

IN THE MATTER OF THE FACTFINDING BETWEEN

STATE OF VERMONT

AND

VERMONT STATE EMPLOYEES' ASSOCIATION

FACTFINDERS REPORT AND RECOMMENDATIONS

Factfinder: Ira B. Lobel

Appearances and Witnesses:

For the State of Vermont:

Michael Marks, Esq., Tarrant, Marks & Gillies
Thomas Ball, Director of Labor Relations, Department of Personnel
James Reardon, Commissioner of Finance and Management, Department of
Finance and Management, Agency of Administration
Harold Schwartz, Director, Administrative Services Division, Department of
Human Resources
Jeffrey B. Carr, President, Economic & Policy Resources, Inc., Williston, VT

For the Vermont State Employees' Association:

Jes Kraus, Director, Vermont State Employees' Association
Gary Hoadley, Field Services Supervisor, Vermont State Employees' Association
Gretchen Naylor, Senior Field Representative, Vermont State Employees'
Association
Dr. Gerald Friedman, Professor, Department of Economics, University of
Massachusetts at Amherst

INTRODUCTION

The State of Vermont ("State") and the Vermont State Employees' Association ("VSEA") are parties to four separate bargaining agreements that were effective July 1, 2008 and will expire June 30, 2010. The four agreements involve a supervisory bargaining unit, a corrections bargaining unit, a non-management bargaining unit and a State police bargaining unit. During the negotiations, a different union was certified as the bargaining representative for the State police.

In making the recommendations in the present Report, I have considered the statutory criteria, and have attempted to make reasonable recommendations that are both fair and acceptable to the parties. The Association and the State brought the following issues to fact finding:

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2. Steps Group C Employees	page 10
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4. Grievance Procedure - Arbitration	page 16
5. Weekend Differential Fish & Game Wardens	page 18
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1 SALARY AND WAGES

ASSOCIATION POSITION

Non-Management Salary Proposal (Article 45)

2016-2017 - 4% Across the Board Increase Plus Step Advancement

2017-2018 - 4% Across the Board Increase Plus Step Advancement

Supervisory (Article 49) and Correction (Article 49)

2016-2017 - 3% Across the Board Increase Plus Step Advancement

2017-2018 - 3% Across the Board Increase Plus Step Advancement

4. GRIEVANCE PROCEDURE (ARTICLE 15 ALL AGREEMENTS)

All of the Agreements now provide that the final step of the grievance procedure is before the Vermont Labor Relations Board.

ASSOCIATION POSITION

The Association proposes to modify the current contract language by adding binding arbitration as an alternative to submitting all grievances to the Vermont Labor Board. In addition, under the Association's proposal, dismissals of classified employees could also be submitted to arbitration. The Association argues that binding grievance arbitration is the almost universal process for resolving grievances between unions and management in both the private and public sector. The Association contends that adding arbitration as an alternative forum would provide advantages to both the State and the Association, as most often arbitration would be quicker, and less costly than the costly and lengthy discovery process that often exists now for grievances that are submitted to the Vermont Labor Board for final disposition. Moreover, the Association states that both the Association and State would have the ability to select the arbitrators, and agree upon procedures for the issuance of timely decisions.

STATE POSITION

The State maintains that it is not necessarily opposed to adding binding arbitration as an alternative means for resolving grievances. The State contends that there are still a number of details that have to be negotiated with the Association before it will agree to arbitration as an option in the parties' grievance procedure. The State claims that the parties should further work on these details for a future agreement.

Discussion

There can be little dispute that final and binding arbitration is universally recognized as the last step in the grievance procedure for collective bargaining agreements in both the public and private sector. Thus, there is certainly ample justification for the parties to add binding arbitration as an additional alternative to the Labor Board as the last step in the grievance procedure. Moreover, there are certainly some advantages, as the parties will be able to select their arbitrators, and thus can have more say in the procedures, and can even agree to an expedited process to obtain a decision in a more timely manner.

