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H.642

Introduced by Representatives Donovan of Burlington, Masland of Thetford,
McCormack of Burlington, O’Sullivan of Burlington, Poirier of
Barre City, Sullivan of Burlington, Till of Jericho, and Weed of
Enosburgh

Referred to Committee on

Date:

Subject: Executive; education; labor; collective bargaining; agency fee;
certification procedure; employment practices; good cause
employment

Statement of purpose of bill as introduced: This bill proposes to permit
employees to elect a collective bargaining representative through card check
elections; to require employers to provide employee contact information in
relation to an effort to organize a bargaining unit; to require employees who
choose not to join a union and who do not pay a collective bargaining service
fee or agency fee to reimburse the union for the cost of representing them in a
grievance proceeding; to repeal collective bargaining service fee provisions
that have been ruled unconstitutional; to amend the law related to the use of
State grant funds in relation to union organizing; and to establish a good cause
standard for termination of employment in Vermont.

1 bargaining may petition the employer and the Board for a list of the employees
2 in the proposed bargaining unit. Within ten business days after receiving the
3 petition, the employer shall file with the Board and the employee or group of
4 employees, or the individual or employee organization purporting to act in
5 their behalf, a list of the employees in the proposed bargaining unit. The list
6 shall comply with the requirements of subdivisions (e)(2)(B) and (C) of this
7 section.

8 * * *

9 (e)(1) Whenever, as a result of a petition and an appropriate hearing, the
10 Board finds substantial interest among employees in forming a bargaining unit,
11 a secret ballot election shall be conducted by the Board to be taken in such
12 manner as to show separately the wishes of the employees in the voting group
13 involved as to the determination of the collective bargaining unit, including the
14 right not to be organized. In order for a collective bargaining unit to be
15 recognized and certified by the Board, there must be a majority vote cast by
16 those employees voting.

17 (2)(A) Unless the employer and labor organization agree to a longer
18 period, within five business days after the Board determines that substantial
19 interest exists and a secret ballot election shall be conducted, the employer
20 shall file with the Board and the labor organization that will be named on the
21 ballot a list of the employees in the bargaining unit.

1 which identifies a person or labor organization that will act as representative of
2 the employees in the collective bargaining unit, bears the signatures of at least
3 50 percent plus one of the employees in a bargaining unit deemed appropriate
4 by the Board pursuant to this section, the Board shall certify the person or
5 labor organization as the representative of the bargaining unit.

6 (B) Certification of a collective bargaining representative shall only
7 be available pursuant to this subdivision (g)(4) when no other person or labor
8 organization is currently certified or recognized as the exclusive representative
9 of the employees in the bargaining unit.

10 (h) A representative chosen ~~by secret ballot~~ for the purposes of collective
11 bargaining by a majority of the votes cast by secret ballot or certified pursuant
12 to subdivision (g)(4) of this section shall be the exclusive representative of all
13 the employees in ~~such~~ the bargaining unit for a minimum of one year. ~~Such~~
14 The representative shall be eligible for reelection or for recertification pursuant
15 to subdivision (g)(4) of this section.

16 * * *

17 (k)(1) Nothing in this chapter requires an individual to seek the assistance
18 of his or her collective bargaining unit or its ~~representative(s)~~ representative in
19 any grievance proceeding. He or she may represent himself or herself or be
20 represented by counsel of his or her own choice or may avail himself or herself
21 of the unit representative in grievance proceedings.

1 (2) In the absence of a requirement that nonmembers of the employee
2 organization pay a collective bargaining service fee, a nonmember who avails
3 himself or herself of the unit representative in grievance proceedings shall be
4 required to reimburse the unit representative for the actual cost of representing
5 the employee in relation to the grievance proceedings.

