

MEMORANDUM

To: Senator Michael Sirotkin, Chair, Senate Economic Development, Housing and General Affairs Committee

From: Timothy Noonan, Executive Director, Vermont Labor Relations Board

Date: August 27, 2020

Subject: S.254, An act relating to union organizing

Draft 2.4 has addressed several of the issues that I raised yesterday in my memorandum to you. This substantially reduces the issues the Board is raising. However, the following issues still exist with respect to Draft 2.4.

Specific timelines – Draft 2.4 has been changed from Draft 1.2 to now specify whether days are “calendar” or “business” with respect to various deadlines in the Board processing of election petition cases. However, the resulting mixing of “calendar” and “business” days causes significant issues with respect to two deadlines – Board hearings being held within 8 calendar days of the filing of an election petition, and elections being held within 21 calendar days of the filing of a petition (*See* p. 3, line 14; p.5, line 21; p.6, line 7; p.14, line 16; p.16, line 15; p.17, line 3). If these are changed to specify them as “business” days, there are no issues the Board would raise with respect to them. If they continue to be specified as “calendar”, there are the following potential consequences:

- There will be many instances where there will be no opportunity to informally resolve appropriate unit issues contrary to the explicit statutory provision that the Board may attempt to mediate any such dispute.
- There will be insufficient time for the Board to provide notice of elections in cases where there is a Board hearing.
- Employees will be unable to exercise their right to cast absentee ballots that the Board provides in all on-site elections in cases that proceed to hearing. I note that Draft 2.4 provides on p.17, lines 4 – 5 that “(t)he parties may mutually agree to extend the time for submission of absentee ballots to a date after the election date.” This does not resolve the absentee ballot issue for several reasons. There is no solution if the parties do not mutually agree. It also is contrary to the intent of this bill to expedite elections. This delays the finality of elections. Further, it is contrary to the consistent practice of the

Board that all ballots are counted at the time set aside for ballot counting, providing finality to the process. Finally, this in many cases will be contrary to the secrecy of the ballot as it will not be unusual in our elections to have one absentee ballot cast.

In my testimony, I will provide an example that illustrates the issues with respect to these time deadlines and how these issues can be eliminated if “business”, rather than “calendar”, days are specified.

Contents of employer response to election petition – As stated in my memorandum yesterday, the phrase “or any other unit determination issues” needs to be inserted after “unit” and before “with” on p.2, line10, and on p.13, line 7, to capture the full content of the employer response that the Board is needed in election petition cases.

Counting of Separated Ballots – As stated in my memorandum yesterday; referring to p.6, line 12; and p.17, line 7; there is a significant issue with respect to the secrecy of ballots due to this bill if the separated ballot *may affect* the results of the election. The statutes the Board administers provide for the secrecy of ballots. As discussed above, many of the elections the Board conducts are small. In a case where there are a small number of separated ballots that may affect the results of the election, and the Board determines they should be counted, there may be no secrecy of the ballot. For example, there would be no secrecy in the event of one separated ballot and there may not be if there are two separated ballots.

List of employees – As stated in my memorandum yesterday, the provisions on p. 2, lines 3 through 7, and p.12, lines 17 through 21, appear to refer to an employee list that was part of an earlier draft of this bill and is no longer part of Draft 2.4. It appears to serve no purpose in this draft.

Stipulation of parties to different composition of bargaining unit – As stated in my memorandum yesterday, there are provisions concerning the parties stipulating to a different composition of a bargaining unit after the Board directs the conducting of an election – i.e., p.7, lines 11 through 15; p.18, lines 9 through 13. These provisions serve no purpose because the time for the parties to stipulate to a different composition of a bargaining unit has passed once the Board directs an election.