Threshold Issues in ULP Cases

A. Timeliness of ULP Charge

Under all applicable statutes, unfair labor practice charges generally must be filed within six months of when the alleged unfair labor practice occurred.[1] Therefore, the VLRB generally has declined to issue unfair labor practice complaints in cases where the charge was filed more than six months after the alleged unfair practice.[2] The six month clock does not begin running on alleged unilateral changes in conditions of employment until the employer actually implements the changes.[3]

A bargaining duty does not survive after a failure to assert it for a period of six months; the failure of a union to protest an alleged unilateral change in a condition of employment within the six month period for filing an unfair labor practice charge means the union has waived the right to bargain over it during the term of the present contract.[4] In a case decided under the Municipal Employee Relations Act, the Board stated: "To permit a union to dredge up an 'old' alleged unfair labor practice, when the employer had been led to believe by the union's inaction that its action was not a source of dispute, would be contrary to the purpose and policy of the Municipal Employee Relations Act to 'provide orderly and peaceful procedures' for resolving disputes."[5]

---

[1] 3 V.S.A. §965, 3 V.S.A. §1030, 21 V.S.A. §1727(a), 21 V.S.A. §1622(a), and 21 V.S.A. §1638(a); 33 V.S.A. §3612(e).
[2] Samler v. Burlington School District, 35 VLRB 262, 267-68 (2019). Davis v. Town of Williston, 32 VLRB 43, 45 (2012). AFT Local 3333, VFT, AFL-CIO v. U32 High School Board of Directors, et al., 6 VLRB 115, 117 (1983).
[3] Cavendish Town Elementary School Teachers' Association, Vermont-NEA/NEA v. Cavendish Town Board of School Directors, 16 VLRB 378, 385-86 (1993). Mt. Abraham Education Association v. Mt. Abraham Union High School Board of School Directors, 4 VLRB 228-29 (1981).
[4] Local 2323, IAFF v. City of Rutland, 13 VLRB 48, 55 (1990).
[5] Id. at 57-58.

In cases where an employer defends against a charge of improper unilateral implementation of a condition of employment by alleging that a charge filed by a union is untimely, it is not sufficient for the employer to show that the employer's action occurred at a publicly-warned public meeting for which minutes were published. In such cases, in the absence of proof that the union and employees had independent knowledge of the employer's action, the Board determined that "at the very least, the Employer was required to either post the new policy in the workplace, or forward a copy of the policy to the employees or the Union, before we would conclude the Union should reasonably have been aware that an alleged unilateral implementation of a policy occurred".[6]

There must at minimum be an alleged violation of unfair labor practice provisions within six months of when the unfair labor practice charge was filed to support the issuance of an unfair labor practice complaint.[7] Earlier events may be utilized to shed light on the true character of matters occurring within the six-month period where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices.[8]

The filing of a grievance on the matter does not toll or relax the responsibility to file an unfair labor practice charge within six months of the occurrence of the alleged unfair practice.[9] The Board stated: "To hold otherwise would encourage parties to engage in forum-shopping, and lead a party dissatisfied with an arbitrator's decision to file an unfair labor practice charge. A rule creating such a situation would inevitably lessen the effectiveness of the grievance procedure and subvert the

---

[6] AFSCME Local 1201, Council 93 v. City of Rutland, 18 VLRB 189, 198-99 (1995).
[7] Miller v. University of Vermont, 23 VLRB 205, 208-209 (2000). Essex Educators Association (ESP Unit) v. Essex Town Board of School Directors, 24 VLRB 206, 207 (2001).
[8] Id.
[9] Champlain Valley Union High School Teachers' Association v. Champlain Valley Union High School Board of Directors, 4 VLRB 315 (1981).

collective bargaining process."[10] Also, the filing of an action in court does not toll or relax the responsibility to file an unfair labor practice charge or a grievance within applicable time periods.[11]

The VLRB did recognize the notion of a continuing unfair labor practice in one case. An employee was denied union representation and coverage of the collective bargaining agreement upon his discharge, which discharge occurred two years after the contract was implemented. The Board held that that a continuing unfair labor practice existed since the employee did not realize he was illegally excluded from coverage of the contract until the time he was discharged.[12]

