

**Supreme Court of Vermont
Office of State Court Administrator**

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TO: Sen. Jeanette K. White, Chair
Senate Government Operations Committee

FROM: Patricia Gabel, Esq., State Court Administrator

DATE: February 23, 2021

RE: S. 78

Dear Senator White:

The Vermont Judiciary supports the current system of having the Vermont Labor Relations Board (VLRB) serve as the final arbiter of any unresolved dispute, rather than a private arbitrator.

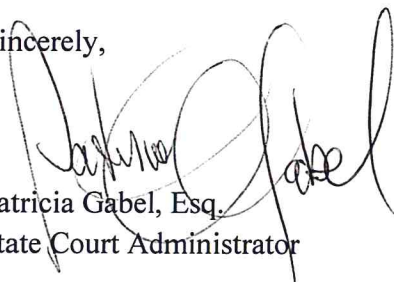
There are several reasons for this position, including:

- **Cost:** the VLRB already exists and the cost of its operations are already imbedded in the state's general fund. By contrast, utilization of a private arbitrator now typically costs between \$2000 and \$3000 for each day of service, split equally between the employer and the union. The typical last best offer (LBO) proceeding will involve at least two days of a private arbitrator's time (at least a day of hearing and a separate day for writing the decision), and significantly more time in a complicated case. It seems an unnecessary expense to absorb this added cost when there is a perfectly suitable alternative forum already established by law and fully functional.
- The VLRB process typically involves the final and binding hearing being conducted before a three-member panel, one of whom has been appointed from a management background, one from a labor background, and one from a neutral background. This historic methodology by the VLRB assures neutrality, fairness, and a decision based on the merits of the matter as much as possible.
- Because the VLRB is also designated by statute as the final and binding adjudicator of grievances that may arise between the parties under a collective bargaining agreement, it may often have developed an awareness of the background of bargaining disputes that come before it for final resolution, making for more informed decision-making than would be the case through a private arbitration methodology. For example, the recent October 2020 decision from the VLRB regarding limits on the use of temporary employees will serve as useful guide for the Judiciary's future actions.

- The VLRB process typically involves the additional step of a pre-hearing conference between its Executive Director and the representatives of the parties at which the issues in dispute, the facts of the matter and the applicable law are discussed, and what amounts to an additional mediation session is conducted. Historically, this process has sometimes resulted in a settlement of the matter, in disputes between VSEA and the Executive Branch, without the necessity for a hearing at significant savings to both parties in terms of both money and time.
- The VLRB process involves a stenographic record which does not occur typically in private arbitration proceedings without the absorption of yet additional cost. The ability to request that questions and answers be read back during the course of a hearing is tremendously helpful to the parties, as it is in court proceedings. In arbitration proceedings, the more typical custom is for the arbitrator to rely upon his/her own notes or a tape, both of which are more complicated to work with.
- The VLRB process involves the issuance of a written decision which not only sets forth the determination of the issue but also an analysis of the basis for the decision. This decision-making process creates an important “stare decisis” guide to the parties for their future interaction with one another which is most helpful. By contrast, private arbitration decisions are often stated to be on the basis of those particular facts only, so they are nowhere near as reliable as a guide to the parties for the future.

In short, the Vermont Judiciary is confident that the interests of all parties in a collective bargaining process, as well as the taxpayers of Vermont, are better served by the system that is now set forth in JELRA. A statutory mandate making private arbitrator utilization the default mechanism for resolving bargaining disputes were and will both undermine the current workable method for dispute resolution and add unnecessary additional cost and leave the parties with less practical guidance for their future interactions.

Sincerely,



Patricia Gabel, Esq.
State Court Administrator

- cc. Sen. Anthony Pollina, Vice Chair
Sen. Alison Clarkson, Clerk
Sen. Brian Collamore
Sen. Kesha Ram, Clerk
Gail Carrigan, Committee Assistant