

1 S.78

2 Introduced by Senator Hooker

3 Referred to Committee on Government Operations

4 Date: February 12, 2021

5 Subject: Executive; Judiciary Employees Labor Relations Act; binding
6 arbitration

7 Statement of purpose of bill as introduced: This bill proposes to provide that a
8 bargaining impasse between the Vermont Judiciary and the representative of a
9 collective bargaining unit may be resolved through binding arbitration upon
10 the request of either party.

11 An act relating to binding interest arbitration for employees of the Vermont
12 Judiciary

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 3 V.S.A. § 1018 is amended to read:

15 § 1018. MEDIATION; FACT-FINDING; LAST BEST OFFER

16 * * *

17 (i)(1) If the dispute remains unresolved ~~15~~ 20 days after transmittal of
18 findings and recommendations or within a period of time mutually agreed
19 upon by the parties that may be not more than an additional 30 days, each
20 party shall submit to the Board or, upon the request of either party, to an

1 arbitrator mutually agreed upon by the parties its last best offer on all disputed
2 issues as a single package. If the parties cannot agree on an arbitrator, the
3 American Arbitration Association shall appoint a neutral third party to act as
4 arbitrator.

5 (2) Each party's last best offer shall be:

6 (A) filed with the Board or the arbitrator under seal;

7 (B) certified to the Board or the arbitrator by the fact finder; and

8 (C) unsealed and placed in the public record only when both parties'

9 last best offers are filed with the Board or the arbitrator.

10 (3) The Board ~~may~~ or the arbitrator shall hold one or more hearings and
11 consider the recommendations of the fact finder.

12 (4)(A) Within 30 days of the certifications, the Board or the arbitrator
13 shall select between the last best offers of the parties, considered in their
14 entirety without amendment, and shall determine its cost.

15 (B) If the Board or the arbitrator finds that the last best offers of both
16 parties are unreasonable and likely to produce undesirable results or likely to
17 result in a long-lasting negative impact upon the parties' collective bargaining
18 relationship, then the Board or the arbitrator may select the recommendation of
19 the fact finder under subsection (g) of this section as to those disputed issues
20 submitted to the Board or the arbitrator in the last best offers.

1 (5) The Board or the arbitrator shall not issue an order under this
2 subsection that is in conflict with any law or rule or that relates to an issue that
3 is not bargainable.

4 (6) The decision of the Board or the arbitrator shall be final and binding
5 on the parties.

6 Sec. 2. 3 V.S.A. § 1019 is amended to read:

7 § 1019. ~~MEDIATION-ARBITRATION~~

8 ~~(a) Notwithstanding section 1018 of this title or any other law, the parties~~
9 ~~may agree in advance to a mediation and arbitration procedure.~~

10 ~~(b) The parties may jointly select a mediator. If they are unable to agree,~~
11 ~~either party may petition the Board to appoint a mediator who shall be a~~
12 ~~person of high standing and in no way actively connected with labor or~~
13 ~~management. The mediator may not be a person who has served as a mediator~~
14 ~~at an earlier stage of the same proceedings.~~

15 ~~(c) The mediator shall encourage the parties to reach a voluntary settlement~~
16 ~~of the dispute, but may, after a reasonable period of mediation, as determined~~
17 ~~by the mediator, certify to the Board that the impasse continues and end~~
18 ~~mediation efforts.~~

19 ~~(d) If the impasse remains unresolved for 15 days after the mediator's~~
20 ~~certification to the Board, either party may petition the Board to appoint an~~
21 ~~arbitrator who has been mutually agreed upon by the parties. If the parties fail~~

1 to agree on an arbitrator within five days, the Board shall appoint an arbitrator
2 who shall be a person of high standing and not actively connected with labor
3 or management.

4 (e) A hearing before an arbitrator shall be informal and the Rules of
5 Evidence for judicial proceedings shall not be binding. The arbitrator may
6 consider any relevant evidence. The arbitrator may administer oaths and may
7 issue subpoenas to persons and documents and other evidence relating to the
8 issues presented.

9 (f) In reaching a decision, the arbitrator shall consider the factors in
10 subsection 1018(f) of this title.

11 (g) The arbitrator shall submit a report, including its costs, to the parties
12 and to the Board no later than 30 days after the termination of the hearing,
13 unless the time is extended by agreement of both parties. The determination
14 by the arbitrator on all issues shall be final and binding on the parties and shall
15 not be appealable to the Board or to any other judicial or administrative quasi-
16 judicial challenge, except as follows:

17 (1) A party may request the arbitrator to modify an award if the request
18 is made within 30 days after delivery of the award to the applicant. An
19 arbitrator may modify an award if the arbitrator finds one of the following:

1 ~~(A) There was an evident miscalculation of figures or an evident~~
2 ~~mistake in the description of any person, thing or property referred to in the~~
3 ~~award.~~

4 ~~(B) The award was based on a matter not submitted and the award~~
5 ~~may be corrected without affecting the merits of the decision upon the issues~~
6 ~~submitted.~~

7 ~~(C) The award is imperfect in a matter of form that does not affect~~
8 ~~the merits of the controversy.~~

9 ~~(2) Notwithstanding any law to the contrary, upon application of a party,~~
10 ~~a Superior Court shall vacate an arbitration award based on one of the~~
11 ~~following:~~

12 ~~(A) The award was procured by corruption, fraud, or other undue~~
13 ~~means.~~

14 ~~(B) There was evident partiality or prejudicial misconduct by the~~
15 ~~arbitrator.~~

16 ~~(C) The arbitrator exceeded his or her power or rendered an award~~
17 ~~requiring a person to commit an act or engage in conduct prohibited by law.~~

18 ~~(D) There is insufficient evidence on the record to support the award.~~

19 ~~(3) An application to the Superior Court for review pursuant to~~
20 ~~subdivision (2) of this subsection shall be made within 30 days after delivery~~
21 ~~of a copy of the award to the applicant, except that in case of a claim of~~

1 corruption, fraud or other undue means, in which case the petition shall be
2 made within 30 days after such grounds are known or should have been
3 known. [Repealed.]

4 ~~Sec. 3. EFFECTIVE DATE~~

5 ~~This act shall take effect on July 1, 2021.~~

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022 and shall apply to contract negotiations that commence after that date.