I would recommend that the parties adopt arbitration as an additional alternative for the final step in the grievance procedure. The language set forth by the Association is reasonable and should be the basis for adding grievance arbitration to the parties' Agreement. In addition, disputes submitted to arbitration are processed by certain procedural and substantive rules. The American Arbitration Association has adopted rules for submitting cases to arbitration, and also rules for expedited arbitrations. I would suggest that the parties review the Rules of the American Arbitration Association and agree upon those rules that they believe are appropriate to their process. The parties should also agree upon a panel of arbitrators to hear cases, as this would expedite the time for obtaining an award, and lower costs. In addition to utilizing the American Arbitration Association for their panel of arbitrators, the parties should also consider the roster of arbitrators maintained by the Federal Mediation and Conciliation Service, as this would be less costly.

As there is still more work to be done before agreeing to arbitration as an alternative forum, the parties should continue their negotiations with a goal of implementing arbitration as the final step commencing July 1, 2017.

RECOMMENDATION - GRIEVANCE ARBITRATION

The parties should agree to add binding arbitration as an additional option as the final step in the grievance procedure. The parties should continue negotiations on the parameters of arbitration as set forth above, and implement this final step for grievances filed after July 1, 2017.

5. WEEKEND SHIFT DIFFERENTIAL (ARTICLE 19 - NON-MANAGEMENT AGREEMENT Fish and Wildlife Wardens)

At the present time there is no weekend shift differential for Fish and Wildlife Wardens.

ASSOCIATION POSITION

The Association proposes a weekend shift differential of 50¢ an hour for the Fish and Wildlife Wardens. The Associations proposal reads as follows:

Commencing with the first full pay period starting after July 1, 2016, a weekend differential shall be paid at the rate of fifty cents (\$0.50) per hour, which shall apply to regularly scheduled shifts beginning after 10 PM on Friday, excluding shifts beginning after 10 PM on Sunday night. (Weekend differential will be added to any other shift differential and to the basic hourly rate before cash overtime is computed.)

The Association maintains that the Wardens are the only law enforcement employees working for the State who receive no shift differential or weekend differential. The Association states that its proposal would treat the Wardens in a manner similar to other law enforcement

VERMONT STATE EMPLOYEES' ASSOCIATION, INC.



LAST BEST OFFER

March 21, 2016

VERMONT LABOR RELATIONS BOARD DOCKET No 15-42, 15-44, and 15-45

**IN THE MATTER OF BARGAINING IMPASSE BETWEEN:
STATE OF VERMONT & VERMONT STATE EMPLOYEES ASSOCIATION**

**Corrections Bargaining Unit
Supervisory Bargaining Unit
Non-Management Bargaining Unit**

The Vermont State Employees' Association submits its Last Best Offer based on the written findings and recommendations of the fact finder, Gary Altman.

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ARTICLE 15
GRIEVANCE PROCEDURE

(d) STEP IV (Board Level)

The appeal from the Department of Human Resources' decision shall be to the Vermont Labor Relations Board in accordance with the rules and regulations established by the Board and such appeal shall be filed within thirty (30) days after receipt of the Step III decision or the matter shall be considered closed. If within the time set by the VLRB for appealing such decision, VSEA submits a written request for reconsideration, the State may respond in writing to such a request, and if it does so, the time for appealing the decision of the Department of Human Resources shall begin to run from the date of receipt of the State's written reconsideration response. However, in no event shall the time for appealing the Human Resources Department's decision exceed forty-five (45) calendar days from the date of receipt of the original Step III decision.

Upon implementation of binding arbitration as an alternative at Step IV, the appeal from the Department of Human Resources decision by VSEA shall be to binding arbitration as specified in 3(e) below or to the Vermont Labor Relations Board.

e) STEP IV (Binding Arbitration)

The State and VSEA will continue negotiations on the parameters of binding arbitration as an alternative for VSEA at Step IV with the implementation of binding arbitration for grievances filed after July 1, 2017.

