



Agricultural Worker Labor and Employment Laws Study Committee

Overview of Collective Bargaining

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Outline of Presentation

- Federal Collective Bargaining Laws
- Vermont's Collective Bargaining Laws
- The Vermont Labor Relations Board
- Components of a Collective Bargaining Law
- States that Permit Agricultural Workers to Collectively Bargain

Federal Collective Bargaining Laws

- Railway Labor Act of 1926
 - Applies to railroads and airlines
- National Labor Relations Act of 1935 (NLRA)
 - Applies to most private sector employers and employees doing business in interstate commerce.
 - Does not apply to agricultural laborers, domestic workers, or independent contractors.
 - Does not apply to state and local public sector workers.

Vermont's Collective Bargaining Laws

- Provide collective bargaining rights to most public sector workers and some private workers who are not covered by federal law
- Vermont State Labor Relations Act (1967)
 - Modeled on the NLRA
 - Covers private employers with 5 or more employees who are not engaged in interstate commerce, as defined by NLRA
- State Employees' Labor Relations Act (SELRA) (1969)
 - Covers most State employees, UVM, Vermont State Colleges, the Defender General's Office, State's Attorneys' offices, and State-paid deputy sheriffs.
 - Creates the Vermont Labor Relations Board (VLRB).
 - Provides State employees with whistleblower protections
- Labor Relations for Teachers Act (LRTA) (1969)
 - Covers teachers and administrators at publically funded schools in Vermont, including any independent school "that directly or indirectly receives support from public funds."

Vermont's Collective Bargaining Laws

- Municipal Labor Relations Act (MLRA) (1973)
 - Covers municipal employees of a municipal employer that employees 5 or more employees.
 - Provides unfair labor practice protections for both MLRA and LRTA
- Judiciary Employees Labor Relations Act (JELRA) (1998)
 - Covers employees of the Vermont Judiciary.
- Independent Direct Support Providers Labor Relations Act (2013)
 - Covers providers of home and community-based services to individuals under Choices for Care, the Attendant Services Program, the Children's Personal Care Services Program, and the Developmental Disabilities Services Program.
 - Bargain with State over a limited list of subjects
- Early Care and Education Providers Labor Relations Act (2014)
 - Covers licensed or registered child care home providers, and legally exempt child care home providers.
 - Bargain with State over a limited list of subjects.

Vermont Labor Relations Board

- Created under SELRA.
- Has 6 part-time members who sit in 3-person panels for cases that go to a hearing.
- Makes bargaining unit determinations.
- Conducts representative elections.
- Hears unfair labor practice and grievance cases.
- Option for resolving bargaining impasse under SELRA and JELRA.

Components of a Collective Bargaining Law

- Definition of who may bargain
- Subjects for bargaining
- Process for determining bargaining unit
- Process for forming union
- Parameters for contract negotiation
- Process for dispute resolution
- Unfair labor practices
- Entity(ies) with oversight

Who can bargain: Employers

- The definition of employer establishes which workplaces are subject to the requirements of the law
- Definition of employer often focuses on type and size
 - Municipal Labor Relations Act (21 V.S.A. ch. 22) defines a “municipal employer” as “a city, town, village, fire district, lighting district, consolidated water district, housing authority, union municipal district, or any of the political subdivisions of the State of Vermont that employs five or more employees as defined in this section.”

Who can bargain: Employees

- The definition of employee establishes which employees within a workplace have collective bargaining rights
- Definition of employee may exclude certain types of employees
 - Under the Municipal Labor Relations Act, the definition of “municipal employee” excludes:
 - Elected officials, board and commission members, and executive officers
 - Supervisors
 - Employees in their probationary period
 - Confidential employees
 - Licensed employees of school districts

Subjects for Bargaining

- Subjects for bargaining identified in collective bargaining law are also called “mandatory” subjects for bargaining.
 - If one party makes a proposal regarding one of the subjects, the parties must bargain in relation to it
- Permissive subjects for bargaining are usually not set forth in statute, but are subjects that the parties may choose to bargain about
 - Cannot bargain for something that is contrary to law (i.e. a subminimum wage)

Subjects for Bargaining

- Subjects for bargaining in Vermont statutes include:
 - Wages and other compensation
 - Hours
 - Benefits and insurance coverage
 - Conditions of employment
 - Procedures for processing complaints and grievances
 - Reduction in force procedures
- Some subjects are specifically prohibited
 - Labor Relations for Teachers Act specifically prohibits bargaining in relation to health care benefits or coverage because it is determined on a statewide basis

Process for Determining Bargaining Unit

- Bargaining unit can be determined by an oversight body such as VLRB or upon agreement of the parties
 - Any disagreements are settled by an oversight body
- Considerations in determining whether a bargaining unit is appropriate:
 - Can the employer control the working conditions of all employees in the unit?
 - Do the employees have similar or different needs, interests, and working conditions?
 - Would the proposed bargaining unit overly fragment the workforce?

Union Certification

- A union must have support from a majority of the employees in a bargaining unit to be certified as the exclusive bargaining representative for the unit
- Certification process typically begins with the filing of a petition showing that a significant portion of employees are interested in forming a union
- Vermont permits two ways of showing majority interest:
 - Majority sign-up
 - Secret ballot election

Contract Negotiation

- Employers and the union representing a bargaining unit have a duty to negotiate in good faith
- Statute may set a time for negotiations to begin
 - Labor Relations for Teachers Act requires that union request negotiations “no later than 120 days prior to the earliest school district annual meeting conducted within the supervisory union.”
- Once negotiations begin, the parties must negotiate in good faith until they agree to a contract or reach an impasse

Impasse Resolution

- Vermont statutes provide for a variety of impasse resolution procedures
- Mediation
 - All four major Vermont labor relations acts specify mediation as the first step to resolve an impasse
- Fact Finding
 - Neutral third-party collects evidence, makes findings, and recommends a resolution to dispute
 - Also included in all four major Vermont labor relations acts

Impasse Resolution

- VLRB hearing
 - Provided for in State Employees and Judiciary Employees Labor Relations Acts
 - VLRB chooses between the last best offers of the parties
- Arbitration
 - All four major Vermont labor relations acts provide for arbitration as a final stage of the process
 - Under LRTA and MLRA parties can agree to arbitration
 - Under MLRA, municipality can adopt arbitration procedure
 - Under SELRA and JELRA, either party may elect arbitration instead of VLRB hearing
 - Depending on law, arbitrator must either select between last best offers in their entirety or may choose provisions from both

Unfair Labor Practices

- Unfair labor practices are actions that violate the rights established by the collective bargaining statute or rules established pursuant to the statute
- Party must bring a charge to the oversight body
 - In Vermont, charge must be filed with VLRB within 6 months of the alleged unfair labor practice
- VLRB may investigate charge, issue a complaint, and hold a hearing on the charge
- If VLRB finds that unfair labor practice was committed, can order party to stop practice and order other actions to restore status quo

Entity with Oversight

- VLRB
 - Oversees unit determination and union elections
 - Resolves bargaining disputes under SELRA and JELRA
 - Resolves unfair labor practice complaints
- VLRB decisions are appealable to the Supreme Court on questions of law
- Other states have created a body with jurisdiction over agricultural labor relations

States With Agricultural Collective Bargaining Laws

- Arizona
- California
- Colorado
- Hawaii
- Kansas
- Kentucky
- Louisiana
- Massachusetts
- Nebraska
- New Jersey
- New York
- Oregon
- Washington
- Wisconsin