6 Sec. 2. 16 V.S.A. § 1992 is amended to read:

7 § 1992. ~~REFERENDUM~~ PROCEDURE FOR REPRESENTATION;

8 PETITION; REFERENDUM

9 (a)(1) An organization purporting to represent a majority of all of the
10 teachers or administrators employed by the school board may be recognized by
11 the school board without the necessity of a referendum upon the submission of
12 a petition bearing the valid signatures of a majority of the teachers or
13 administrators employed by that school board. ~~Within 15 days after receiving~~
14 ~~the petition the school board shall notify the teachers or administrators of the~~
15 ~~school district in writing of its intention to either require or waive a secret~~
16 ~~ballot referendum. If the school board gives notice of its intention to waive a~~
17 ~~referendum and recognize an organization, 10 percent of the teachers or~~
18 ~~administrators employed by the school board may submit a petition within~~
19 ~~15 days thereafter, objecting to the granting or recognition without a~~
20 ~~referendum, in which event a secret ballot referendum shall be held in the~~
21 ~~district for the purpose of choosing an exclusive representative according to the~~

1 ~~guidelines for referendum contained in this legislation.~~ The school board and
2 the organization purporting to represent a majority of the teachers or
3 administrators shall, within 10 business days after the petition is submitted,
4 agree on an impartial third party to examine the petition and determine whether
5 a majority of the teachers or administrators support the organization. If the
6 parties fail to agree on an impartial third party within 10 business days, the
7 Vermont Labor Relations Board shall examine the petition and determine
8 whether a majority of the teachers or administrators support the organization.
9 If the impartial party or the Board determines that a majority of the teachers or
10 administrators support the organization, it shall certify the organization as the
11 exclusive representative of the teachers or administrators.

12 (2) An organization seeking to represent the teachers or administrators
13 employed by a school board may petition the school board and the Vermont
14 Labor Relations Board for a list of the teachers or administrators in the
15 proposed bargaining unit. Within ten business days after receiving the petition,
16 the school board shall file with the Vermont Labor Relations Board and the
17 organization a list of the teachers or administrators in the proposed bargaining
18 unit. The list shall comply with the requirements of subdivisions (c)(2)(B) and
19 (C) of this section.

20 (b) ~~Recognition granted to~~ Certification of a negotiating unit as exclusive
21 representative shall be valid and not subject to challenge by referendum

1 petition or otherwise for the remainder of the fiscal year in which ~~recognition~~
2 ~~is granted~~ the certification occurs and for an additional period of 12 months
3 after final adoption of the budget for the succeeding fiscal year and shall
4 continue thereafter until a new referendum is called for.

5 (c)(1) A secret ballot referendum shall be held any time that 20 percent of
6 the teachers or administrators employed by the school board present a petition
7 requesting a referendum on the matter of representation, except during a period
8 of prior ~~recognition~~ certification, as ~~hereinbefore~~ provided pursuant to
9 subsection (b) of this section. Any organization interested in representing
10 teachers or administrators in the school district shall have the right to appear on
11 the ballot by submitting a petition supported by ten percent or more of the
12 teachers or administrators in the school district.

13 (2)(A) Unless the school board and the organization agree to a longer
14 period, within five business days after the petition is presented, the school
15 board shall file with the organization that will be named on the ballot a list of
16 the teachers or administrators in the bargaining unit.

17 (B) The list shall include, as appropriate, each teacher's or
18 administrator's name, work location, job classification, and contact
19 information. As used in this subdivision (2), "contact information" includes a
20 teacher's or administrator's home address, personal e-mail address, and home
21 and personal cellular telephone numbers.

1 bargaining representative, is no longer a representative as defined in section
2 1583 of this title.

3 ~~(2)(B)~~ By an employer, alleging that one or more individuals or labor
4 organizations have presented to him or her a claim to be recognized as the
5 representative defined in section 1583 of this title.

6 (2) An employee or group of employees, or any individual or employee
7 organization purporting to act in their behalf, that is seeking to determine
8 interest in the formation of a bargaining unit or representation for collective
9 bargaining may petition the employer and the Board for a list of the employees
10 in the proposed bargaining unit. Within ten business days after receiving the
11 petition, the employer shall file with the Board and the employee or group of
12 employees, or the individual or employee organization purporting to act in
13 their behalf, a list of the employees in the proposed bargaining unit. The list
14 shall comply with the requirements of subdivisions (b)(1)(A)(ii)(II) and (III) of
15 this section.