B. Mootness of ULP Charge

One threshold issue that has been decided in unfair labor practice cases is whether the charge should be dismissed as moot or not justiciable. The Board and the Supreme Court have dismissed cases as moot or not justiciable where a teachers' association and a school board reached agreement on a collective bargaining contract pending the outcome of an unfair labor practice charge prompted by alleged actions occurring during contract negotiations. In these cases, the underlying dispute in the unfair labor practice charges was resolved by the parties agreeing to a collective bargaining agreement.[13] The Court and Board concluded in these cases that no actual controversy or existing bona fide litigation existed between the parties.[14] The Board has indicated these are not cases that are capable of repetition, yet evading review;

---

[10] Id. at 317.
[11] Harrington v. Department of Corrections, et al, 14 VLRB 166, (1991).
[12] AFSCME, Local 490 v. Town of Bennington, 6 VLRB 88, 98-100 (1983).
[13] North Country Education Association v. Brighton School Board, 135 Vt. 451 (1977). Windsor Southwest Education Association v. Windsor School District Board of School Directors, 11 VLRB 217 (1988). Milton Staff Association / Vermont-NEA / NEA Local 130 v. Milton Board of School Trustees, 17 VLRB 176, 177-78 (1994). Arlington Educators Association, Vermont-NEA/NEA v. Arlington Board of School Directors, 18 VLRB 154 (1995).
[14] Id.

that if a similar action occurred in a future round of negotiations, the Board would be able to review such action in a timely manner.[15]

In a 2020 decision, the Board rejected a union's claim that an ongoing issue of contention between the parties as to the timing of negotiations over wage and other compensation provisions is capable of repetition, yet evading review. The Board noted that informal intervention by the Board Executive Director could have occurred quickly that potentially may have assisted the parties resolving the underlying issues.[16] The Board supported this statement with various examples:

> For example, VSEA had filed an unfair labor practice charge in the previous round of negotiations between the parties contending that the Employer was committing an unfair labor practice by refusing to engage in collective bargaining prior to the commencement of the budgetary process that would be required to fund any contractual items, and thereby making it impossible for VSEA to negotiate over financial items. The Board Executive Director met with the parties two weeks after the Employer filed its response to the charge and thereafter continued to interact with the parties until the charge was informally resolved. This allowed for negotiations to proceed in a manner agreed upon by the parties (See VLRB Docket No. 17-31).
>
> . . . Further examples exist with respect to a series of unfair labor practice charges arising during negotiations between VSEA and the State of Vermont in 2004 for a successor collective bargaining agreement. On September 23, 2004, VSEA filed an unfair labor practice charge alleging among other issues that the State committed unfair labor practices by refusing to submit a proposal in collective bargaining negotiations on wages and benefits, and attempting to condition bargaining on wages and benefits on the resolution of non-economic matter. The Board required the State to file a response to the charge 7 days later, on September 30. The Board Executive Director met with the parties on October 1 and 4. Following the meetings, the parties had resolved all issues in dispute except for one issue. The Board then issued a Memorandum and Order on October 5, declining to issue an unfair labor practice complaint on the remaining issue. VSEA v. State of Vermont, 27 VLRB 226 (2004). In sum, the case was resolved 12 days after it was filed.

---

[15] Windsor, 11 VLRB at 219. Milton, 17 VLRB at 179.

[16] Vermont State Employees' Association v. Judiciary Department of the State of Vermont, 35 VLRB 419, 426.

> Similarly, in two further unfair labor practice charges filed during the same round of negotiations, the cases were resolved quickly. In one case, involving a claim by VSEA of the State making illegal bargaining demands, the Board Executive Director quickly met with the parties and the matter was informally resolved by the parties within three weeks of the charge being filed (VLRB Docket No. 04-46). In the other case, involving a claim by the State that VSEA had violated negotiations ground rules, the parties met with the Board Executive Director two days after the charge was filed, the Board issued an unfair labor practice complaint four days after the filing of the charge, the hearing before the Board was held 17 days after the charge was filed, and the decision was issued 39 days after filing of the charge. <u>State of Vermont v. VSEA</u>, 28 VLRB 1 (2005).
>
> These cases illustrate that unfair labor practice cases involving negotiation disputes have been resolved quickly if given priority by the Board and the parties. The potential existed for this to have occurred in this case if VSEA had filed the charge earlier. Also, the potential exists for this to occur in any future negotiations dispute involving the parties to this case. Accordingly, we are not persuaded that the issue involved in this case is capable of repetition, yet evading review. Instead, it can be resolved in a timely manner. [17]

