

**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: January 30, 2020

Re: S. 307

Dear Senator White:

The Judiciary requests the opportunity to be heard on this bill.

The Vermont Judiciary and the Vermont State Employees Association ("VSEA") are currently parties to a collective bargaining agreement (the "CBA"). The parties are also currently in collective bargaining for a successor agreement. S. 307 is attempting to accomplish by Legislation that which the VSEA is currently obligated to accomplish in collective bargaining. The preamble to the CBA provides:

"...during the life of the Agreement the parties agree that neither the Judiciary nor the VSEA will request the Legislature to pass legislation which alters or nullifies any provision of this Agreement. " p. 3

For that reason alone, the Legislature should not adopt a bill that interferes with the contract between the parties and undermines the theory and practice of collective bargaining in Vermont.

There are additional reasons, however, why the Legislature should refrain from making these changes in the law. For your convenience, I have attached my previous memorandum regarding private arbitration, which was submitted to your Committee before you were considering a specific bill.

There has been testimony in several legislative committees that this initiative to give either party the unilateral means to bypass the Vermont Labor Relations Board was prompted by the outcome of one recent particular case that the VSEA considered a loss for the VSEA, and which the VSEA blamed on the bias of one particular member of the Vermont Labor Relations Board.

Members of the Vermont Labor Relations Board are chosen by a process that is not dissimilar to the process by which judges are chosen to serve in the Vermont Judiciary.

Just as there is a Judicial Nominating Board to review, interview, and recommend candidates for judicial office to the Governor for appointment, so there is a Labor Board Review Panel to review, interview, and recommend candidates for appointment to the Vermont Labor Relations Board to the Governor for appointment.

Section 921(a)(1) of Title 3 creates this "nominating board," called the "Labor Board Review Panel." It is composed of five members, including one specific representative of labor and one specific representative of employers, both of whom shall be appointed for two-year terms by the Commissioner of Labor from names provided by labor organizations and employers in the State. The Commissioner is required to request names from at least three Vermont Labor organizations and three Vermont employer organizations, respectively. The Commissioner of Labor, the executive director of the Vermont Bar Association, and the State Court Administrator compose the remaining three members of the Labor Board Review Panel.

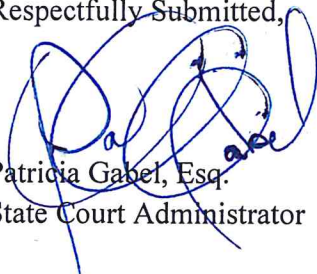
The Labor Board Review Panel is mandated to "ensure a continuing balance on the Board of labor, management, and neutral backgrounds in determining those nominees qualified to be forwarded to the Governor...."

Although I did not sit on the panel that reviewed and recommended the candidate who ultimately participated in the decision that the VSEA did not like, I have sat on panels for other candidates. These panels always are able to make recommendations to the Governor by consensus as the goals of the panels are to identify those candidates from among applicants who are qualified for the vacancy, and the vacancies are always identified as a labor vacancy, a neutral vacancy, or a management vacancy. Usually, just as with the Judicial Nominating Board, there are several names sent to the Governor, and the Governor makes the final decision about whom to appoint.

VSEA's request that the legislature pass S. 307 is comparable to a litigant asking the legislature to create a parallel court system to bypass the Vermont Judicial Branch in all court cases because the litigant felt that one judge who was appointed by the Governor was biased against it in one case.

The Vermont Judicial Branch supports the current role of the Vermont Labor Relations Board (VLRB) in the collective bargaining process for the reasons set forth herein and in the attached Memorandum and objects to S. 307 as a move away from reliance on the established rule of law and procedural due process.

Respectfully Submitted,



Patricia Gabel, Esq.
State Court Administrator

Enclosure

cc. Gail Carrigan, Committee Assistant

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

From: Patricia Gabel, Esq., State Court Administrator

Date: January 14, 2020

Re: Binding Arbitration for Judiciary and VSC

Dear Senator White:

Thank you for the opportunity to testify on this matter. The Vermont Judicial Branch supports the current system of having the Vermont Labor Relations Board (VLRB) serve as the final arbiter of any unresolved dispute over the terms of a collective bargaining agreement, rather than a private arbitrator, for the following reasons:

1. The VLRB is made up of Vermonters from a labor, managerial and neutral background who typically have at least a working understanding of the state's political and economic climate, as opposed to a single arbitrator (often for-profit professionals and typically from another state) appointed through the American Arbitration Association's check off process.
2. The VLRB has the advantage of having a full time executive director who is a labor relations expert totally familiar with the comparability and ability to pay precedents of both the VLRB and the National Labor Relations Board (NLRB) as well as emerging trends in the field of labor law and negotiations.
3. The VLRB has clear Rules of Practice and Procedure which make its protocols quite clear to the parties.
4. The VLRB has a more robust pre-hearing discovery protocol to avoid unnecessary surprises at its hearings.
5. The VLRB has historically conducted a thorough analysis of the issues separating the parties, and has rendered thoughtful decisions that provide a detailed analysis of the basis thereof that is tied back to the determined probative value of the evidence and testimony presented.¹

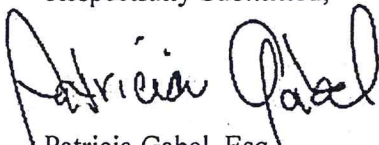
¹ By contrast, private arbitration decisions can often be much more cursory, offering far less guidance as to their basis. See, for example, the recent private last best offer arbitration decision relating to statewide health care for educational employees. While the differences between the parties were over several distinct issues and involved millions of \$ of difference, the arbitrator's decision was simply that he compared/contrasted the parties evidence and testimony and found one party's position "more closely aligned" to the statutory criteria. This decision is provided to the Committee in connection with my testimony

6. The VLRB creates and maintains a complete record of its proceedings which can be accessed in connection with any appeal.
7. The statute provides for the possibility of appeal to the Vermont Supreme Court on the basis of the record created, and with due deference to the subject matter expertise of the VLRB, in the event of a claim that legal error has been made.
8. The decisions of the VLRB are published, easily researched, and constitute thorough stare decisis precedents that serve as guides into the future.
9. As an existing entity created by law to perform such tasks the cost of the VLRB is already embedded in the overall cost of governmental services as opposed to the separate and distinct additional cost of a private arbitrator, the administrative fees of the AAA and the cost of a stenographer if one is utilized, which can be quite high.
10. The VLRB has a strong track record of protection of employee rights in accordance with law.

In short, the Vermont Judicial Branch 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, the Judiciary Employees Labor Relations Act, than they would be if an individual unfamiliar with well-established Vermont labor law principles and unaccountable to the parties or Vermont taxpayers were substituted for this important role.

Thank you for this opportunity to be heard and I would be happy to answer any questions you may have for me.

Respectfully Submitted,



Patricia Gabel, Esq.
State Court Administrator

Enclosures

cc. Sen. Anthony Pollina, Vice Chair
Sen. Christopher Bray
Sen. Alison Clarkson, Clerk
Sen. Brian Collamore
Gail Carrigan, Committee Assistant