a union. Additionally, the hour of time required by the bill for meetings with new employees on work time is, in the University's experience, more than what is really needed to share information with new employees. Finally, with respect to automatic deduction of dues, the University would not be able to comply with the bill's time frame of "no later than the next pay period after receiving" the authorization" from an employee. Again, in the event that the legislature includes this

negotiable item in the final version of the bill, a time frame of “reasonable” or “no later than 30 days” would be more realistic.