

Overview of Collective Bargaining in Vermont

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Overview

- Federal Collective Bargaining Laws
- VT's Collective Bargaining Laws
- Vermont Labor Relations Board
- Elements of labor relations acts





Federal Collective Bargaining Laws

Railway Labor Act of 1926

- Applies to railroads, airlines added in 1936

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
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Vermont's Collective Bargaining Laws

“Vermont has more labor relations statutes per capita than any other state in the country”
– Tim Noonan, former Executive Director of VLRB, author of *The Evolving Vermont Labor Relations Law*

1. SLRA – State Labor Relations Act (1967)
2. SELRA – State Employees Labor Relations Act (1969)
3. LTRA – Labor Relations for Teachers and Administrators Act (1969)
4. MERA – Municipal Employee Relations Act (1973)
5. JELRA - Judiciary Employees Labor Relations Act (JELRA) (1988)
6. Independent Direct Support Providers Labor Relations Act (2013)
7. Early Care and Education Providers Labor Relations Act (2014)

State Labor Relations Act

- Closely modeled on the NLRA
- The VLRB may petition the NLRB for an advisory opinion over jurisdiction if there is an issue
- Private sector employers with five or more employees, not engaged in interstate commerce
- Excludes agricultural workers, supervisors, and independent contractors
- Now covers domestic workers (as of 7/1/24)

State Employees Labor Relations Act

- Vests the VLRB with much broader responsibilities than other labor relations boards in the U.S., including “final determination” on employee grievances
- Covers most State employees, Defender General’s Office State’s Attorneys’ offices, State-paid deputy sheriffs, UVM and VSC
- Excludes managerial and confidential employees; employees in the Department of Human Resources; and certain employees in the Department of Finance and Management
- Provides state employees with whistleblower protection

Labor Relations for Teachers and Administrators Act

- Covers teachers and administrators
- Covers boards of school directors of any public school district or any independent elementary or secondary school within the State that directly or indirectly receives support from public funds
- VLRB does not resolve unit determination issues or conduct union representation elections

Municipal Employee Relations Act

- Covers municipal employers with 5 or more employees
- Covers municipal employees except elected officials, board and commission members, executive officers, supervisors, probationary employees, confidential employees
- Covers non-certified employees of public schools
- Covers unfair labor practice charges involving certified teachers and public school districts
- Can bargain in relation to wages, hours, and conditions of employment

Judiciary Employees Labor Relations Act

- Closely modeled on SELRA
- Covers employees of the Judiciary Department
- Excludes justices; judges; magistrates; hearing officers; the Court Administrator; managerial, supervisory, and confidential employees; law clerks, attorneys, and administrative assistants to judicial officers; temporary/seasonal employees; probationary employees, etc.

Independent Direct Support Providers Labor Relations Act

- Covers providers of home and community-based services to individuals under Choices for Care Medicaid waiver program, the Attendant Services Program, the Children's Personal Care Pro Services Program, and the Developmental Disabilities Service Program; AND
- The individual is employed by the service recipient, shared living provider, or surrogate
- Bargain with State over a limited number of subjects
- Not considered State employees

Early Care and Education Providers Labor Relations Act

- Covers licensed child care home provider, a registered child care home provider, or a legally exempt child care home provider (as defined by DCF)
- Limited subjects for bargaining with the State, incl. child care subsidy reimbursement rates, payment schedules with the Step Ahead Recognition Program, professional development, grievance procedures, collection of dues and agency fees
- Terms and conditions of employment generally covered under federal law (NLRA)
- Not considered State employees

Vermont Labor Relations Board

- Created under SELRA
- 6 part-time Board members; hearings before 3-person panels
- Staff: Executive Director and a part-time Clerk
- Makes bargaining unit determinations
- Oversees selection/election of exclusive representative
- Hears unfair labor practices and grievance cases
- Has a role in resolving bargaining impasses under SELRA and JELRA

Elements of a Labor Relations Act

Definition of who may bargain (employer/employee)

Subjects for bargaining

Process for determining bargaining unit

Union certification

Parameters for contract negotiation

Process for dispute resolution

Unfair labor practices



Subjects for Bargaining – SELRA/JELRA

“All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters that are prescribed or controlled by statute.”

- Working conditions
 - Wages, salaries, benefits, and reimbursement practices
 - Minimum hours per week; overtime compensation; leave
 - Reduction-in-force procedures
 - Grievance procedures
 - Terms of coverage and amount of employee financial participation in insurance programs*
 - Rules for personnel administration
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Subjects for Bargaining - LRTA

Can bargain in relation to

- Salary
- Related economic conditions of employment
- Procedures for processing complaints and grievances related to employment
- Any mutually agreed upon matters not in conflict with the statutes and laws of the State of Vermont.
16 V.S.A. 2004

Cannot bargain in relation to health care benefits or coverage, other than stand-alone vision and dental benefits

- Health benefits are bargained on a Statewide basis by the Commission on Public School Employee Health Benefits
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Process for determining the bargaining unit

- Bargaining unit can be determined by an oversight body (such as the VLRB) or voluntary recognition by the parties
- Considerations in determining appropriateness of bargaining unit:
 - Can the employer control the working conditions of all the 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?