16 (b)(1) The Board shall investigate the petition and if it has reasonable cause
17 to believe that a question of representation exists shall provide for an
18 appropriate hearing before the Board itself, a member thereof, or its agents
19 appointed for that purpose upon due notice. Written notice of the hearing shall
20 be mailed by certified mail to the parties named in the petition not less than
21 seven days before the hearing.

1 (A)(i) If the Board finds upon the record of the hearing that a
2 question of representation exists, it shall conduct an election by secret ballot
3 marked at the place of election and certify to the parties, in writing, the results
4 ~~thereof~~ of the election.

5 (ii)(I) Unless the employer and the individual or labor
6 organization seeking to represent the bargaining unit agree to a longer period,
7 within five business days after the Board determines that a secret ballot
8 election shall be conducted, the employer shall file with the Board and the
9 individual or labor organization that will be named on the ballot a list of the
10 employees in the bargaining unit.

11 (II) The list shall include, as appropriate, each employee's
12 name, work location, shift, job classification, and contact information. As used
13 in this subdivision (1), "contact information" includes an employee's home
14 address, personal e-mail address, and home and personal cellular telephone
15 numbers.

16 (III) To the extent possible, the list of employees shall be in
17 alphabetical order by last name and provided in electronic format.

18 (IV) Failure to file the list within the time required pursuant to
19 subdivision (I) of this subdivision (ii) shall be grounds for the Board to set
20 aside the results of the election if an objection is filed within the time required
21 pursuant to the Board's rules.

1 Sec. 5. 21 V.S.A. § 1724 is amended to read:

2 § 1724. CERTIFICATION PROCEDURE

3 (a)(1) A petition may be filed with the Board, in accordance with
4 regulations prescribed by the Board:

5 ~~(A)~~ By an employee or group of employees, or any individual or
6 employee organization purporting to act in their behalf, alleging that not less
7 than 30 percent of the employees, wish to form a bargaining unit and be
8 represented for collective bargaining, or assert that the individual or employee
9 organization currently certified as bargaining agent is no longer supported by
10 at least 51 percent of the employees in the bargaining unit, or that not less than
11 51 percent of the employees now included in an approved bargaining unit wish
12 to form a separate bargaining unit under Board criteria for purposes of
13 collective bargaining.

14 ~~(B)~~ By the employer alleging that the presently certified bargaining
15 unit is no longer appropriate under Board criteria.

16 (2) An employee or group of employees, or any individual or employee
17 organization purporting to act in their behalf, that is seeking to determine
18 interest in the formation of a bargaining unit or representation for collective
19 bargaining may petition the employer and the Board for a list of the employees
20 in the proposed bargaining unit. Within ten business days after receiving the
21 petition, the employer shall file with the Board and the employee or group of

1 employees, or the individual or employee organization purporting to act in
2 their behalf, a list of the employees in the proposed bargaining unit. The list
3 shall comply with the requirements of subdivisions (e)(2)(B) and (C) of this
4 section.

5 * * *

6 (e)(1) In determining the representation of municipal employees in a
7 collective bargaining unit, the Board shall conduct a secret ballot of the
8 employees and certify the results to the interested parties and to the employer.

9 The original ballot shall be so prepared as to permit a vote against
10 representation by anyone named on the ballot. No representative will be
11 certified with less than a 51 percent affirmative vote of all votes cast. ~~In the~~
12 ~~case where~~ If it is asserted that the certified bargaining agent is no longer
13 supported by at least 51 percent of the employees in the bargaining unit and
14 there is no attempt to seek the election of another employee organization or
15 individual as bargaining representative, there shall be at least 51 percent
16 negative vote of all votes cast to decertify the existing bargaining agent.

17 (2)(A) Unless the employer and the individual or labor organization
18 seeking to represent the bargaining unit agree to a longer period, within five
19 business days after the Board determines that a secret ballot election shall be
20 conducted, the employer shall file with the Board and the individual or labor

1 organization that will be named on the ballot a list of the employees in the
2 bargaining unit.

