Municipal Employee Relations Act

The Municipal Employee Relations Act ("MERA") was enacted in 1973.[1] The Act "prescribe(s) the legitimate rights of both municipal employees and municipal employers in their relations with each other." "Municipal employer means a city, town, village, fire district, lighting district, consolidated water district, housing authority, union municipal district, or any of the political subdivisions of the state of Vermont, which employs five or more employees as defined" in the Act.[2]

"Municipal employee" is defined under the Act as "any employee of a municipal employer . . . except: (A) elected officials, board and commission members and executive officers; (B) individuals employed as supervisors . .; (C) individuals . . employed on a probationary status; (D) confidential employees . . .; (E) certified employees of school districts, except as otherwise provided" in the section of MERA covering teachers with respect to unfair labor practices. Non-certified employees of public schools are included within MERA's coverage.[3]

As originally enacted, MERA also excluded from the definition of municipal employee "individuals . . . employed on a . . . provisional or other nonpermanent status, or on a temporary, seasonal, on-call or part-time basis".[4] However, the Act was amended in 1990 to specifically remove these categories from the list of individuals excluded from the definition of "municipal employee", thereby including them within the definition of employee.[5]

MERA provides employees with the rights to be represented by employee organizations and to bargain collectively with their employers through their

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[1] Act No. 111, 21 V.S.A. §§1721-1735.
[2] 21 V.S.A. §1722(13).
[3] 21 V.S.A. §1722(12).
[4] Act No. 11 (1973), 21 V.S.A. §1722(12).
[5] Act No. 215 (1989 Adj. Sess.), 21 V.S.A. Section 1722(12).

representatives.[6] Employees or an employee organization acting in their behalf may file a petition with the Vermont Labor Relations Board 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 employee organization.[7] Unit determination issues under MERA are discussed in detail in Chapter 3. MERA allows, but does not require, a municipal employer to voluntarily recognize an employee organization if: 1) the employee organization demonstrates majority support of the involved employees, 2) no other organization seeks to represent the employees, and 3) the bargaining unit is appropriate.[8]

Once unit determination issues are resolved either by the Board or agreement of the parties, and voluntary recognition has not occurred, the Board conducts an election in which employees decide whether they wish to be represented by the employee organization.[9] If a majority of employees do not vote to be represented by the employee organization, the organization does not become the representative of employees, and another election may not be held in the bargaining unit or subdivision of the bargaining unit for a year.[10] If a majority of employees vote to be represented by the employee organization, the organization becomes the exclusive representative of all employees in the bargaining unit for purposes of wages, hours and other conditions of employment.[11] Representation elections under MERA are discussed in detail in Chapter 3.

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[6] 21 V.S.A. §1721.
[7] 21 V.S.A. §1724.
[8] 21 V.S.A. §1723.
[9] 21 V.S.A. §1724.
[10] Id.
[11] 21 V.S.A. §§1724-1725.

Once an employee organization becomes the representative of employees, the employer and employee organization are required to engage in collective bargaining. The Act provides:

> For the purpose of collective bargaining, the representatives of the municipal employer and the bargaining unit shall meet at any reasonable time and shall bargain in good faith with respect to wages, hours and conditions of employment, and shall execute a written contract incorporating any agreement reached; provided, however, neither party shall be compelled to agree to a proposal nor to make a concession, nor to bargain over any issue of managerial prerogative.[12]

The municipal employer is represented in bargaining by its legislative body or its designated representative or representatives.[13] MERA was amended in 2007 to provide that "(i)f the municipal employer is a supervisory district or supervisory union, it shall be represented by the school board negotiations council, and the bargaining unit shall be represented by the school employees' negotiations council."[14] 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 school employees' negotiations council consists of representatives designated by each exclusive bargaining agent within a supervisory district or supervisory union to act as its representative for negotiations.[15]

MERA specifically states that provisions may be negotiated in a collective bargaining agreement requiring binding arbitration of grievances concerning the interpretation or application of a collective bargaining agreement, and payroll deduction of employee organization dues.[16]

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[12] 21 V.S.A. §1725(a).
[13] 21 V.S.A. §1725(b).
[14] Act No. 82, 21 V.S.A. §1725(b).
[15] Act No. 82: 21 V.S.A. §1722(18), (19), (20).
[16] 21 V.S.A. §1734(a).

