

## **Labor Relations for Teachers Act**

The Labor Relations for Teachers Act was enacted in 1969 with the stated purpose “to promote the improvement of communications and agreements between certificated employees of the schools within the state and the school boards of those schools by providing a procedure whereby certificated school employees may join associations of their choice and be represented by such associations in arriving at agreements with school boards on the terms and conditions of their professional service and other matters mutually agreed upon.”<sup>1</sup> School boards covered by the Act are the boards of school directors of any public school district or any independent elementary or secondary school within the state which directly or indirectly receives support from public funds.<sup>2</sup>

The Teachers Act has provided since its inception that teachers, principals, assistant principals, and administrators other than superintendents and assistant superintendents “shall have the right to or not to join, assist, or participate in any . . . organization of their choosing.”<sup>3</sup> The Vermont Supreme Court interpreted this statutory language in a 1988 decision to prohibit unions and employers from negotiating agency shop provisions in collective bargaining agreements whereby employees in teachers’ bargaining units who were not union members were required to pay a fee in lieu of the union membership fee.<sup>4</sup> The Vermont General Assembly subsequently amended the Act in 2005 to provide that teachers and administrators “may be required to pay an agency fee pursuant to an agreement negotiated under this Section.”<sup>5</sup>

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<sup>1</sup> Act No. 127, §1.

<sup>2</sup> 16 V.S.A. §1981(3) and (4).

<sup>3</sup> 16 V.S.A. §1982(a) and (b).

<sup>4</sup> Weissenstein v. Burlington Board of School Commissioners and Burlington Education Association, 149 Vt. 288 (1988).

<sup>5</sup> Act No. 25, §2.

The Act was further amended in 2013 to remove agency fees as a required subject of bargaining and instead to provide that employees in a bargaining unit represented by an employee organization as exclusive bargaining representative are required to pay agency fees to the representative.<sup>6</sup> The statutory change provided that the agency fee may not exceed 85 percent of the amount of union dues., and that the fee was to be deducted in the same manner as dues were deducted from the wages of members of the employee organization, and “shall be used to defray the costs of chargeable activities.”<sup>7</sup> However, in 2018, the U.S. Supreme Court ruled that public employers and public sector unions are prohibited from collecting agency fees or any other payment to a union from nonconsenting employees.<sup>8</sup>

The Act also has provided since its inception that “neither the school board nor any employee of the school board serving in any capacity, nor any other person or organization shall interfere with, restrain, coerce or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.”<sup>9</sup> However, the Teachers Act, contrary to other Vermont labor relations statutes, did not contain provisions detailing employer and union unfair labor practices when it was enacted. The lack of unfair labor practice provisions concerning teachers was changed in 1975 when the Municipal Employee Relations Act was amended to add a section providing:

For the purposes of representation in, and prevention of, unfair labor practices under sections 1726-1729 of this title, a teacher who is a certified employee of a school district shall be considered a municipal employee; and any school district, which includes any public school district or any quasi-public or private elementary or secondary school within the state which directly or

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<sup>6</sup> 16 V.S.A. §1982(a) and (b).

<sup>7</sup> 16 V.S.A. §1981(7).

<sup>8</sup> Janus v. AFSCME, et al., \_\_\_ U.S. \_\_\_ (June 27, 2018).

<sup>9</sup> 16 V.S.A. §1982(c).

indirectly receives support from public funds shall be considered a municipal employer.<sup>10</sup>

Unlike the other labor relations statutes in Vermont, the Teachers Act does not provide for the Vermont Labor Relations Board resolving unit determination issues and conducting 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 of the involved employees by “submission of a petition bearing the valid signatures of a majority of the teachers or administrators”. The school board is not required to voluntarily recognize the organization in such circumstances but instead may require that a referendum be held. The Act contains the following provision concerning the conducting of a referendum:

In the interest of expediting the referendum and minimizing the cost thereof, the petitioning party or parties and the school board may agree together to conduct cooperatively the referendum themselves. Alternatively, the parties may select an impartial person or agency to conduct or aid in the conducting of the referendum. Failing agreement among all interested parties on the conduct of the referendum, any of the petitioning parties or the school board may request that the referendum be conducted with the aid and assistance of the American Arbitration Association or its designee. The American Arbitration Association or its designee shall have the responsibility for making decisions on any and all matters in dispute regarding the mechanics of the referendum, eligibility and other necessary decisions relating to the conduct of the referendum.<sup>11</sup>

A bill enacted into law during the 2020 legislative session amended the provisions of the Labor Relations for Teachers Act to establish specific timeframes

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<sup>10</sup> Act No. 113; 21 V.S.A. §1735.