The Board also dismissed as moot a charge, alleging interference of employee rights to testify in a pending disciplinary proceeding, where the parties had settled all pending disciplinary issues underlying the charge. The Board concluded that an actual controversy between the parties no longer existed.[18]

In other cases, the Board has declined to dismiss charges as moot even though collective bargaining agreements had been finalized after the unfair labor practice charge was filed. In two cases, the subject of the unfair labor practice charge was not raised by either party during contract negotiations and the new contract did not resolve the issue raised in the charge. The Board concluded under these

---

[17] <u>Id.</u> at 426-428.
[18] <u>VSEA and Danforth v. Department of Public Safety</u>, 20 VLRB 112 (1997).

circumstances that an actual controversy still existed between the parties which required resolution.[19]

Also, the Board has indicated that the statute does not require the Board to "play hide and seek" with those guilty of unfair labor practices,[20] and has declined to dismiss cases as moot if they are "capable of repetition, yet evading review."[21] In one case, the Board declined to dismiss an unfair labor practice charge on mootness grounds where a union alleged in the charge that the unilateral adoption of rules and regulations during the course of contract negotiations was a refusal to bargain in good faith, and the parties had their negotiations dispute resolved pending Board decision on the charge. The Board concluded: "it is important to decide this issue since there is a continuing dispute between the parties over the right of management to promulgate rules and regulations during the course of negotiations. We believe this is the type of case which is 'capable of repetition, yet evading review' . . . and thus should not be dismissed as moot.[22]

C. Deferral to Grievance Procedure

Another threshold issue which has been decided in unfair labor practice cases is whether the VLRB should defer to a contract's grievance procedure in lieu of issuing an unfair labor practice complaint. The VLRB has not ruled on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and employees had an adequate redress for the

---

[19] Castleton Education Association, Vermont-NEA v. Castleton-Hubbardton Board of School Directors, 13 VLRB 60, 64-65 (1990). South Burlington Board of School Directors v. South Burlington Educators' Association and Vermont-NEA, 32 VLRB 56, 77-81 (2012).
[20] Rutland Schools, 2 VLRB 250, 283-284 (1979.
[21] Id. Burlington Fire Fighters Association v. City of Burlington, 4 VLRB 379, 384-385 (1981). South Burlington Board of School Directors v. South Burlington Educators' Association and Vermont-NEA, 32 VLRB at 81.
[22] Burlington Fire Fighters Association v. City of Burlington, 4 VLRB at 384-85.

alleged wrongs through the grievance procedure.[23] Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie.[24]

The Board begins its analysis by considering if the issue contained in the charge is subject to arbitration, irrespective of whether it might also be an unfair labor practice.[25] If the issue is subject to arbitration, the contract grievance procedure should be applied, barring an overriding statute or deferral policy.[26] The rationale underlying deferral to the grievance procedure was stated by the Board in an early case:

> If this Board hears as an unfair labor practice a complaint which is a grievance without first requiring the complainant to utilize the dispute resolution procedures agreed to in the collective bargaining agreement, the collective bargaining process would be undermined . . . (A)n exhaustion of contract remedies doctrine . . . insures the integrity of the collective bargaining process by requiring the parties to collective bargaining agreements to follow the procedures they have negotiated to resolve contract disputes. This policy also encourages the parties to negotiate grievance procedures to resolve contract disputes which is sound labor relations policy. Labor relations stability depends on the parties working together to resolve disputes which directly affect them.[27]

---

[23] Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9 VLRB 195 (1986). Fair Haven Graded School Teachers Association, Vermont-NEA v. Fair Haven Board of School Directors, 13 VLRB 101, 109-110 (1990). Winooski Police Employees' Association v. City of Winooski, 28 VLRB 102 (2005). International Union of Public Employees, Hartford Police Union v. Town of Hartford, 32 VLRB 357, 361 (2013). Burlington Education Association v. Burlington Board of School Commissioners, 34 VLRB 389 (2018). Samler v. Burlington School District, 35 VLRB 262, 269-70 (2019).

[24] Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 518 (1991).

[25] Id. at 519.

[26] Id.