3 (B) The list shall include, as appropriate, each employee's name,
4 work location, shift, job classification, and contact information. As used in
5 this subdivision (2), "contact information" includes an employee's home
6 address, personal e-mail address, and home and personal cellular telephone
7 numbers.

8 (C) To the extent possible, the list of employees shall be in
9 alphabetical order by last name and provided in electronic format.

10 (D) Failure to file the list within the time required pursuant to
11 subdivision (A) of this subdivision (2) shall be grounds for the Board to set
12 aside the results of the election if an objection is filed within the time required
13 pursuant to the Board's rules.

14 * * *

15 (h)(1) Notwithstanding subsections (e)–(g) of this section, if the Board
16 determines that a petition filed pursuant to subsection (a) of this section, which
17 identifies an individual or labor organization that will act as representative of
18 the employees in the bargaining unit, bears the signatures of at least 50 percent
19 plus one of the employees in the bargaining unit, the Board shall certify the
20 individual or labor organization as the representative of the bargaining unit.

1 (2) Certification of a bargaining representative shall only be available
2 pursuant to this subsection when no other individual or labor organization is
3 currently certified or recognized as the representative of the employees in the
4 bargaining unit.

5 (i) No election or certification of a representative may shall be conducted
6 under this section in a bargaining unit or a subdivision within which in the
7 preceding 12 months a valid election or certification has ~~been held~~ occurred.

8 * * * State Funds In Relation to Union Organizing * * *

9 Sec. 6. 21 V.S.A. § 496a is amended to read:

10 § 496a. STATE FUNDS; UNION ORGANIZING

11 (a) An employer that is the recipient of a grant of State funds in a single
12 grant of more than \$1,000.00 shall certify to the State that none of the funds
13 will be used to interfere with or restrain the exercise of an employee's rights
14 with respect to unionization or for activities directly related to influencing or
15 coercing employees with respect to unionization or union organizing, and upon
16 request shall provide records to the Attorney General or Secretary of
17 Administration which that attest to such certification.

18 (b)(1) An employer that is the recipient of a grant of State funds in a single
19 grant of more than \$1,000.00 shall not use the funds to interfere with or
20 restrain the exercise of an employee's rights with respect to unionization or for

1 activities directly related to influencing or coercing employees with respect to
2 unionization or union organizing.

3 (2)(A) An employer that violates subdivision (1) of this subsection shall
4 be liable to the State for two times the amount of the funds expended in
5 violation of subdivision (1) of this subsection and shall also be assessed a civil
6 penalty equal to not more than two times the amount of the funds expended in
7 violation of subdivision (1) of this subsection.

8 (B) The Attorney General may conduct an investigation of an alleged
9 violation of this subsection and may enforce the provisions of this subsection
10 by bringing a civil action. An investigation shall not be a prerequisite to
11 bringing a civil action.

12 * * * Costs of Grievance Proceedings * * *

13 Sec. 7. 3 V.S.A. § 1017 is amended to read:

14 § 1017. GRIEVANCE PROCEDURES; BINDING ARBITRATION

15 * * *

16 (f) In the absence of a requirement that an employee who exercises his or
17 her right not to join the employee organization pay a collective bargaining
18 service fee, the employee shall be required to reimburse the employee
19 organization for the actual cost of representing the employee in relation to the
20 grievance proceedings.

1 Sec. 8. 16 V.S.A. § 1982 is amended to read:

2 § 1982. RIGHTS

3 (a)(1) Teachers shall have the right to or not to join, assist, or participate in
4 any teachers' organization of their choosing. However, teachers who choose
5 not to join the teachers' organization, recognized as the exclusive
6 representative pursuant to section 1992 of this chapter, shall pay the agency fee
7 in the same manner as teachers who choose to join the teachers' organization
8 pay membership fees. The teachers' organization shall indemnify and hold the
9 school board harmless from any and all claims stemming from the
10 implementation or administration of the agency fee.

11 (2) In the absence of a requirement that a teacher who exercises his or
12 her right not to join the teachers' organization pay the agency fee, the teacher
13 shall be required to reimburse the teachers' organization for the actual cost of
14 representing the teacher in relation to grievance proceedings.

