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Agency of Administration

MEMORANDUM

To: Maribeth Spellman, DHR Commissioner
From: John J. Berard, Director of Labor Relations
Date: February 10, 2015
Subject: Bill Review – Teachers' Negotiations

The brief summary of the three proposals related to teachers' negotiations you requested is provide below:

ANALYSIS

H.76 (Wright Bill): Modifies Title 16, Chapter 57 – Labor Relations for Teachers to require, after a fifteen (15) day cooling off period after a fact-finder's report has been issued or impasse has been reached the submission of Last Best Offers ("LBO") to the Vermont Labor Relations Board ("VLRB"). The VLRB may hold hearings and may consider the fact-finder's recommendations, but does not appear to be required to do so. If the VLRB does exercise its option to hold hearings, the proposed legislation provides a list of factors which the VLRB must consider. Unlike the provisions in the State Employees Labor Relations Act ("SELRA"), the VLRB must select one of the parties LBOs and has no option of selecting the fact-finder's recommendations. Additionally, the VLRB's decision, absent "corruption, fraud or undue means," is final and binding on the parties, without further approval or request for funding from the General Assembly as is found in SELRA.

The Bill also repeals the ability of a School Board to impose terms and conditions after impasse and the provisions that allows binding interest arbitration by mutual written agreement.

Finally, the Bill allows the Supreme Court to issue a temporary restraining order or other injunctive relief in conjunction with any action "...in violation of this section, including engaging in a strike, which shall have the same meaning as in 21 V.S.A. § 1722, and the imposition of contractual terms." However, it does not explicitly prohibit teachers to strike.

H.102 (LaLonde Bill): Modifies Title 16, Chapter 57 – Labor Relations for Teachers to ensure that the chair of the fact-finding committee is the "neutral fact finder." It also requires the chair to submit a written report to the parties, based upon a list of seven (7) primary factors; and four (4) optional factors related to "comparable communities."

The Bill also modifies existing language of the binding interest arbitration section to remove "comparable communities," as a primary factor for review and making such a comparison optional.

The Bill does not prohibit strikes by teachers or the imposition of terms and conditions by a School Board.



NEA DRAFT: Modifies Title 21, Chapter 22 – Vermont Municipal Labor Relations Act to prohibit municipal employees from striking unless the municipality has voted to permit employee bargaining units to strike. It should be noted that, as drafted, the aforementioned prohibition/permission would apply to all unionized employees in a municipality, not just teachers. However, it contains no information on when such a referendum would be placed before the electorate or when such a vote would occur.

The Bill would also modify Title 21, Chapter 22, to require the submission to final and binding arbitration of any impasse issue after mediation and fact-finding as required by other sections of the statute in those municipalities who have NOT voted to allow bargaining units to strike. Also modifies the language on selection of chair of the arbitration panel to “submit to the selection process of the American Arbitration Association,” as an alternative to having the chair appointed by the superior court of the county in which the municipality is situated.

The language of Title 21, Chapter 22 remains substantively unchanged for municipalities who have voted to allow bargaining units to strike.

The Bill modifies Title 16, Chapter 57 – Labor Relations for Teachers to incorporate similar changes as those made in Title 21, Chapter 22, in those municipalities who have NOT voted to allow bargaining units to strike. Additionally, it adopts a definition of “Strike” from Title 21 and would allow active participation in any debate/campaign by teachers regarding the “strike” referendum.

It is worth noting that the changes to both Titles 21 and 16 could be read to appear to allow a referendum to be placed before the electorate during the bargaining process after the fact-finder’s report is made public.

CONCLUSION

The LaLonde Bill makes minimal changes to the law and does not prohibit teachers from striking. The NEA draft is overly-broad in scope and creates an unduly cumbersome and burdensome process that is likely to prevent meaningful implementation. The Wright Bill seems most workable, but I would recommend the inclusion of a clear prohibition on striking (the language in SELRA could be utilized) and language which would allow consideration of the fact-finder’s report during LBO. One area which may raise concern is the loss of “local control.” In order to alleviate that concern, language similar to that which exists in SELRA, could be inserted to require the LBO selected by VLRB’s be submitted to a local authority, such as the electorate for approval.

Please let me know if you have any other questions.