[27] Burlington Education Association v. City of Burlington, 1 VLRB 335, 340 (1978).

Abstention cannot be equated with abdication of the Board's statutory duty to prevent and remedy unfair labor practices; instead the parties are directed to seek resolution of their disputes under the provisions of their own contract, thus fostering the collective relationship and the policy favoring voluntary arbitration and dispute settlement.[28] Where contract interpretation may resolve the dispute, deferral to the arbitration procedure is "merely the prudent exercise of restraint, a postponement of the use of the Board's processes to give the parties' own dispute resolution machinery a chance to succeed."[29]

The exhaustion doctrine does not bind the parties if the issue raised before the Board does not qualify as a matter of contract interpretation.[30] However, interpretation of an agreement may involve interpolating from a written text solutions not expressly spelled out in the text.[31] Textual interpretations may be blended with "contracts implied in fact" in the form of established past practices.[32] An arbitrator is ideally poised to consider and resolve such issues; they are issues concerning the "law of the shop" as opposed to the "law of the land".[33] The Board has deferred cases to the grievance procedure where the blending of textual contract interpretations with established past practices were involved.[34]

---

[28] Champlain Water District, 156 Vt. at 519-520. National Radio Co., 198 N.L.R.B. 527, 531 (1972).
[29] Milton Education and Support Association v. Milton Board of School Trustees, 171 Vt. 64 (2000).
[30] Champlain Water District, 156 Vt. at 520.
[31] Id.
[32] Id. at 520-21.
[33] Id. at 521.
[34] IBEW Local 300 v. Barton Village Trustees, 23 VLRB 165 (2000). BED IBEW, Local 300, Unit Six v. Burlington Electric Department 22 VLRB 325 (1999). Milton Education and Support Association v. Milton Board of School Directors, 22 VLRB 330 (1999).

The exhaustion doctrine also does not bind the parties if an overriding statute negates deferral, or if the Board's own deferral guidelines indicate that deferral would not serve the purpose of the statute.[35] The Board stated in one case:

> The charge made by the Association involves an issue central to the system of collective bargaining. In these instances, we will apply our own principles of interpretation of the collective bargaining statute we are empowered to administer. Our mandate is to enforce a statutorily-determined system of collective bargaining; this duty differs from that of the arbitrator who looks to contract interpretation alone.[36]

In another case, involving an allegation of discrimination based on union activities, the Board recognized that the case "obviously . . . involves a claim central to the protections afforded employees by the Municipal Employee Relations Act", but concluded that deferral to the grievance procedure was appropriate.[37] The collective bargaining agreement protected employees from discrimination based on union membership and activities. Given this, the Board determined that it was apparent that the union and involved employee had an adequate redress to resolve their claim of discrimination due to union activities pursuant to the agreement's four-step grievance procedure culminating in binding arbitration.[38] The Board referenced precedents under the National Labor Relations Act providing for deferral of unfair labor practice charges to resolution through the grievance procedure in such cases, and stated:

> Likewise, in the case now before us it is appropriate to defer to the grievance procedure the resolution of the Association's allegation of discrimination based on protected union activities. This may resolve the dispute between the parties, making it unnecessary to proceed with the unfair labor practice charge. Since contract interpretation may resolve the dispute, deferral to the grievance procedure is "merely the prudent exercise of restraint, a

---

[35] Champlain Water District, 156 Vt. at 520.
[36] Mt. Abraham Education Association v. Mt. Abraham School Board, 4 VLRB 224, 230 (1981).
[37] Winooski Police Employees Association v. City of Winooski, 28 VLRB 102, 107-109 (2005).
[38] Id.

postponement of the use of the Board's processes to give the parties' own dispute resolution machinery a chance to succeed."[39]

The Board has indicated deferral is not appropriate if an employee or union is alleging retaliation against an employee for filing previous unfair labor practice charges with the Board or giving testimony in proceedings before the Board.[40] This is because the duty to protect the Board's processes from abuse is a function of the Board that is not for delegation to the grievance procedure or arbitration.[41]

If the VLRB does decide to defer to a grievance arbitration procedure under a contract, the Board may retain jurisdiction solely for the purpose of entertaining a motion that the grievance arbitration has failed to meet the following criteria necessary for the Board to defer to an arbitrator's award: 1) fair and regular arbitration proceedings; 2) agreement by all parties to be bound; 3) the decision is not repugnant to the purpose and policies of the Act; 4) the arbitrator clearly decided the unfair labor practice issue; and 5) the arbitrator decided issues within his or her competency.[42]

