

Good Morning, Senator White:

Thank you for again seeking our input on S.156.

In the prior email provided by our Department, we responded to the bill as then-drafted, which left our Department under the current impasse proceedings (under the VLRB). We indicated that this would be acceptable to the Department. The question you have now asked is whether the Department of State's Attorneys and Sheriffs (SAS) would want to change the current statutory provision (i.e. using the VLRB) to instead go to private binding arbitration for contract resolution. In order to respond to that inquiry, there are several questions that would need to be clarified/resolved in the draft, and then the Department could consider its position.

Regarding S. 156:

As you are aware, the 2017 legislation – S.131 – advanced and clarified organizing and bargaining rights of the State's Attorneys' employees, primarily those working in the 14 offices. The Department helped with the language revisions, and supported S.131 as passed in 2017.

The Department of State's Attorneys and the VSEA have not started bargaining a first contract. The VLRB's certification of the recently-held union election (affirmative 59-12) should occur this week.

The pending bill, S.156, creates an affirmative requirement to use binding arbitration for contract impasse if one side does not want to use the VLRB's process. This is different than the statutory language of 2015 that established a mechanism for grievance arbitration (see note, below). In that process, both sides have to agree to seek grievance arbitration instead of using the VLRB. Under S.156, contract arbitration can be insisted upon by one side only.

Note: ¹In the current statute, under 3VSA§ 926, grievance arbitration has been provided for as a final step, "rather than a hearing by the Board", if the parties include grievance arbitration as part of their contract. It requires the parties to include "the procedure for selecting an arbitrator", and further states, "the agreement may also establish: (1) procedural rules for conducting grievance arbitration proceedings". It appears that the parties have not adopted grievance arbitration despite the 2015 statutory amendment.

The 2017 legislation, under 3VSA, Ch.25, established our impasse proceedings, with mediation, fact-finding and last-best-offer under the Vermont Labor Relations Board (VLRB). It is the system under which the State and VSEA have operated since 1977 when wage-bargaining was first permitted under the 1969-enacted State Employees Labor Relations Act.

When the 2017 bill was passed, the Department was asked to assist JFO's fiscal note. We advised that any additional costs not contemplated in any approved FY budget would need to be addressed through the Budget Adjustment Act. The FY20 budget for the Department incorporates the current/known

salary and benefit costs, but not increases related to a first contract, such as costs associated with contract arbitration vs. utilizing the VLRB.

The proposed bill does not outline how the State's Attorneys and VSEA would select the arbitrator. I presume it would be by mutual agreement, but if the parties cannot agree, would the parties default to AAA?

Would the parties seek an expedited arbitration process in order to control arbitration costs and speed up the delivery of an arbitrator's decision in order to assist the legislative budget-process? Should the arbitration process limit the number of issue that can be presented (for the same reasons)?

Should the statute establish a shorter timeframe for starting and concluding negotiations, as has been discussed in prior years, so that the costs can be incorporated into the legislative appropriations process and to avoid the employees working under an expired contract?

Under the current statute 3VSA 982(d) if the Legislature fails to appropriate the total necessary funds to implement the agreement, the parties go back to the bargaining table to negotiate within the confines of the allocation. Under the proposed bill, if impasse results a second time, the current language in 982(d) does not make clear the resolution process in a potential second impasse. Would it be a second arbitration? 3VSA 982(d) should be made clear, under either VLRB or arbitration.

I would point out that there are other "process challenges" under the current statute, that could be examined in order to improve the process:

1. The construct of the last-best-offer at the VLRB requires "total package". While this may - or allegedly - create an enhanced incentive to be reasonable and/or cautious, it may not always result in the most equitable results. An alternative process - "issue by issue" last-best-offer - would allow the VLRB to choose the most reasonable proposal on each issue, and likely increase the comfort-level of the parties with the LBO at the Board. This may be an appropriate change.
2. The Labor Board Review Panel language was constructed to engage individuals, from labor or management, with actual experience in labor relations. As you are aware, however, the current language failed to ensure the intended input from the labor stakeholders last year. Additional language, directing specific outreach to named organizations (at a minimum), might help resolve that problem in the future.
3. The Labor Board Review Panel must ensure that the candidates are actually qualified for the specific seat (labor, management or neutral) to which they are nominated, which should include an interview and a discussion of potential conflicts.
4. The process for vetting a potential "neutral" candidate could follow similar criteria and application process used by the Federal Mediation and Conciliation Service (FMCS) when they vet a mediator application. The classification of a candidate as labor or management should, by all reasonable and

objective standards, be more discernable to the Review Panel. If a candidate's background cannot clearly stand out as labor or management, then the person should not be recommended.

We appreciate your engaging us in the discussion, Senator, and we hope to assist the Committee's work on this bill by raising some of these questions for discussion and resolution.

The Department would be able to provide an answer to whether we would support a redrafted S.156 once some of these questions are resolved.

Sincerely,

Annie Noonan

LR Manager

From: Jeanette White <JWhite@leg.state.vt.us>

Sent: Wednesday, April 17, 2019 6:01 PM

To: Noonan, Annie <Annie.Noonan@vermont.gov>; Gail Carrigan <GCarrigan@leg.state.vt.us>; Alison Clarkson <aclarkson@leg.state.vt.us>; Campbell, John <John.Campbell@vermont.gov>; Pepper, James <James.Pepper@vermont.gov>

Cc: Anthony Pollina <APollina@leg.state.vt.us>; Christopher Bray <CBray@leg.state.vt.us>; Brian Collamore <BCollamore@leg.state.vt.us>

Subject: Re: Due to Illness Today: Declined: FW: S.156 - Request for Testimony

Thanks. You are proposing that the VLRB be final here and that it not go to arbitration if both sides don't agree to go to the board? Could we talk for a few minutes.

Jeanette

From: Noonan, Annie <Annie.Noonan@vermont.gov>

Sent: Wednesday, April 17, 2019 10:19 AM

To: Gail Carrigan; Jeanette White; Alison Clarkson; Campbell, John; Pepper, James

Cc: Anthony Pollina; Christopher Bray; Brian Collamore

Subject: Due to Illness Today: Declined: FW: S.156 - Request for Testimony

When: Wednesday, April 17, 2019 1:30 PM-3:00 PM.

Where: SGO

Good Morning, Senator White:

I am writing on behalf of John Campbell, Executive Director, Department of State's Attorneys and Sheriffs.

John was scheduled to testify this afternoon, after the Floor on S. 156 - An act relating to binding interest arbitration for State employees and municipal public safety employees. Unfortunately, John is out sick today with a very severe problem with his back, and will not be available to testify in person or by phone.

Regarding to the Department's position on S.156:

As currently drafted, S.156 maintains the existing statutory language for impasse resolution for our Department of State's Attorneys and Sheriffs - with the Vermont Labor Relations Board as final arbiter (last-best-offer), after mediation and fact-finding as outlined under 3VSA §925. The language, as proposed, is acceptable to our Department at this time. The SAS staff just last Friday voted 59-12 to join VSEA; and the parties have not yet bargained a first contract.

If other language for S.156 is proposed that alters the language as drafted, or that otherwise affects our Department, we respectfully request the ability to review such language and to testify.

Thank you for your review of this email.

Sincerely,

Annie Noonan