4. GENERAL PROVISIONS

(a) Grievances may be initiated at Step II if the subject matter of the complaint is clearly beyond the control of the immediate supervisor, or at Step III if the subject matter of the grievance is clearly beyond the control of the agency, department or institution head.

(b) Grievances initially filed at Step II or Step III shall be submitted within fifteen (15) workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the grievance.

(c) An employee may appeal his or her dismissal directly to the Vermont Labor Relations Board. Upon implementation of binding arbitration as an alternative as specified in 3e above, VSEA may appeal an employee dismissal directly to the Vermont Labor Relations Board or Binding Arbitration.

(d) The management representative at Step II or III shall act fairly and without prejudice in determining the facts which affect the granting or denial of a grievance. If the management representative participated in the decision to impose disciplinary action, or in the preparation or writing of a performance evaluation in progressive corrective action cases, subject to the grievance (s)he shall disclose that fact, but shall not be disqualified thereby. Hearing officers may disqualify themselves if, in their opinion, they perceive the existence of a conflict which makes their future participation inadvisable. Complaints concerning the conduct of the management representative shall be grievable directly to, but not beyond, Step III. The management representative may attempt to mediate any grievance by suggesting that either side alter its position, provided that any Step II settlement be subject to the approval of the Department of Human Resources. If Human Resources does not approve the settlement,

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the reasons for disapproval will be provided in writing to VSEA. For purposes of this Article, "management representative" shall mean the appointing authority/administrative head of the department, or person selected as designee.

(e) When a grievance meeting is held at Step III, the VSEA (whether or not it is representing the aggrieved employee) shall be notified by the Department of Human Resources and shall have the right to be present, to participate in the proceedings as a party at interest, and to submit a statement (oral or written) to the Department of Human Resources of its opinion of the merits or demerits of the grievance and the effect of any proposed solution on other employees. The VSEA will be sent a copy of any such grievance decision concerning bargaining unit employee(s).

(f) In the event the employer fails to render a decision at Step I, II, or III within the prescribed time, the grievant may proceed to the next Step within the time limits established above.

(g) Grievances may not be submitted via e-mail.

The Vermont Statutes Online

Title 03 : Executive

Chapter 027 : State Employees Labor Relations Act

Subchapter 002 : Labor Relations Board

§ 925. Mediation; fact finding

(a) Whenever the representatives of a collective bargaining unit and the representative of the employer, after a reasonable period of negotiation reach an impasse during the course of collective bargaining on subjects defined in section 904 of this title, the Board, upon petition of either or both parties, may authorize the parties to submit their differences to mediation. The Board shall within five days appoint a mediator who shall communicate with the employer and the employees or their representatives and endeavor by mediation to obtain an amicable settlement. Any mediator so appointed shall be a person of high standing in no way actively connected with labor or management.

(b) If after a reasonable period of time not less than 15 days after the appointment of a mediator the impasse is not resolved, the mediator shall certify to the Board that the impasse continues. The Board shall appoint a fact finder mutually agreed upon by the parties. If the parties do not agree, the Board may appoint a neutral third party to act as fact finder pursuant to rules adopted by the Board.

(c) [Repealed.]

(d) The fact finder shall conduct hearings, pursuant to rules established by the Board. Upon request of either party or of the fact finder, the Board may issue subpoenas of persons and documents for the hearings and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing herein shall prohibit a fact finder from endeavoring to mediate the dispute, which the fact finder is considering, at any time prior to the issuance of recommendations.

(f) The fact finder shall consider, if applicable to the issues, the following factors, among others, in making a recommendation:

(1) wage and salary schedules and employee benefits to the extent they are inconsistent with prevailing rates both internally and in commerce and industry for comparable work within the State;

(2) work schedules relating to assigned hours and days of the week as they relate to the employee's needs and the general public's requirement for continual service;

(3) general working conditions as they compare with generally accepted safety standards and conditions prevailing in commerce and industry within the State.

