



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNSEL

**MEMORANDUM**

To: House Committee on General and Housing  
From: Sophie Zdatny  
Date: April 28, 2025  
Subject: **S.125 – an act relating to workers’ compensation and collective bargaining rights**

On April 25, 2025, Chair Mihaly requested this memo to answer a couple of questions that arose with respect to this bill.

**1. What is the difference between the definition of manager under SELRA and JELRA?**

In the State Employees Labor Relations Act (SELRA), a managerial employee is defined as “an individual finally determined by the Board as being in an exempt or classified position that requires the individual to function as an agency, department, or institution head, a major program or division director, a major section chief, or director of a district operation.” 3 V.S.A. § 902(18).

In the Judiciary Employees Labor Relations Act (JELRA), a managerial employee is defined as “an individual, as determined by the Board, who functions as the head of a department, institution, district operation, or a major program or division or section.” 3 V.S.A. § 1011(13).

The definitions of supervisory employees are virtually the same under both acts.<sup>1</sup> In 1977, supervisory employees were granted the right to organize and bargain collectively under SELRA. JELRA, which was subsequently enacted in 1997, excluded supervisory employees from the right to organize and bargain collectively.<sup>2</sup> The determination as to whether an employee should be designated as a managerial, confidential, or supervisory

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<sup>1</sup> Under SELRA, a supervisory employee means “an individual finally determined by the Board as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.” 3 V.S.A. § 902(16).

Under JELRA, a supervisory employee means “an employee, as determined by the Board, who has authority from the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or who has the responsibility for directing employees or adjusting employee grievances or effectively recommending such action, provided the exercise of authority is not merely routine or clerical, but requires independent judgment.” 3 V.S.A. § 1011(17).

<sup>2</sup> [Act 92](#).

employee under SELRA is determined by the Commissioner of Human Resources. If a designation is disputed, the Vermont Labor Relations Board makes the final determination.<sup>3</sup> Under JELRA, the determination is made by the employer, with any disputes arising from the determination being resolved by the Board.<sup>4</sup>

Pursuant to precedent from the Vermont Labor Relations Board, individuals employed as managers are ineligible to be included in a collective bargaining unit.<sup>5</sup> The Board recognizes that the statutory definition of a supervisory employee in SELRA encompasses managerial responsibilities and that the two descriptions (manager and supervisor) are not mutually exclusive. “It is simply that, in terms of responsibility, some supervisors justify managerial designations, and some do not.”<sup>6</sup>

There are no VLRB or court decisions involving managerial employees involving JELRA and so the VLRB would likely look to its case law under SELRA if asked to determine whether a judiciary employee is appropriately designated as a supervisory or managerial employee.<sup>7</sup>

If so, under SELRA, the VLRB looks at an employee’s discretionary authority in the central areas of management of budget administration, personnel administration, and policy matters. The definition of managerial employee necessarily implies the employee will manage and monitor not only their own time and performance, but that of a significant number of employees as well.<sup>8</sup> “When an employer seeks to exclude an individual from a bargaining unit as a manager, a considerable amount of evidence must be advanced to warrant such exclusion.”<sup>9</sup>

## **2. How many of Vermont’s Labor Relations statutes provide for recognition of a new bargaining unit by majority sign up/card check?**

[Act 117 of 2024](#) permitted bargaining units subject to the State Employees’ Labor Relations Act (SELRA), the Judiciary Employees’ Labor Relations Act (JELRA), the Teachers’ Labor Relations Act (LRTA), the Municipal Labor Relations Act (MERA), and the State Labor Relations Act (SLRA) to form a union without a secret ballot election

<sup>3</sup> 3 V.S.A. § 906(a).

<sup>4</sup> 3 V.S.A. § 1015.

<sup>5</sup> *The Evolving Vermont Labor Relations Law*, Timothy Noonan (VLRB, 4th ed. 2018) at pp. 97-98.

<sup>6</sup> *Id.*, citing *In re Personnel Designations*, 139 Vt. 91 (1980).

