Judiciary Employees Labor Relations Act

The Judiciary Employees Labor Relations Act ("JELRA") was enacted in 1998.[1] Many of the provisions of JELRA are closely modeled after the provisions of the State Employees Labor Relations Act ("SELRA").[2]

JELRA applies to the "judiciary department, represented by the supreme court or the supreme court's designee", and its employees as defined by the Act.[3] "Employee means any individual employed . . . on a permanent or limited status basis by the judiciary department", but "does not include any of the following: (A) a justice, judge, assistant judge, magistrate or hearing officer, (B) the court administrator, (C) a managerial, supervisory or confidential employee, (D) a law clerk, attorney, administrative assistant or private secretary to a judge, justice or court administrator, (E) an individual employed on a temporary, contractual, seasonal or on-call basis, including an intern, (F) an employee during the initial or extended probationary period, (G) the head of a department or division . . . (I) an attorney for the supreme court, for the court administrator or for any board or commission created by the supreme court, (J) an employee paid by the State . . appointed part-time as county clerk".[4] The employer determines the designation of employees as managerial, confidential or supervisory; and the VLRB finally resolves any disputes arising from such designations.[5]

JELRA provides employees with "the right to self-organization; to form, join or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other

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[1] Act No. 92 (1997 Adj. Sess.); 3 V.S.A. §1010-1043.
[2] Id., 3 V.S.A. §§901-1007.
[3] 3 V.S.A. §1011(10).
[4] 3 V.S.A. §1011(8).
[5] 3 V.S.A. §1015.

mutual aid or protection; to refrain from any or all those activities".[6] The Act prohibits employees from striking, and employees may not "recognize a picket line of an employee organization while performing . . . official duties."[7]

Employees or a labor organization acting in their behalf may file a petition with the VLRB asserting that the employees wish to be represented by a particular employee organization. If the petition is supported by a sufficient showing of interest, the Board resolves any issues that arise concerning the appropriate grouping of employees in the bargaining unit to be represented by the labor organization. Once the unit issues are resolved, the Board conducts an election in which employees vote on whether they wish to be organized into the unit and whether they wish to be represented by the petitioning employee organization or organizations.[8]

If a majority of employees do not vote to be organized into a bargaining unit or to be represented by the employee organization, the employee organization does not become the representative of employees. If a majority of employees vote to be organized into a bargaining unit and to be represented by the employee organization, the employee organization becomes the exclusive representative of all employees in the bargaining unit for a minimum of one year.[9] There is no provision in JELRA for employers to voluntarily recognize employee organizations as representatives of employees; an election must be conducted among employees for an employee organization to become the representative of employees.[10]

JELRA allows employees to file a petition to decertify an employee organization as their bargaining representative, or replace one employee

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[6] 3 V.S.A. §1012(a).
[7] 3 V.S.A. §1012(b).
[8] 3 V.S.A. §§1021, 941.
[9] Id.
[10] Id.

organization with another employee organization as their representative.[11] However, such an election may not be held in any bargaining unit if an election has been held in the previous 12 months.[12] Also, as discussed in Chapter 3, collective bargaining agreements bar such petitions for much of the term of the agreement.

Once an employee organization becomes the representative of employees, the employer and employee organization are required to engage in collective bargaining with the intent to arrive at a collective bargaining agreement.[13] JELRA provides that to bargain collectively "means performing the mutual obligation to meet at reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter . . . (t)he failure or refusal of either party to agree to a proposal, to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be direct or indirect evidence of, a breach of this obligation."[14]

As discussed in Chapter 5, the required scope of bargaining under JELRA, like SELRA, is broad.[15] Prior to 2013, one of the required subjects of bargaining was collective bargaining service fees. JELRA was amended in 2013 to remove collective bargaining service 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 collective bargaining service fees to the representative.[16]

The statutory change provided that fees may not exceed 85 percent of the amount of union dues and the fee was to be deducted in the same manner as dues are deducted from the wages of members of the employee organization, and "shall be

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[11] Id.
[12] Id.
[13] 3 V.S.A. §1016
[14] Id.
[15] 3 V.S.A. §1013.
[16] 3 V.S.A. §1012(c).

used to defray the costs of chargeable activities."[17] 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.[18]