(g) Upon completion of the hearings, the fact finder shall make and file with both parties written findings and recommendations.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the party incurring them, and the costs and expenses of the fact finder shall be divided equally between the parties. Each party shall make payment of its half of the total to the fact finder within 15 days after receipt of the fact finder's bill.

(i) If the dispute remains unresolved 20 days after transmittal of findings and recommendations to the parties or within a time frame mutually agreed upon by the parties that may be no more than an additional 30 days, each party shall submit as a single package its last best offer on all disputed issues to the Board. Each party's last best offer shall be filed with the Board under seal and shall be unsealed and placed in the public record only when both parties' last best offers are filed with the Board. The Board shall hold one or more hearings. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in its entirety without amendment.

(j) Notwithstanding the provisions of subsection (i) of this section, should the Board find the last best offers of both parties unreasonable and likely to produce undesirable results, or likely to result in a long-lasting negative impact upon the parties' collective bargaining relationship, then the Board may select the recommendation of the fact finder under subsection (g) of this section as to those disputed issues submitted to the Board in the last best offers.

(k) In the case of the State of Vermont, the decision of the Board shall be final, and the terms of the chosen agreement shall be binding on each party, subject to appropriations in accordance with subsection 982(d) of this title. In the case of the University of Vermont or the Vermont State Colleges, the decision of the Board shall be final and binding on each party.

(l) Nothing herein shall be construed to permit the Board to issue an order under subsection (i) of this section binding upon the parties that is in conflict with any statute or any rule or regulation that is not bargainable. (Added 1969, No. 113, § 1; amended 1971, No. 185 (Adj. Sess.), § 2, eff. March 29, 1972; 1971, No. 193 (Adj. Sess.), § 8, eff. April 3, 1972; 1977, No. 109, § 6; 1987, No. 177 (Adj. Sess.), § 4; 2005, No. 71, § 178a, eff. June 21, 2005; 2005, No. 1 (Spec. Sess.), § 1; 2005, No. 194 (Adj. Sess.), § 2; 2011, No. 22, § 1.)

The Vermont Statutes Online

Title 03 : Executive

Chapter 027 : State Employees Labor Relations Act

Subchapter 002 : Labor Relations Board

§ 926. Grievances

(a) The Board shall hear and make a final determination on the grievances of all employees who are eligible to appeal grievances to the Board. Grievance hearings at the Board level shall be conducted in accordance with the rules and regulations adopted by the Board. The right to institute grievance proceedings extends to individual employees, groups of employees, and collective bargaining units.

(b) A collective bargaining agreement may provide for binding arbitration as a final step of a grievance procedure, rather than a hearing by the Board. An agreement that includes a binding arbitration provision shall also include the procedure for selecting an arbitrator.

(c) If a collective bargaining agreement provides for binding arbitration as a final step of a grievance procedure, the agreement may also establish:

- (1) procedural rules for conducting grievance arbitration proceedings;
- (2) whether grievance arbitration proceedings will be confidential; and
- (3) whether arbitrated grievance determinations will have precedential value.

(d) An arbitrator chosen or appointed under this section shall have no authority to add to, subtract from, or modify the collective bargaining agreement.

(e) Any collective bargaining agreement that contains a binding arbitration provision pursuant to this section shall include an acknowledgement of arbitration that provides substantially the following:

(The parties) understand that this agreement contains a provision for binding arbitration as a final step of the grievance process. After the effective date of this agreement, no grievance, submitted to binding arbitration, may be brought to the Vermont Labor Relations Board. An employee who has declined representation by the employee organization or whom the employee organization has declined to represent or is unable to represent, shall be entitled, either by representing

himself or herself or with the assistance of independent legal counsel, to appeal his or her grievance to the Vermont Labor Relations Board as the final step of the grievance process in accordance with the rules and regulations adopted by the Board.

(f) This section shall not apply to labor interest arbitration, which as used in this chapter means the method of concluding labor negotiations by means of a disinterested person to determine the terms of a labor agreement.