15 (b)(1) Principals, assistant principals, and administrators other than
16 superintendent and assistant superintendent shall have the right to or not to
17 join, assist, or participate in any administrators' organization or as a separate
18 unit of any teachers' organization of their choosing. However, subject to the
19 provisions of subsection (d) of this section, administrators other than the
20 superintendent and assistant superintendent who choose not to join the
21 administrators' organization, recognized as the exclusive representative

1 pursuant to section 1992 of this chapter, shall pay the agency fee in the same
2 manner as administrators who choose to join the administrators' organization
3 pay membership fees. The administrators' organization agrees to indemnify
4 and hold the school harmless from any and all claims stemming from the
5 implementation or administration of the agency fee.

6 (2) In the absence of a requirement that an administrator who exercises
7 his or her right not to join the administrators' organization pay the agency fee,
8 the administrator shall be required to reimburse the administrators'
9 organization for the actual cost of representing the administrator in relation to
10 grievance proceedings.

11 * * *

12 Sec. 9. 21 V.S.A. § 1734 is amended to read:

13 § 1734. MISCELLANEOUS

14 * * *

15 (e) In the absence of a requirement that an employee who exercises his or
16 her right not to join the employee organization pay the agency service fee, the
17 employee shall be required to reimburse the employee organization for the
18 actual cost of representing the employee in relation to grievance proceedings.

1 reached, or the discriminatory application of a rule or regulation, ~~which~~ that
2 has not been resolved to a satisfactory result through informal discussion with
3 the State.

4 ~~(6)~~(5) “Independent direct support provider” means any individual who
5 provides home- and community-based services to a service recipient and is
6 employed by the service recipient, shared living provider, or surrogate.

7 ~~(7)~~(6) “Labor organization” means an organization of any kind in which
8 independent direct support providers participate and ~~which~~ that exists, in whole
9 or in part, for the purpose of representing independent direct support providers.

10 ~~(8)~~(7) “Service recipient” means a person who receives home- and
11 community-based services under the Choices for Care Medicaid waiver, the
12 Attendant Services Program (ASP), the Children’s Personal Care Service
13 Program, the Developmental Disabilities Services Program, or any successor
14 program or similar program subsequently established.

15 ~~(9)~~(8) “Shared living provider” means a person who operates under a
16 contract with an authorized agency and provides individualized home support
17 for one or two people who live in his or her home. An authorized agency
18 includes a designated agency for developmental services.

19 ~~(10)~~(9) “Surrogate” means a service recipient’s authorized family
20 member; or legal guardian, or a person identified in a written agreement as
21 having responsibility for the care of a service recipient.

1 Sec. 11. 21 V.S.A. 1634 is amended to read:

2 § 1634. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING;

3 SCOPE OF BARGAINING

4 * * *

5 (b) Mandatory subjects of bargaining under this section shall be limited to:

6 * * *

7 (3) the collection and disbursement of dues or fees to the exclusive
8 representative, ~~provided that a collective bargaining service fee may not be~~
9 ~~required of nonmembers unless the exclusive representative has established~~
10 ~~and maintained a procedure to provide nonmembers with:~~

11 ~~(A) an audited financial statement that identifies the major categories~~
12 ~~of expenses, and divides them into chargeable and nonchargeable~~
13 ~~expenses; and~~

14 ~~(B) an opportunity to object to the amount of the agency fee sought,~~
15 ~~any amount reasonably in dispute to be placed in escrow, subject to prompt~~
16 ~~review and determination by the Board to resolve any objection over the~~
17 ~~amount of the collective bargaining fee, as provided for in subsection (d) of~~
18 ~~this section;~~

19 * * *

20 ~~(d) Any dispute raised by a nonmember concerning the amount of a~~
21 ~~collective bargaining service fee, as provided for under subdivision (b)(3) of~~

1 ~~this section, may be grieved to the State Labor Relations Board which shall~~
2 ~~review and determine such matter promptly, in accordance with the Board's~~
3 ~~rules~~ An employee who chooses not to be a member of the labor organization
4 shall reimburse the organization for the actual cost to the organization of
5 bringing and resolving the employee's grievance against the State.

