State Labor Relations Act

The State Labor Relations Act ("SLRA"), the first labor relations statute in Vermont, was enacted in 1967.[1] The specific provisions of SLRA are closely modeled after the National Labor Relations Act.[2] It generally covers those private sector employers in Vermont with five or more employees whom do not engage in interstate commerce within the meaning of the National Labor Relations Act.[3] The Vermont Labor Relations Board ("VLRB") is the agency designated by SLRA to administer the Act. The VLRB may petition the National Labor Relations Board, which administers the National Labor Relations Act, "for an advisory opinion as to whether that agency will assert jurisdiction over a labor dispute which is the subject of a proceeding then pending before the board."[4]

Agricultural laborers, supervisors and independent contractors are excluded from the definition of employees covered by SLRA.[5] Government employers, non-profit hospitals and nursing homes are excluded from the definition of employers within the Act's coverage.[6]

SLRA provides employees with the right to be represented by labor organizations, bargain collectively with their employers through representatives of their choice, and "engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection".[7] Employees also have the right to refrain from any of these activities except to the extent that such right may be affected by an agreement between the employer and the labor organization

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[1] Act No. 198, 1967; 21 V.S.A. §§1521-1623.
[2] Id. 29 U.S.C. §§141-187.
[3] 21 V.S.A. §§1502(7), 1505.
[4] 21 V.S.A. §1544(b).
[5] 21 V.S.A. §1502(6).
[6] 21 V.S. A. §1502(7).
[7] 21 V.S. A. §1503.

representing employees which requires employees to become members of the labor organization as a condition of employment.[8]

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 labor 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. SLRA prohibits the Board from including guards of an employer in the same bargaining with other employees, and from including professional employees in a bargaining unit with other employees unless a majority of the professional employees vote for inclusion in the unit.[9]

Once unit determination issues are resolved either by the Board or agreement of the parties, the Board conducts an election in which employees decide whether they wish to be represented by the labor organization.[10] If a majority of employees do not vote to be represented by the labor organization, the labor 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.[11] If a majority of employees vote to be represented by the labor organization, the labor organization becomes the exclusive representative of all employees in the bargaining unit for purposes of wages, hours and other conditions of employment.[12] In lieu of an election, an employer may voluntarily recognize a labor organization as the representative of employees.[13]

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[8] Id.; 21 V.S.A. §1621(a)(6).
[9] 21 V.S.A. §1543.
[10] 21 V.S.A. §§1543, 1581-1585.
[11] 21 V.S.A. §§1582, 1584(b).
[12] 21 V.S.A. §1583.
[13] 21 V.S.A. §1581(e).

Once a labor organization becomes the representative of employees, the employer and labor organization are required to engage in collective bargaining. SLRA defines "collective bargaining" as "the process of negotiating terms, tenure or conditions of employment between one or more employers and representatives of employees with the intent to arrive at an agreement which, when reached, shall be reduced to writing."[14] The Act further elaborates:

> (T)o bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be evidence, direct or indirect, of a breach of this obligation.[15]

SLRA allows employees to file a petition to decertify a labor organization as their bargaining representative, or replace one labor organization with another labor organization as their representative.[16] 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.[17] Also, as discussed in Chapter 3, collective bargaining agreements bar such petitions for much of the term of the agreement.

SLRA sets forth unfair labor practices of employers and labor organizations. Included among employer unfair labor practices since SLRA was enacted in 1967 are: 1) interfering with, restraining or coercing employees in the exercise of their rights guaranteed by SLRA; 2) dominating or interfering with the formation or administration of a labor organization; 3) discriminating against employees to

[14] 21 V.S.A. §1502(4).
[15] 21 V.S.A. §1621(e).
[16] 21 V.S.A. §1581(a).
[17] 21 V.S.A. §§1582, 1584(b).

encourage or discourage membership in a labor organization; and 4) refusing to bargain collectively with the representative of employees. Among the unfair labor practices of labor organizations set forth in SLRA since its enactment are: 1) restraining or coercing employees in the exercise of their rights guaranteed by SLRA, 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. [18]

Whenever an unfair labor practice charge is filed against an employer or a labor organization alleging violation of the unfair labor practice provisions of SLRA, 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 SLRA.[19]

SLRA provides that the VLRB may petition the Vermont Supreme Court for the enforcement of Board orders and for appropriate temporary relief or restraining orders.[20] The Act provides that a party may appeal an unfair labor practice decision of the Board to the Supreme Court.[21] SLRA does not explicitly address appeal to the Supreme Court from unit determination or representation decisions of the Board, but the Supreme Court has determined that SLRA does allow such appeals.[22]

SLRA has seldom been amended since it was enacted in 1967. There was a significant amendment in 1976 repealing sections of SLRA relating to creation,

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[18] 21 V.S.A. §1621.
[19] 21 V.S.A. §1622.
[20] 21 V.S.A. §1623(a).
[21] 21 V.S.A. §1623(c).
[22] Kellogg-Hubbard Library v. Labor Relations Board, 162 Vt. 571 (1994).

membership, powers and duties of the VLRB, as well as legal counsel for the Board, because the areas covered by such provisions were transferred to the State Employees Labor Relations Act.[23]

Other significant amendments have concerned categories of employees protected against discrimination. When enacted, SLRA made it an unfair labor practice for an employer to discriminate against an employee on account of race, color or creed. Similarly, labor organizations were prohibited from discriminating against persons seeking or holding membership in the labor organization on account of race, color or creed.[24] In 1999 and 2007, the unfair labor practice provisions of the Act were amended to add discrimination based on religion, disability, sex, sexual orientation, gender identity, age and national origin as prohibited acts of employers and labor organizations.[25]

The Act was further amended in 2013 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.[26] The agency fee may not exceed 85 percent of the amount of union dues. The fee is to be deducted in the same manner as dues are deducted from the wages of members of the employee organization, and "shall be used to defray the costs of chargeable activities."[27] An employee organization may not charge the fee unless it provides nonmembers with: 1) an audited financial statement that identifies and divides expenses into chargeable and non-chargeable activities; 2) an opportunity to object to the amount of the fee, with any amount reasonably in dispute to be placed in

[23] 21 V.S. A. §§1541, 1542. Repealed. 1975 (Adj. Sess.), No. 152, §7.
[24] 21 V.S.A. §1621(a)(7) and (b)(8)(A).
[25] Id.
[26] 21 V.S.A. §1503(a).
[27] 21 V.S.A. §1502(14).

escrow; and 3) prompt arbitration by an arbitrator to resolve any objection over the amount of the fee.[28]

SLRA is the least used of the Vermont labor relations statutes. Historically, cases filed under the Act have constituted less than one percent of the Board's caseload.

[28] 21 V.S.A. §1503(b).