(g) A party may apply to the arbitrator for a modification of an award if the application is made within 30 days after delivery of a copy of the award to the applicant. An arbitrator may modify an award only if the arbitrator finds any one of the following:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.

(2) The award was based on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted.

(3) The award was imperfect in form and the award may be corrected without affecting the merits of the controversy.

(h) A party may apply to the Civil Division of the Superior Court for review of the award provided the application is made within 30 days after delivery of a copy of the award to the applicant or, in the case of a claim of corruption, fraud, or other undue means, the application is made within 30 days after those grounds are known or should have been known. The Civil Division of the Superior Court shall vacate an arbitration award based on any of the following:

(1) The award was procured by corruption, fraud, or other undue means.

(2) There was partiality or prejudicial misconduct by the arbitrator.

(3) The arbitrator exceeded his or her power or rendered an award requiring a person to commit an act or engage in conduct prohibited by law.

(i) The Board shall hear and make a final determination on the grievances of all retired individual employees of the University of Vermont, groups of such retired individuals, and retired collective bargaining unit members of the University of Vermont. Grievances shall be limited to those relating to compensation and benefits that were accrued during active employment but are received after retirement. As used in this subsection, "grievance" means an allegation of a violation of a collective bargaining agreement, employee handbook provision,

early retirement plan, individual separation agreement or other documented agreement, or rule or regulation of the University of Vermont. (Added 1969, No. 113, § 1; amended 1977, No. 109, § 7, eff. July 3, 1977; 2007, No. 107 (Adj. Sess.), § 1; 2015, No. 35, § 1, eff. May 26, 2015.)

The Vermont Statutes Online

Title 03 : Executive

Chapter 027 : State Employees Labor Relations Act

Subchapter 005 : Agreements; Generally

§ 982. Agreements; limitations, renegotiation, and renewal

(a) Collective bargaining agreements, except those affecting the Vermont State Colleges and the University of Vermont, shall be for a maximum term of two years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall be filed with the Board. Upon the filing of such consent, an agreement may be supplemented, cancelled, or renegotiated.

(b) Nothing in this chapter shall be construed to require either party during collective bargaining to accede to any proposal or proposals of the other party.

(c) Except in the case of the Vermont State Colleges or the University of Vermont, agreements between the State and certified bargaining units which are not arrived at under the provisions of subsection 925(i) of this title shall, after ratification by the appropriate unit memberships, be submitted to the Governor who shall request sufficient funds from the General Assembly to implement the agreement. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

(d) When the parties are unable to reach agreement on a collective bargaining agreement, and the Vermont Labor Relations Board recommends an agreement in accordance with subsection 925(k) of this title, the Board shall determine the cost of the agreement selected and request the General Assembly to appropriate the amount determined to be necessary to implement the selected agreement. If the General Assembly chooses to appropriate sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates less than the amount requested, the terms of the agreement affected by the lesser appropriation shall be renegotiated based on the amount of the funds actually appropriated, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

(e) No portions of any agreement shall become effective separately except with mutual consent of both parties.

(f) Such an agreement shall terminate at the expiration of its specified term. Negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time within one year next preceding the expiration date upon the

request of either party and may be commenced at any time previous thereto with the consent of both parties.

(g) In the event the State of Vermont, the University of Vermont, and the Vermont State Colleges as employer and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract which, as amended, shall remain in effect until a new contract is ratified by the parties.

(h) The Board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party. In the event a complaint is made by either party to an agreement, the Board shall proceed in the manner prescribed in section 965 of this title relating to the prevention of unfair labor practices. (Added 1969, No. 113, § 1; amended 1971, No. 193 (Adj. Sess.), § 12, eff. April 3, 1972; 1977, No. 109, § 12, eff. July 3, 1977; 1979, No. 141 (Adj. Sess.), §§ 21, 22; 1981, No. 249 (Adj. Sess.), § 4, eff. July 4, 1982; 1987, No. 177 (Adj. Sess.), § 5; 2005, No. 194 (Adj. Sess.), § 3; 2011, No. 22, § 2.)