MERA provides that the employer and the employee organization representing employees may make an agreement requiring an agency service fee to be paid as a condition of employment or requiring membership in an employee organization as a condition of employment.[17] The Act was amended in 2013 to provide that, in the absence of an agreement requiring an employee to be a member of the employee organization, employees in a bargaining unit represented by an employee organization as exclusive bargaining representative were required to pay agency service fees to the representative.[18]

The statutory change provided that an agency service 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."[19] 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.[20]

If the parties are unable to arrive at a collective bargaining agreement without outside assistance, MERA provides for the dispute resolution mechanisms of mediation and fact-finding to resolve negotiations impasses.[21] It further provides that a strike shall not be prohibited unless: 1) it occurs sooner than 30 days after delivery of a factfinder's report, 2) it occurs after both parties have voluntarily submitted the dispute to final and binding arbitration, or 3) "it will endanger the health, safety or welfare of the public."[22] MERA was amended in 1999 to prohibit

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[17] 21 V.S.A. §1726(a)(8).
[18] 21 V.S.A. §1734(d).
[19] 21 V.S.A. §1722(1).
[20] Janus v. AFSCME, et al, ___ U.S. ___ (June 27, 2018).
[21] 21 V.S.A. §§1731, 1732.
[22] 21 V.S.A. 1730.

a municipal employer from permanently replacing employees who participate in a permitted strike.[23]

MERA provides for the alternative of binding interest arbitration to a strike to resolve negotiation disputes. It states: "Nothing herein shall prevent the legislative body of a municipal employer and the exclusive bargaining agent from voluntarily submitting a contract impasse to final and binding arbitration or for the municipality by a referendum vote from adopting binding arbitration procedures".[24] The Act was amended in 1984 to provide that, "(i)f a municipality has voted to adopt binding arbitration procedures", the parties "may agree to proceed directly from mediation to binding arbitration without submitting the dispute to fact-finding."[25] MERA's dispute resolution procedures are discussed further in Chapter 5.

MERA allows employees to file a petition to decertify an employee organization as their bargaining representative, or replace one employee organization with another organization as their representative.[26] However, such an election may not be held in any bargaining unit or subdivision of a bargaining unit if an election has been held in the previous 12 months.[27] Also, as discussed in Chapter 3, collective bargaining agreements bar such petitions for much of the term of the agreement.

MERA sets forth unfair labor practices of employers and employee organizations. Included among employer unfair labor practices since MERA was enacted in 1973 are: 1) interfering with, restraining or coercing employees in the exercise of their rights guaranteed by MERA or any other law, rule or regulation; 2) dominating or interfering with the formation or administration of an employee

[23] Act No. 44; 21 V.S.A. §1730.
[24] 21 V.S.A. §1733.
[25] Act No. 126 (1983 Adj. Sess.); 21 V.S.A. §1733(f).
[26] 21 V.S.A. §1724.
[27] Id.

organization; 3) discriminating against employees to encourage or discourage membership in an employee organization; and 4) refusing to bargain collectively in good faith with the representative of employees.[28] Among the unfair labor practices of employee organizations set forth in MERA since its enactment are: 1) restraining or coercing employees in the exercise of their rights guaranteed by law, rule or regulation, 2) restraining or coercing employers in the selection of representatives for collective bargaining or adjustment of grievances, and 3) refusing to bargain collectively in good faith with an employer.[29]

Significant amendments to the unfair labor practice provisions of MERA have concerned categories of employee protected against discrimination. When enacted, MERA made it an unfair labor practice for an employer to discriminate against an employee on account of race, color, religion, creed, sex, national origin, age or political affiliation. Similarly, employee organizations were prohibited from discriminating against persons seeking or holding membership in the labor organization on account of race, color, religion, creed, sex, national origin, age or political affiliation.[30] In 1992, 1999 and 2007, the Act was amended to add discrimination based on disability, sexual orientation and gender identity as prohibited acts of employers and labor organizations.[31]

Another significant amendment concerning the unfair labor practice coverage of MERA occurred in 1975 when the 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

[28] 21 V.S.A. §1726(a).
[29] 21 V.S.A. §1726(b).
[30] 21 V.S.A. §1726(a)(7), §1726(b)(7).
[31] Act Nos. 135 (1991 Adj. Sess.), 19(1999), 41(2007).

indirectly receives support from public funds shall be considered a municipal employer.[32]

Whenever an unfair labor practice charge is filed against an employer or a labor organization alleging violation of the unfair labor practice provisions of MERA, 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 will carry out the policies" of MERA.[33] The practices and procedures in unfair labor practice cases are discussed in detail in Chapter 4.

MERA provides that the VLRB or any party may file a petition with a superior court for the enforcement of Board orders.[34] The Act provides that a party may appeal an order or decision of the Board to the Supreme Court "on questions of law".[35] When enacted, MERA made no provision for the stay of Board orders. However, the Act was amended in 1988 to provide that 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 Vermont Supreme Court or a justice of the Court may stay the order or any part of it.[36]

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[32] Act No. 113; 21 V.S.A. §1735.
[33] 21 V.S.A. §1727.
[34] 21 V.S.A. §1729(a).
[35] 21 V.S.A. §1729(c).
[36] 21 V.S.A. §1729(d).