If the employee organization and employer are unable to arrive at a collective bargaining agreement without outside assistance, JELRA provides for the dispute resolution mechanisms of mediation, fact-finding, and selection of a last best offer by the VLRB to resolve negotiations impasses.[19] These provisions are closely modeled after comparable provisions in SELRA. Notwithstanding these provisions, the parties, contrary to SELRA, alternatively may agree in advance to a dispute resolution procedure that provides for mediation and interest arbitration to resolve the dispute.[20]

JELRA provides that collective bargaining agreements shall be for a maximum term of two years. Agreements are not subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties.[21]

JELRA sets forth unfair labor practices of employers and employee organizations. Included among employer unfair labor practices since JELRA was enacted in 1998 are: 1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by JELRA or any other law; 2) dominating or interfering with the formation or administration of an employee organization; 3) discriminating against employees to encourage or discourage membership in a labor organization; 4) refusing to bargain collectively with the representative of

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[17] 3 V.S.A. §1011(4).
[18] Janus v. AFSCME, et al, ___ U.S. ___ (June 27, 2018).
[19] 3 V.S.A. §1018.
[20] 3 V.S.A. §1019.
[21] 3 V.S.A. §1036(a).

employees; and 5) discriminating against employees on account of race, color, creed, sex, sexual orientation, national origin, age, religion or disability.[22]

Among the unfair labor practices of employee organizations set forth in JELRA since its enactment are: 1) restraining or coercing employers in the exercise of their rights guaranteed by law, 2) restraining or coercing employers in the selection of representatives for collective bargaining or adjustment of grievances, and 3) refusing to bargain collectively with an employer.[23] Also, employee organizations have been prohibited from discriminating against a member or applicant for membership on account of race, color, creed, sex, sexual orientation, national origin, age, religion or disability.[24]

JELRA was amended in 2007 to add discrimination based on gender identity as a prohibited act of employers and labor organizations.[25] It also was amended in 2010 and 2011 as part of a judicial reorganization to change the definition of employees covered by the Act.[26]

Whenever an unfair labor practice charge is filed against an employer or an employee organization alleging violation of the unfair labor practice provisions of JELRA, the Board investigates the charge and determines whether to issue a complaint. If the Board issues a complaint, a hearing is held before the Board. If the Board determines subsequent to the hearing that an unfair labor practice has been committed, the Board issues an order requiring the offending party "to cease and desist from such unfair labor practice, and to carry out such affirmative action as

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[22] 3 V.S.A. §1026.
[23] 3 V.S.A. §1027.
[24] 3 V.S.A. §1028.
[25] Act No. 41, 3 V.S.A. §§1026, 1028.
[26] Act No. 154 (2009 Adj. Session), 3 V.S.A. § 1011(8)(J); Act No. 1 (2011), 3 V.S.A. § 1011(8)(H) repealed.

will carry out the policies" of JELRA.[27] The practices and procedures in unfair labor practice cases are discussed in detail in Chapter 4.

JELRA provides that the employer and representative of the employees shall negotiate a procedure for resolving complaints and grievances. Unless otherwise agreed to by the parties, the VLRB "shall hear and make final determination on a grievance". In lieu of the Board making final determination on grievances, the parties may agree to provide for binding arbitration administered by the American Arbitration Association as the final step of a grievance procedure.[28] An arbitration award may be vacated by a superior court under specified circumstances. Otherwise, an award may be enforced by any party by filing a petition with superior court.[29]

Some individuals not considered "employees" under JELRA nonetheless have limited rights to appeal to the Board to contest actions taken by the employer. Persons who are applicants for employment in a position included in a bargaining unit and employees in their initial probationary period may appeal to the Board if they believe they have been discriminated against based on race, color, creed, religion, disability, sex, sexual orientation, gender identity, age or national origin.[30]

JELRA provides that the VLRB or any party may file a petition with superior court for the enforcement of Board orders.[31] The Act provides that a party may appeal an order or decision of the Board to the Supreme Court "on questions of law".[32] Also, an "order of the Board shall not automatically be stayed pending appeal." A stay is first requested from the Board. If the Board denies a stay, the

[27] 3 V.S.A. §1030.
[28] 3 V.S.A. §1017.
[29] 3 V.S.A. §§1017, 1042(d).
[30] 3 V.S.A. §1041(a).
[31] 3 V.S.A. §1042.
[32] 3 V.S.A. §1043(a).

Vermont Supreme Court or a justice of the Court may stay the order or any part of it.[33]

[33] 3 V.S.A. §1043(b).