<sup>7</sup> Witness Joe McNeil cited to a recent unpublished NLRB decision in his testimony. See <https://www.nlr.gov/case/19-UC-323383>. In *Friends of Children-Portland*, the Employer filed a unit clarification petition seeking to have an Accounting & Finance Manager declared a supervisor and, therefore, excluded from the bargaining unit. The Regional Director found that the employee was not a supervisor. The Board affirmed on appeal, noting that although the employee gave out assignments, he did not use independent judgment and his participation in the hiring process amounted to merely screening applicants. Attorney McNeil also cited to *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267 (1974), a 5-4 Supreme Court decision, which held that Congress intended to exclude all employees properly classified as “managerial” from the protections of the National Labor Relations Act and not just those in positions susceptible to conflicts of interest. A copy of this decision is provided with this Memorandum.

<sup>8</sup> *Evolving VT Lab. Rel. Law*, pp. 97-98, citing *Vermont Department of Public Safety Designation Dispute (Re: State Police Lieutenants)*, 32 VLRB 145, 170-71 (2012). A copy of this decision is provided with this Memorandum.

<sup>9</sup> *Id.* citing *United Professions of Vermont/AFT and Vermont State Colleges*, 25 VLRB 1, 39 (2002); *Agency of Transportation Designation Dispute (Re: Transportation Senior Planner)*, 17 VLRB 135, 141 (1994).

if a majority of the employees in the bargaining unit sign a petition in support of forming a union. Card check is not an option under the Independent Direct Support Providers Labor Relations Act and the Early Care and Education Providers Labor Relations Act.

**3. What is the threshold for a showing of interest to decertify a union under each of Vermont's labor relations acts?**

30% - SELRA, 3 V.S.A. § 941(c)(1), VLRB Rules of Practice, Section 13.5

30% - JELRA, VLRB Rules of Practice, Section 53.5

30% - SLRA, 21 V.S.A. § 1581, VLRB Rules of Practice, Section 23.5

30% - MERA, 21 V.S.A. § 1724, VLRB Rules of Practice, Section 33.5

30% - Independent Direct Support Providers Labor Relations Act, VLRB Rules of Practice, Section 63.5

30% - Early Care and Education Providers Labor Relations Act, 33 V.S.A. § 3607(a)(1)(B), VLRB Rules of Practice, Section 73.5

Unlike the other labor relations statutes in Vermont, the Teachers Act (LRTA) does not provide for the VLRB to resolve unit determinations or conduct union representation elections. An organization purporting to represent a majority of the teachers or administrators may be voluntarily recognized by a school board without a referendum vote, upon the submission of a petition bearing the valid signatures of a majority of the teachers or administrators employed by that school board.<sup>10</sup>

The referendum procedure for representation under the LRTA recognizes the possibility of decertification,<sup>11</sup> but does not explicitly identify a showing of interest threshold. The statute provides that a secret ballot referendum shall be held after 20 percent of the teachers or administrators employed by a school board present a petition requesting a referendum on the matter of representation.<sup>12</sup> “Any organization interested in representing teachers or administrators in the school district shall have the right to appear on the ballot by submitting a petition supported by ten percent or more of the teachers or administrators in the school district.”<sup>13</sup> The referendum may either be conducted by the parties themselves or the parties select an impartial person or agency to conduct the referendum.<sup>14</sup> The ballot shall include “no representation” as one of the choices. If the majority vote for no representation, then the school board cannot recognize a representative for at least twelve months. If no choice receives a majority vote, there is a runoff between the two choices receiving the greatest number of votes.<sup>15</sup>

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<sup>10</sup> 16 V.S.A. § 1992(a)(1).

<sup>11</sup> 16 V.S.A. § 1992(a)(2)(A)(ii) (noting that an organization or group of teachers or administrators seeking to demonstrate that the current representative is no longer supported by a majority of the unit is not entitled to obtain a list of the employees in the bargaining unit). There is no other reference to decertification. Certification of a representative cannot be challenged for the remainder of the fiscal year in which the certification occurs and for an additional 12 month period after final adoption of the budget for the succeeding fiscal year. 16 V.S.A. § 1992(b).

<sup>12</sup> 16 V.S.A. § 1992(c)(1)(A).

<sup>13</sup> 16 V.S.A. § 1992(c)(1)(C).

<sup>14</sup> 16 V.S.A. § 1992(d).

<sup>15</sup> 16 V.S.A. § 1992(f).