6 Sec. 12. 33 V.S.A. § 3603 is amended to read:

7 § 3603. ESTABLISHMENT OF COLLECTIVE BARGAINING

8 * * *

9 (b)(1) Mandatory subjects of bargaining are limited to:

10 * * *

11 (C) the collection of dues and disbursement to the exclusive
12 representative; and

13 (D) ~~agency fees and disbursement to the exclusive~~
14 ~~representative; and~~

15 (E) procedures for resolving grievances.

16 * * *

17 (e) An early care and education providers' organization shall not charge the
18 agency fee unless it has established and maintained a procedure to provide
19 nonmembers with:

20 (1) ~~an audited financial statement that identifies the major categories of~~
21 ~~expenses and divides them into chargeable and nonchargeable expenses;~~

1 ~~(2) an opportunity to object to the amount of the agency fee sought, and~~
2 ~~to place in escrow any amount reasonably in dispute; and~~

3 ~~(3) prompt arbitration by the Vermont Labor Board to resolve any~~
4 ~~objections over the agency fee.~~

5 ~~(f) Agency fees, if successfully bargained, shall be based on the~~
6 ~~proportionate amount of subsidies an early care and education provider~~
7 ~~receives provider that chooses not to be a member of the early care and~~
8 ~~education providers' organization shall reimburse the organization for the~~
9 ~~actual cost to the organization of bringing and resolving the early care and~~
10 ~~education provider's grievance against the State.~~

11 * * * Good Cause Employment * * *

12 Sec. 13. FINDINGS

13 The General Assembly finds:

14 (1) The Vermont statutes offer workers protection from many forms of
15 arbitrary or discriminatory treatment in the workplace.

16 (2) Some Vermont workers enjoy protections from termination for no
17 reason or termination for an arbitrary, capricious, trivial, or pretextual reason
18 pursuant to a collective bargaining agreement or contract.

19 (3) Other Vermont workers, however, do not enjoy such protections.
20 Those workers are known as "at-will" employees. An "at-will" employee may

1 be discharged for any reason that is not prohibited by law or public policy, or
2 for no reason at all.

3 (4) Currently, absent an agreement between an employer and an
4 employee to the contrary, an employee is presumed to be an “at-will”
5 employee in 49 out of 50 U.S. states.

6 (5) However, Montana and most industrialized countries provide
7 workers with legal protections against arbitrary dismissal. Among other
8 things, Montana’s law makes it illegal to discharge an employee for other than
9 “good cause” after the employee has completed his or her probationary period.
10 “Good cause” can include a variety of legitimate business reasons, including
11 an employee’s failure to perform his or her job duties satisfactorily, disruption
12 to the employer’s operations, or other economic factors.

13 (6) The additional job security that a “good cause” standard for
14 dismissal provides will distinguish Vermont from other states and make it a
15 more attractive place for workers and families to relocate, live, and raise
16 children.

17 Sec. 14. 21 V.S.A. § 495 is amended to read:

18 § 495. UNLAWFUL EMPLOYMENT PRACTICE

19 * * *

20 (b)(1) It shall be an unlawful employment practice for an employer to
21 discharge an employee for other than good cause shown. As used in this

1 subdivision, “good cause” means either a reasonable, good-faith reason for
2 discharge related to a legitimate business reason or that the employee has been
3 employed by the employer for fewer than 90 days. “Good cause” does not
4 include reasons for discharge that are trivial, arbitrary, capricious, or otherwise
5 unrelated to a legitimate business reason.

6 (2) The provisions of this section shall not be construed to limit:

7 (A) the rights of employers to discharge employees for good cause
8 shown; or

9 (B) any other rights of employees provided pursuant to law or in a
10 collective bargaining agreement or contract.

11 * * *

12 * * * Effective Date * * *

13 Sec. 15. EFFECTIVE DATE

14 This act shall take effect on July 1, 2018.