

1 S.125

2 An act relating to workers' compensation and collective bargaining rights

3 The House proposes to the Senate to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

5 Sec. 1. [Deleted.]

6 Sec. 2. [Deleted.]

7 Sec. 3. [Deleted.]

8 Sec. 4. [Deleted.]

9 * * * Labor Relations * * *

10 Sec. 5. 3 V.S.A. § 1011 is amended to read:

11 § 1011. DEFINITIONS

12 As used in this chapter:

13 * * *

14 (8) "Employee," means any individual employed and compensated on a
15 permanent or limited status basis by the Judiciary Department, including
16 permanent part-time employees and any individual whose employment has
17 ceased as a consequence of, or in connection with, any current labor dispute or
18 because of an unfair labor practice. "Employee" does not include any of the
19 following:

20 (A) a Justice, judge, assistant judge, magistrate, or hearing officer;

21 (B) the Court Administrator;

- 1 (C) a managerial,~~supervisory~~, or confidential employee;
- 2 (D) a law clerk, attorney, or administrative assistant or private
- 3 secretary to a judge, Justice, or Court Administrator;
- 4 (E) an individual employed on a temporary, contractual, seasonal, or
- 5 on-call basis, including an intern;
- 6 (F) an employee during the initial or extended probationary period;
- 7 (G) the head of a department or division;
- 8 (H) [Repealed.]
- 9 (I) an attorney for the Supreme Court, for the Court Administrator, or
- 10 for any board or commission created by the Supreme Court;
- 11 (J) an employee paid by the State who is appointed part-time as
- 12 county clerk pursuant to 4 V.S.A. § 651 or 691;
- 13 (K) an employee who, after hearing by the Board upon petition of
- 14 any individual, the employer, or a collective bargaining unit, is determined to
- 15 be in a position that is sufficiently inconsistent with the spirit and intent of this
- 16 chapter to warrant exclusion.

17 * * *

18 Sec. 5a. 3 V.S.A. § 941 is amended to read:

19 § 941. UNIT DETERMINATION, CERTIFICATION, AND

20 REPRESENTATION

21 * * *

1 (c)(1) A petition may be filed with the Board, in accordance with
2 procedures prescribed by the Board by an employee or group of employees, or
3 any individual or employee organization purporting to act on their behalf,
4 alleging by filing a petition or petitions bearing signatures of not less than 30
5 percent of the employees that they wish to form a bargaining unit and be
6 represented for collective bargaining, ~~or that the individual or employee~~
7 ~~organization currently certified as the bargaining agent is no longer supported~~
8 ~~by at least 51 percent of the employees in the bargaining unit,~~ or that they are
9 now included in an approved bargaining unit and wish to form a separate
10 bargaining unit under Board criteria for purposes of collective bargaining. The
11 employee, group of employees, individual, or employee organization that files
12 the petition, shall, at the same time that the petition is filed with the Board,
13 provide a copy of the petition to the employer and, if appropriate, the current
14 bargaining agent.

15 (2) A petition may be filed with the Board, in accordance with
16 procedures prescribed by the Board, by an employee or group of employees, or
17 any individual or employee organization purporting to act on their behalf,
18 alleging by filing a petition or petitions bearing signatures of not less than 50
19 percent plus one of the employees that the individual or employee organization
20 currently certified as the bargaining agent is no longer supported by a majority
21 of the employees in the bargaining unit. The employee, group of employees,

1 individual, or employee organization that files the petition shall, at the same
2 time that the petition is filed with the Board, provide a copy of the petition to
3 the employer and, if appropriate, the current bargaining agent.

4 (A)(i) An employer shall, not more than seven business days after
5 receiving a copy of the petition, file any objections to the appropriateness of
6 the proposed bargaining unit and raise any other unit determination issues with
7 the Board and provide a copy of the filing to the employee, group of
8 employees, individual, or employee organization that filed the petition.

9 * * *

10 (d) The Board, a Board member, or a person or persons designated by the
11 Board shall investigate the petition and do one of the following:

12 (1) Determine that the petition has made a sufficient showing of interest
13 pursuant to ~~subdivision~~ subdivisions (c)(1) and (2) of this section.

14 * * *

15 Sec. 5b. [Deleted.]

16 Sec. 5c. 3 V.S.A. § 1021 is amended to read:

17 § 1021. UNIT DETERMINATION; CERTIFICATION

18 (a) The Board shall determine issues of unit determination, certification,
19 decertification, and representation in accordance with this chapter and the
20 provisions of section 941 of this title. The Board shall decide the appropriate
21 unit for collective bargaining in each case and the employees to be included in

1 that unit to assure the employees the fullest freedom in exercising the rights
2 guaranteed by this chapter.

