

**Northfield School Board v. Washington South
Education Association and Paul Clayton
Vt. Sup. Ct; April 12, 2019**

Summary prepared by Jim DesMarais, Leg. Counsel

Facts:

- A teacher at Northfield Middle High School was suspended under [16 V.S.A. § 1752](#) because the superintendent determined that the teacher’s actions demonstrated “conduct unbecoming a teacher.” The superintendent notified the teacher of his right to appeal the suspension decision to the Northfield School Board and outlined the [§ 1752\(e\)](#) procedures and deadline to bring such appeal.
- Neither the teacher nor anyone on his behalf filed a notice of appeal to the Board. As required by [§ 1752\(h\)](#), the Board met in a warned executive session to review the superintendent's decision to suspend the teacher and recommendation in favor of dismissal. He was dismissed.
- The teacher, now represented by the Vermont-NEA, submitted a grievance alleging a violation of the collective bargaining agreement (CBA) that covered him and requesting that the parties proceed directly to final and binding arbitration.
- The Board responded to Vermont-NEA's letter and declined to accept the grievance, explaining that the teacher waived his right to file a grievance under the CBA because he did not follow the statutorily-prescribed pre-termination procedures under [§ 1752](#) and therefore the grievance was barred as a matter of law.

1 **Text of 16 V.S.A. § 1752:**

2
3 § 1752. GROUNDS AND PROCEDURES FOR SUSPENSION AND
4 DISMISSAL

5 (a) A teacher under contract to teach in a public school who fails, without
6 just cause, to complete the term for which the teacher contracted to teach, shall
7 be disqualified to teach in any public school for the remainder of the school
8 year.

9 [Non-renewal of contract; statutory process in (b) subject to collective
10 bargaining agreement]

11 (b) Unless otherwise negotiated, a teacher under contract to teach in a
12 public school whose contract is not to be renewed for the ensuing year shall be
13 notified in writing, setting forth the grounds therefor, no later than April 15. If
14 the teacher so notified desires a hearing, the teacher shall so request in writing
15 to the clerk of the school board. The teacher shall have the right to a hearing
16 before the school directors within 15 days, may present witnesses and written
17 evidence, and may be represented by counsel. A hearing shall be in executive
18 session unless the teacher making the appeal requests or agrees in writing that
19 it be open to the public. The school board shall affirm, modify, or reverse the
20 nonrenewal and shall issue its decision in writing within five days. In the case
21 of a probationary teacher who has received two written performance

1 evaluations per year of probationary service, a decision of the board shall be
2 final. The standard for nonrenewal of a contract shall be:

3 (1) In the case of a nonprobationary teacher, just and sufficient cause.

4 (2) In the case of a probationary teacher, any reason other than those
5 prohibited by law. However, the standard for nonrenewal for a probationary
6 teacher's contract shall be just and sufficient cause if the teacher has not
7 received at least two written performance evaluations per year of probationary
8 service. A probationary teacher is a person who has been employed as a
9 teacher in Vermont public schools for less than two school years.

10 [Suspension/termination; statutory process in (c)-(i) **not** subject to
11 collective bargaining agreement]

12 (c) A superintendent may suspend a teacher under contract on the
13 grounds of incompetence, conduct unbecoming a teacher, failure to attend to
14 duties, or failure to carry out reasonable orders and directions of the
15 superintendent and school board.

16 (d) The suspension shall be in writing and shall set forth the grounds
17 therefor. Copies shall be delivered to the teacher, and to the chair and to the
18 clerk of the board of school directors. Thereafter, performance under the
19 teacher's contract shall be suspended, but he or she shall be paid pro rata to the
20 time of his or her dismissal by the board.

21 (e) The teacher so suspended shall have the right to appeal to the board of
22 school directors of the district for review of the decision. Filing a written

1 notice of appeal with the clerk of the school board within seven days of the
2 effective date of the suspension shall initiate the appeal. The clerk of the board
3 shall forthwith forward a copy of the notice of appeal to the superintendent and
4 send to the teacher an acknowledgment of receipt of the appeal.

5 (f) The school board to which the appeal is directed shall hear the appeal
6 within 10 days of receipt of notification. The teacher and the superintendent
7 shall be advised by the clerk of the board of the time and place of hearing by
8 written notice at least three days before the date of hearing.

9 (g) All parties shall be entitled to counsel at every stage of the proceedings
10 established by this section. Hearings shall be in executive session, unless the
11 teacher making an appeal requests or agrees in writing that they be open to the
12 public. A teacher making an appeal may waive in writing his or her right to a
13 hearing.

14 (h) Upon hearing, or if no appeal is taken, the school board shall affirm or
15 reverse the suspension or take such other action, including dismissal, as may
16 appear just. If the suspension, or the dismissal, is reversed, the teacher shall not
17 suffer any loss of pay, retirement benefits, or any other benefits to which he or
18 she would otherwise have been entitled.

19 (i) The decision of the school board shall be in writing and filed with the
20 clerk of the school board not later than five days after the hearing or after the
21 time for taking an appeal has expired. The clerk shall within three days notify
22 the superintendent and the teacher in writing of the decision.

1 [No action language]

2 (j) No action shall lie on the part of a teacher against any school district for
3 breach of contract by reason of suspension or dismissal unless the procedures
4 described in this section have been followed by said teacher.

5 (k) Every teacher's contract shall be deemed to contain the provisions of
6 this section and any provision in the contract inconsistent with this section
7 shall be considered of no force or effect.

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9 **Vt. Sup. Ct. Holding:**

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- 11 • The court held in favor of the School Board (denying the right to
12 arbitration)
 - 13 • The court's decision was based on its interpretation of 16 V.S.A.
14 § 1752
 - 15 • The court found that:
 - 16 ○ The statute does not allow teachers to negotiate in their
17 CBA alternative pre-termination procedures
 - 18 ○ § 1752 provides that no action shall lie on the part of a
19 teacher against any school district for breach of contract by
20 reason of suspension or dismissal unless the statutory
21 procedures have been followed, and that the teacher did not
22 follow those procedures
 - 23 ○ In response to the argument that the term "action" means a
24 judicial action and would not bar arbitration, the court found
25 that this term was broad enough to encompass both judicial
26 action and arbitration, and therefore in this case arbitration
27 was precluded.