<sup>11</sup> 16 V.S.A. §1992(d).

for employer responses to election petitions and scheduling of referendums. The Act previously did not set specific timeframes.<sup>12</sup>

Prior to 2007, the Act provided that, in cases where an organization represents teachers or administrators, the involved school board and the recognized organization “shall meet together at reasonable times . . . and shall negotiate in good faith on all matters properly before them” under the provisions of the Act. The Act was amended in 2007 to establish school board negotiations councils, teachers organization negotiations councils and administrators’ organization councils to conduct negotiations for collective bargaining agreements. A school board negotiations council is made up of representatives of school boards within a supervisory union or a school board for a supervisory district. A teachers or administrators negotiations council consists of representatives designated by each teachers organization or administrators organization within a supervisory district or supervisory union to act as its representative for negotiations.<sup>13</sup>

Teacher or administrator organizations are required under the Act to make a request for commencement of negotiations “no later than 120 days prior to the earliest school district annual meeting conducted within the supervisory union.”<sup>14</sup> The parties are required to negotiate “on matters of salary, related economic conditions of employment, an agency service fee, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the state”.<sup>15</sup> This limited scope of required bargaining under the Teachers Act is discussed further in Section 5.

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<sup>12</sup> Act No. 180 (2019 Adj Sess.)

<sup>13</sup> Act No. 82: 16 V.S.A. §§1981(2), (8), (9); 1991(a); 2001.

<sup>14</sup> 16 V.S.A. §2003.

<sup>15</sup> 16 V.S.A. §2004.

This scope of bargaining was affected by a bill enacted into law during the 2018 Special Session that created a bargaining model for school health care bargaining that is separate from the traditional bargaining model under the Municipal Employee Relations Act and Teachers Act, and it provides for different representation of the respective parties in collective bargaining negotiations.<sup>16</sup> It creates a Commission on Public School Employee Health Benefits to “determine . . . the amounts of the premiums and out-of-pocket expenses for school employee health benefits that shall be borne by school employers and by participating employees”; and “whether school employers shall establish a health reimbursement arrangement, a health savings account, both, or neither, for their participating employees.”<sup>17</sup>

If the parties are unable to arrive at an agreement, the Teachers Act provides for the dispute resolution mechanisms of mediation (if requested jointly or by either party) and fact-finding (requested by either party) to resolve negotiations impasses.<sup>18</sup> It further provides that “all decisions of the school board regarding matters in dispute in negotiations shall, after full compliance with this Section, be final.”<sup>19</sup> Under the Teachers Act, teachers also have a limited right to strike. A court may issue a restraining order or injunction against a strike pursuant to the Act if the court concludes after a hearing that “the commencement or continuance of the action poses a clear and present danger to a sound program of school education which in the light of all relevant evidence it is in the best public interest to prevent.”<sup>20</sup> These dispute resolution procedures are discussed further in Section 5.

The Teachers Act was amended in 1992 to provide for binding interest arbitration at the conclusion of the negotiations process only “if both parties agree

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<sup>16</sup> Act No. 11 (2018 Special Session).

<sup>17</sup> 16 V.S.A. § 2102 (a); 16 V.S.A. § 2103(b)(1).

<sup>18</sup> 16 V.S.A. §§2006, 2007.

<sup>19</sup> 16 V.S.A. §2008.

<sup>20</sup> 16 V.S.A. §2010.

in writing to submit to binding arbitration”.<sup>21</sup> This statutory language was amended in 2007 when school board negotiations councils, teachers organization negotiations councils and administrators’ organization councils were established to conduct negotiations for collective bargaining agreements. The amended language provides: “Arbitration shall only occur if the recognized organization and one or more of the school boards agree in writing to submit to binding arbitration for one or more issues remaining in dispute. An agreement to accept binding arbitration . . . shall apply only to the parties to the arbitration.”<sup>22</sup> The binding interest arbitration provisions of the Act cover selection and decision of the arbitrator, jurisdiction of the arbitrator, factors to be considered by the arbitrator and judicial appeal of the arbitrator’s decision.<sup>23</sup>

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<sup>21</sup> Act. No. 196; 16 V.S.A. §2021(a).

<sup>22</sup> Act No. 82; 16 V.S.A. §2021(a).

<sup>23</sup> 16 V.S.A. §§2021-2027.