3 * * *

4 Sec. 5d. 16 V.S.A. § 1992 is amended to read:

5 § 1992. REFERENDUM PROCEDURE FOR REPRESENTATION

6 * * *

7 (b) Certification of a negotiating unit as exclusive representative shall be
8 valid and not subject to challenge by referendum petition or otherwise for the
9 remainder of the fiscal year in which the certification occurs and for an
10 additional period of 12 months after final adoption of the budget for the
11 succeeding fiscal year and shall continue thereafter until a new referendum is
12 called for. An organization or group of teachers or administrators, or any
13 person purporting to act on their behalf, shall submit a petition bearing
14 signatures of not less than 50 percent plus one of the individuals currently in
15 the bargaining unit alleging that the current exclusive representative of the
16 teachers or administrators is no longer supported by a majority of the teachers
17 or administrators employed by that school board. A copy of the petition shall
18 be provided to the current bargaining agent at the same time as the petition is
19 submitted to the school board.

20 * * *

1 Sec. 5e. 21 V.S.A. §§ 1581 and 1584 are amended to read:

2 § 1581. PETITIONS FOR ELECTION; FILING, INVESTIGATIONS,
3 HEARINGS, DETERMINATIONS

4 (a) A petition may be filed with the Board, in accordance with rules
5 adopted by the Board:

6 (1) ~~By~~ by an employee or group of employees, or any individual or
7 labor organization acting in their behalf, alleging that not less than 30 percent
8 of the employees:

9 ~~(A)~~ wish to be represented for collective bargaining and that their
10 employer declines to recognize their representative as the representative
11 defined in section 1583 of this title; ~~or~~

12 ~~(2)(B)~~ by an employee or group of employees, or any individual or labor
13 organization acting on their behalf, alleging that not less than 50 percent plus
14 one of the employees assert that the individual or labor organization that has
15 been certified, or is being currently recognized by their employer as the
16 bargaining representative, is no longer a representative as defined in section
17 1583 of this title; or

18 ~~(2)(3)~~ By by an employer, alleging that one or more individuals or labor
19 organizations have presented to him or her a claim to be recognized as the
20 representative defined in section 1583 of this title.

21 * * *

1 § 1584. PETITIONS AND ELECTION TO RESCIND

2 REPRESENTATIVE'S AUTHORITY

3 (a) When ~~30~~ 50 percent plus one or more of the employees in a bargaining
4 unit covered by an agreement between their employer and a labor organization
5 requiring membership in a labor organization as a condition of employment
6 file a petition alleging that they desire that the authority of the labor
7 organization to make such an agreement be rescinded, the Board shall take a
8 secret ballot of the employees in such unit and certify the results thereof, in
9 writing, to the labor organization and to the employer.

10 (b) No election shall be conducted under this section in a bargaining unit or
11 a subdivision within which in the preceding 12 months a valid election or
12 certification of a representative pursuant to this subchapter has occurred.

13 Sec. 5f. 21 V.S.A. § 1724 is amended to read:

14 § 1724. CERTIFICATION PROCEDURE

15 (a)(1) A petition may be filed with the Board, in accordance with rules
16 adopted by the Board:

17 (A) By an employee or group of employees, or any individual or
18 employee organization purporting to act on their behalf, alleging that not less
19 than 30 percent of the employees wish to form a bargaining unit and be
20 represented for collective bargaining, ~~or assert that the individual or employee~~
21 ~~organization currently certified as bargaining agent is no longer supported by~~

1 ~~at least 51 percent of the employees in the bargaining unit~~, or that not less than
2 51 percent of the employees now included in an approved bargaining unit wish
3 to form a separate bargaining unit under Board criteria for purposes of
4 collective bargaining. The employee, group of employees, individual, or
5 employee organization that files the petition shall, at the same time that the
6 petition is filed with the Board, provide a copy of the petition to the employer
7 and, if appropriate, the current bargaining agent.

8 (B) By the employer alleging that the presently certified bargaining
9 unit is no longer appropriate under Board criteria. The employer shall provide
10 a copy of the petition to the current bargaining agent at the same time that the
11 petition is filed with the Board.

12 (C) By an employee or group of employees, or any individual or
13 employee organization purporting to act on their behalf, alleging that a
14 majority of the employees in the bargaining unit no longer support the
15 individual or employee organization currently certified as the bargaining agent.
16 The petition shall bear signatures of not less than 50 percent plus one of the
17 employees in the presently certified bargaining unit. The employee, group of
18 employees, individual, or employee organization that files the petition shall, at
19 the same time that the petition is filed with the Board, provide a copy of the
20 petition to the employer and, if appropriate, the current bargaining agent.