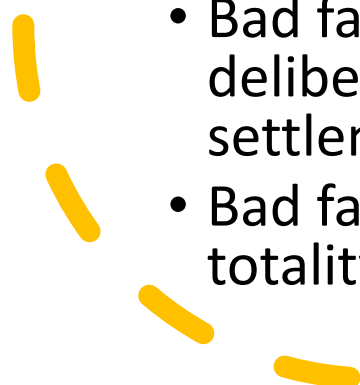
Union Certification

- Union must have support from majority of the employees in the proposed bargaining unit to be certified as the exclusive representative
- Certification process typically begins with the filing of a petition showing that a significant portion of the employees are interested in forming a union
- Can establish majority interest by:
MAJORITY SIGNUP/CARD CHECK or
SECRET BALLOT ELECTION



Contract Negotiation – duty to negotiate in good faith

- Expeditious and prompt arrangements to meet for bargaining
- Obligation to participate actively in the deliberations
- Open mind and sincere desire to reach agreement
- A party is not required to make concessions but can hold a position to impasse so long as the position is based on sound reasons and not for the purpose of frustrating bargaining
- Bad faith, includes attempts to expedite or short circuit deliberations, violation of the ground rules, attempts to avoid settlement
- Bad faith – determination based on a party's overall conduct and totality of the circumstances





Dispute Resolution

- MEDIATION – neutral third party works with the parties to find common ground and resolve dispute
- FACT FINDING – neutral party collects evidence, makes findings, and makes non-binding recommendations to resolve dispute
- SELECTION OF LAST BEST OFFER before the VLRB – SELRA and JELRA
- ARBITRATION – Depending on the law, the arbitrator must either select the last best offers in their entirety or may choose provisions from both
- RATIFICATION VOTE



Dispute Resolution - Arbitration

- Under SELRA/JELRA, either party can choose to submit last best offer to an arbitrator, instead of the VLRB
- Under MERA
 - Municipalities may adopt an arbitration procedure or parties may mutually agree to arbitration
 - Arbitration panel – 3 members; disputed issues decided by majority vote
- Under LRTA
 - Binding interest arbitration only if both parties agree; strikes prohibited after parties agree to arbitration
 - Parties mutually agree on arbitrator or request that AAA appoint one
 - Parties agree on whether arbitrator selects a last best offer in single package or issue-by-issue basis



Strikes

- VLRB/arbitrator decision is final and binding under SELRA, JELRA, Indep. Direct Support Providers, and Early Care and Education Providers Act
- Strikes mentioned in passing in SLRA
- Strikes explicitly prohibited under SELRA and JELRA
- MERA – strikes prohibited if sooner than 30 days after factfinder’s report; after parties have voluntarily submitted dispute to final and binding arbitration; or “it will endanger the health, safety, or welfare of the public.”
- LRTA – strikes prohibited if parties have voluntarily agreed to final and binding arbitration; contract imposition by school board



Unfair Labor Practices

- ULPs are actions that violate the rights established by the collective bargaining statute or rules established pursuant to the statute
- Aggrieved party brings a charge to the VLRB, within 6 months of the alleged ULP
- VLRB may investigate the charge, explore informal resolution, issue complaint, and hold a hearing
- Charging party has burden of proof; standard is “preponderance of the evidence”
- If the VLRB finds that the ULP was committed, it can issue a “cease and desist” order and take affirmative action to remedy the ULP



Any questions?

Resources

National Labor Relations Act - <https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act>

State Labor Relations Act - <https://legislature.vermont.gov/statutes/chapter/21/019>

State Employees Labor Relations Act - <https://legislature.vermont.gov/statutes/chapter/03/027>

Labor Relations for Teachers and Administrators - <https://legislature.vermont.gov/statutes/chapter/16/057>

Municipal Employee Relations Act - <https://legislature.vermont.gov/statutes/chapter/21/022>

Judiciary Employees Labor Relations Act - <https://legislature.vermont.gov/statutes/chapter/03/028>

Independent Direct Support Providers Labor Relations Act <https://legislature.vermont.gov/statutes/chapter/21/020>

Early Care and Education Providers Labor Relations Act - <https://legislature.vermont.gov/statutes/chapter/33/036>

Vermont Labor Relations Board - <https://vlrb.vermont.gov/>