In post-arbitration deferral cases, the Board has decided whether arbitrators have clearly decided unfair labor practice issues. The Board has decided that an unfair labor practice issue effectively was decided once an arbitrator determined that an action by an employer is specifically covered and permitted by the contract. Once this determination was made, the Board reasoned that same action could not be determined to be an improper unilateral action in violation of unfair labor practice

[39] Id. at 108-09.
[40] Teamsters Local 597 v. Chittenden County Transportation Authority, 23 VLRB 240 (2000).
[41] Id. at 243.
[42] AFSCME Local 490, Bennington Department of Public Works and Police Units v. Town of Bennington, 9 VLRB 195 (1986).

provisions of the Act.[43] However, where the contract did not specifically cover the action taken by the employer, the Board concluded that the arbitrator had not decided the unfair labor practice issue.[44]

In considering whether an arbitrator has clearly decided the unfair labor practice issue, the Board in Burlington Electric Department[45] adopted the following standard articulated by the National Labor Relations Board:

> We would find that an arbitrator adequately considered the unfair labor practice if (1) the factual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. In this respect, differences, if any, between the contractual and statutory standards of review should be weighed by the Board as part of its determination under the *Spielberg* standards whether an award is "clearly repugnant" to the Act.[46]

The Board held in two cases that "a logical extension of the arbitrator's ruling" can be found to "effectively decide the unfair labor practice issue". [47]

The Board also has considered in post-arbitration deferral cases whether an arbitration decision is repugnant to the purposes and policies of the labor relations act. An award is repugnant to the act if it is "palpably wrong"; that is not susceptible to an interpretation consistent with the act.[48]

---

[43] Burlington Education Association v. Burlington Board of School Commissioners, 35 VLRB 235, 242-245 (2019). AFSCME Local 1201, Castleton Employees v. Town of Castleton, 25 VLRB 140, 141-42 (2002). BED IBEW, Local 300, Unit Six v. Burlington Electric Department, 23 VLRB 245, 250 (2000).
[44] Milton Education and Support Association v. Milton Board of School Trustees, 23 VLRB 301, 306 (2000); *Affirmed,* 175 Vt. 531 (2003).
[45] 23 VLRB at 249.
[46] Olin Corporation and Local 8-77, Oil, Chemical and Atomic Workers International Union, AFL-CIO, 268 N.L.R.B. 573, 574 (1984).
[47] Burlington Education Association v. Burlington Board of School Commissioners, 35 VLRB 235, 243-45 (2019). AFSCME Local 1201, Castleton Employees v. Town of Castleton, 25 VLRB 140, 143-44 (2002).
[48] Burlington Education Association v. Burlington Board of School Commissioners, 35 VLRB at 243, 245. Burlington Electric Department, 23 VLRB at 249. Milton, 23 VLRB at 311.

The Board declined to change these long-standing post-arbitration deferral standards in a 2018 decision.[49] Application of the standards have resulted in the Board both deferring to arbitration decisions where appropriate[50], and not deferring where that is appropriate.[51]

There are other unfair labor practice cases involving alleged violations of collective bargaining agreements where the Board does not retain jurisdiction for the purpose of entertaining a motion that grievance arbitration has not met certain criteria. In addressing charges brought by individual employees without union involvement alleging that the terms of a collective bargaining agreement have been violated, the Board has held that the proper avenue to address that issue is through filing a grievance under the agreement, not through filing an unfair labor practice charge. The Board declined to issue unfair labor practice complaints and dismissed the charges in these cases, rather than retaining jurisdiction.[52]

In another case, the union failed to exhaust available remedies under the collective bargaining agreement by not filing a grievance on a matter involving interpretation of the collective bargaining agreement. The Board concluded that the union's actions precluded Board retention of jurisdiction over the unfair labor practice charge filed by the union, stating:

> . . . (A)n important step has been omitted in our consideration whether to issue an unfair labor practice complaint. . . The Union's failure to pursue a grievance over this matter means that the Union inappropriately has not sought resolution through the mechanism established by the parties to decide contract interpretation issues, and the benefit of an arbitrator's determination