1 (2)(A)(i) An employer shall, not more than seven business days after
2 receiving a copy of the petition, file any objections to the appropriateness of
3 the proposed bargaining unit and raise any other unit determination issues with
4 the Board and provide a copy of the filing to the employee, group of
5 employees, individual, or employee organization that filed the petition.

6 (ii) A hearing shall be held before the Board pursuant to
7 subdivision (d)(1)(B) of this section in the event the employer challenges the
8 appropriateness of the proposed bargaining unit, provided that a hearing shall
9 not be held if the parties stipulate to the composition of the appropriate
10 bargaining unit and resolve any unit determination issues before the hearing.

11 (iii) The Board may endeavor to informally mediate any dispute
12 regarding the appropriateness of the proposed bargaining unit prior to the
13 hearing.

14 (B)(i) Within five business days after receiving a copy of the petition,
15 the employer shall file with the Board and the employee or group of
16 employees, or the individual or employee organization purporting to act on
17 their behalf, a list of the names and job titles of the employees in the proposed
18 bargaining unit. To the extent possible, the list of employees shall be in
19 alphabetical order by last name and provided in electronic format.

20 (ii) An employee or group of employees, or any person purporting
21 to act on their behalf, that is seeking to demonstrate that the current bargaining

1 agent is no longer supported by ~~at least 51 percent~~ a majority of the employees
2 in the bargaining unit shall not be entitled to obtain a list of the employees in
3 the bargaining unit from the employer pursuant to this subdivision (a)(2)(B),
4 but may obtain a list pursuant to subdivision (e)(3) of this section after the
5 Board has investigated its petition and determined that a secret ballot election
6 shall be conducted.

7 (iii) The list shall be kept confidential and shall be exempt from
8 copying and inspection under the Public Records Act.

9 * * *

10 (b) The Board, a Board member, or a person or persons designated by the
11 Board shall investigate the petition and do one of the following:

12 (1) Determine that the petition has made a sufficient showing of interest
13 pursuant to ~~subdivision~~ subdivisions (a)(1)(A) and (C) of this section.

14 (2)(A) If it finds reasonable cause to believe that a question of unit
15 determination or representation exists, the Board shall schedule a hearing to be
16 held before the Board not more than ~~ten~~ 10 business days after the petition was
17 filed with the Board.

18 * * *

19 (e)(1) Except as otherwise provided pursuant to subsection (h) of this
20 section, in determining the representation of municipal employees in a
21 collective bargaining unit, the Board shall conduct an election by secret ballot

1 of the employees and certify the results to the interested parties and to the
2 employer. The election shall be held not more than 23 business days after the
3 petition is filed with the Board except as otherwise provided pursuant to
4 subdivision (4) of this subsection.

5 (2) The original ballot shall permit a vote against representation by
6 anyone named on the ballot. No representative will be certified with less than
7 a ~~51 percent affirmative vote~~ majority of all votes cast. If it is asserted that the
8 certified bargaining agent is no longer supported by at least ~~51~~ 50 percent plus
9 one of the employees in the bargaining unit and there is no attempt to seek the
10 election of another employee organization or individual as bargaining
11 representative, there shall be at least ~~51 percent negative vote~~ a majority of all
12 votes cast to decertify the existing bargaining agent.

13 * * *

14 Sec. 5g. 21 V.S.A. § 1635 is amended to read:

15 § 1635. ELECTION; BARGAINING UNIT

16 (a) ~~Petitions~~ Certification and decertification petitions and elections shall
17 be conducted pursuant to the procedures provided in 3 V.S.A. §§ 941 and 942,
18 except that only one bargaining unit shall exist for independent direct support
19 providers, and the exclusive representative shall be the exclusive representative
20 for the purpose of grievances.

21 * * *

1 Sec. 5h. 33 V.S.A. § 3607 is amended to read:

2 § 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;
3 HEARINGS; DETERMINATIONS

4 (a) A petition may be filed with the Board in accordance with rules
5 prescribed by the Board:

6 (1) By an early care and education provider or group of providers or any
7 individual or labor organization acting on the providers' behalf:

8 (A) ~~alleging~~ Alleging that not less than 30 percent of the providers in
9 the petitioned bargaining unit wish to be represented for collective bargaining
10 and that the State declines to recognize their representative as the
11 representative defined in this chapter; ~~or,~~

12 (B) ~~asserting~~ Asserting that the labor organization that has been
13 certified as the bargaining representative no longer represents a majority of
14 early care and education providers. The petition alleging that the labor
15 organization is no longer supported by a majority of the providers shall bear
16 signatures of not less than 50 percent plus one of the providers in the
17 bargaining unit.

18 (2) By the State alleging that one or more individuals or labor
19 organizations have presented a claim to be recognized as the exclusive
20 representative defined in this chapter.

21 * * *

VT LEG #383607 v.1