

Supreme Court of Vermont
Office of State Court Administrator

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TO: Rep. Thomas Stevens, Chair
House Government, Housing & Military Affairs Committee

FROM: Patricia Gabel, Esq., State Court Administrator

DATE: May 12, 2021

RE: S. 78 - An Act relating to Binding Interest Arbitration for Employees of the Vermont Judiciary

Dear Rep. Stevens:

Thank you for the opportunity to comment on proposed S.78. I understand from others that the Committee met on Friday, May 7th to discuss the bill and that during that meeting Representative Parsons asked a question which was not adequately addressed. For that reason and others, I am submitting this written testimony.

To paraphrase, Rep. Parsons' question was: Have Judiciary-VSEA contract negotiations ever gone to the final step outlined in the statute (i.e. JELRA), and if not, why change the statute?

During the twenty-year history of Judiciary-VSEA bargaining, the sides have never gone to the final statutory step- i.e. having the VLRB choose from among competing last-best-offers (LBO). We have always reached a mutually acceptable settlement before this phase. Because negotiations have never reached the LBO stage, the sides have never been given the opportunity to mutually agree on an arbitrator, an option the current statute allows.

The Executive branch and VSEA have a much longer bargaining history (since 1969), and VSEA apparently feels it lost inappropriately when the VLRB voted 2-1 in March 2018 to accept management's LBO. This was a new experience, as the VLRB had accepted the VSEA's LBO on the three previous occasions that Executive branch contracts went to the penultimate step (1992, 1996, 2016).

In response, the VSEA asked the Legislature to change the Executive branch labor relations act (SELRA). This new provision allowing either side to replace the VLRB with an outside arbitrator has not yet even been tested in Executive branch-VSEA negotiations because a negotiated settlement

was reached between those parties in the 2019 round of bargaining. There is, thus, no basis at this time for any conclusion that this represents a preferable method for settling unresolved disputes.

JELRA as currently written, with LBO as its last step if necessary, is already designed to prompt the parties to bargain in good faith to avoid the time delay, expense, and uncertainty of the last best offer process. To preclude utilization of the VLRB from fulfilling a major purpose for its existence, especially despite all the attendant advantages to which I have previously testified, on speculation of improvement offered by one party does not seem justified.

As indicated, an outside arbitrator will not be as well-versed in Vermont labor relations and Vermont's financial situation as the VLRB. Instead, they will be most familiar with labor relations in Massachusetts, New Hampshire and New York. There seems very little basis to replace Vermont public expertise with a private non-Vermont resource that costs more money.

During the Committee hearing on April 29, 2021, VSEA Executive Director Steve Howard complained that under the current statute "our members will get whatever the Executive Branch negotiated." The Judiciary has a separate collective bargaining statute and engages in separate collective bargaining from the Executive Branch. Nonetheless, in collective bargaining the parties look to comparable settlements of similarly situated parties when evaluating their interests and positions in negotiations. The Vermont Judiciary and the Vermont Executive Branch use the same classification system (Willis). Over the last four Judiciary-VSEA contracts, the settlements reached resulted in salary increases averaging 3.8% per member (which is more than double the U.S. inflation rate during that period.)

The union's position seems to be that the Judiciary bargaining unit desires an outside arbitrator to encourage the Judiciary to bargain a greater salary increase than that to be paid by the Executive branch. It is not clear how this change in law would achieve that result or why, in any event, the payment of unequal compensation increases between different branches of state government using the same classification system would be an improvement in Vermont public policy. In any event, this proposed change in law does not solve any identified deficit in public policy. That is why I described it as a solution looking for a problem.

Thank you for your consideration of our requests with respect to this proposed legislation.

Sincerely,



Patricia Gabel, Esq.

State Court Administrator

cc. Rep. Joseph "Chip" Troiano, Vice Chair
Rep. Barbara Murphy, Ranking Member
Rep. Matthew Birong
Rep. Tiffany Bluemle
Rep. Lisa Hango
Rep. Mary E. Howard, Clerk
Rep. John Killacky
Rep. John Palasik
Rep. Joseph Parsons
Rep. Tommy Walz
Ron Wild, Committee Assistant