---

[49] Rutland Education Association and Rutland Staff Association v. Rutland Board of School Commissioners, et al, 34 VLRB 207 (2018).
[50] Castleton, supra; Burlington Electric Department, supra; Rutland, supra.
[51] Milton, supra.
[52] Bergeron v. Chittenden County Transportation Authority, 33 VLRB 42 (2014). Fouts v. Chittenden County Transportation Authority, 32 VLRB 27 (2012). Heath v. City of Burlington, 29 VLRB 299 (2007). Hurley v. Superintendent of Rutland Public Schools, 15 VLRB 422 (1992).

> whether the Town's action is specifically covered and permitted by the contract has been lost. Thus, we are left without a basis to retain jurisdiction in this matter.[53]

Also, special considerations apply under the State Employees Labor Relations Act when the Board considers whether to defer an unfair labor practice case to the grievance procedure. This is because, unlike other acts administered by the Board, the Board resolves both unfair labor practice charges and grievances under the State Employees Act. In several cases in which both a grievance and an unfair labor practice charge have been filed contesting actions taken by an employer, the Board has concluded that a dual process of review is not warranted where issues raised in the charge are also raised in the grievance. The Board has deferred the matter to the Board's grievance proceedings, and has exercised its discretion to not issue an unfair labor practice complaint.[54]

D. Determining Arbitrability of Grievances

In a related area, the Board has recognized that its jurisdiction over unfair labor practices does not extend to determining the arbitrability of grievances; that the question of arbitrability of a specific claim under a valid general agreement to arbitrate is a question for arbitrators and, ultimately, the courts.[55] Also, the Vermont

---

[53] International Union of Public Employees, Hartford Police Union v. Town of Hartford, 32 VLRB at 365-66.

[54] Vermont State Employees' Association v. State of Vermont (Re: Agency of Transportation Call-In Pay Policy), 30 VLRB 20 (2008). Locke v. State of Vermont Agency of Transportation, 29 VLRB 302 (2007). Vermont State Employees' Association v. State of Vermont, Office of the Secretary of State, 25 VLRB 274 (2002). Burgess v. State Department of Buildings and General Services, 25 VLRB 281 (2002). VSEA v. State of Vermont, Office of the Secretary of State, 25 VLRB 274 (2002). VSEA, Barney, et al v. Department of Public Safety, 21 VLRB 230 (1998). Choudhary v. State of Vermont (Department of Public Service and Department of Personnel), 15 VLRB 185 (1992). Swett and Vermont State Colleges Faculty Federation, Local 3180, VFT, AFT, AFL-CIO v. Vermont State Colleges, 3 VLRB 344 (1980).

[55] Montpelier Education Association v. Montpelier Supervisory District Board of School Commissioners, 18 VLRB 401 (1995). AFSCME Local 1201, Council 93, AFL-CIO and Town of Middlebury, 16 VLRB 396 (1993). U32 High School Association, AFT Local 3333 and Danziger v. U32 Board of School Directors, 4 VLRB 254, 255 (1981).

Supreme Court has indicated that "the question whether the arbitrator exceeded the scope of" his or her "authority is a matter properly before the courts for resolution."[56]

The Supreme Court invoked in an early decision the long-established common law doctrine that an agreement to submit a dispute to arbitration is revocable by either party prior to the publication of the arbitration award.[57] However, the subsequently enacted Vermont Arbitration Act[58] expressly provides that a party to an arbitration clause has the right to seek a superior court order compelling arbitration when the other party to the clause refuses to participate.[59]

The Board has held that a union has not selected the proper forum to resolve a dispute when it files an unfair labor practice charge, alleging refusal to bargain in good faith, because the employer refuses to proceed to arbitration under the collective bargaining agreement.[60] This rule extends to an employer's refusal to arbitrate because the collective bargaining agreement does not contain the required acknowledgment of arbitration clause before an agreement to arbitrate can be enforced under the Vermont Arbitration Act.[61]

---

[56] Fairchild v. West Rutland School District, 135 Vt. 282, 284 (1977).
[57] Id. at 286.
[58] 12 V.S.A. §5651 et seq.
[59] 12 V.S.A. §§5671, 5674.
[60] Middlebury, supra.
[61] Montpelier, supra.