

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION,)	Case No.: 2015-__
Complainant,)	Filed: _____
)	
v.)	
)	
JUDICIARY DEPARTMENT OF THE)	
STATE OF VERMONT,)	
Respondent.)	
)	
Re: Refusal to bargain,)	

UNFAIR LABOR PRACTICE CHARGE
(Failure to bargain in violation of 3 VSA §§1026(5) and 1036(e))

Introduction:

In this unfair labor practice charge, the Vermont State Employees' Association ("VSEA") challenges the actions of the Judiciary Department of the State of Vermont ("Judiciary") in failing and refusing to engage in collective bargaining, as requested by VSEA, prior to the commencement of the budgetary processes that would be required to fund any contractual items, and thereby making it impossible for the VSEA to negotiate over financial items to be included in the court administrator's request for funds from the general assembly, all in violation of 3 VSA §§1026(5) and 1036(e).

Parties:

1. The Vermont Employees' Association is an employee organization pursuant to 3 VSA §1011 (9) and is the certified bargaining agent for the employees working in the Judicial

Department Bargaining Unit. The VSEA offices are located at 155 State Street, Montpelier, Vermont 05602.

2. The Judiciary Department of the State of Vermont is the employer pursuant to 3 VSA §1011 (10) of the employees of the Judicial Department Bargaining Unit, and has a central office at 109 State Street, Montpelier, Vermont 05609.

Facts:

3. The VSEA and the Judiciary reached agreement on their first collective bargaining agreement with the Judiciary in 2002, effective retroactively to July 1, 2001, and have negotiated a series of successive collective bargaining agreements since that date.
4. The current collective bargaining agreement for the unit was negotiated in 2014, and is effective from July 1, 2014 to June 30, 2016.
5. Funding for the Judiciary Department must be appropriated by the General Assembly as part of the biennial budget process, a process that begins with the submission of all proposed cost items, including personnel costs negotiated through collective bargaining, by the Court Administrator to the General Assembly.
6. The state budget, including the Judiciary Department budget, runs from July 1 of each even-numbered year to June 30 of the following even-numbered year.
7. The General Assembly constructs the budget legislation based on proposals submitted by the Governor, generally in the beginning of the calendar year when the budget will take effect, based on financial submissions submitted during the last months of the previous year by all agencies and departments, including the Judiciary Department.

8. In each round of successor bargaining, the negotiations have commenced after the Judiciary Department has already submitted its funding requests to the General Assembly.
9. Because prior negotiations have always commenced after the Court Administrator has already submitted the Judiciary Department's funding requests to the General Assembly, the VSEA has never been able to engage in meaningful collective bargaining over wages and other financial terms and conditions of employment, and has instead been forced to accept whatever terms are negotiated into the collective bargaining agreements covering employees of the executive branch of state government.
10. The Judicial Employees Labor Relations Act provides as follows:

(c) An agreement between the employer and the employees' exclusive bargaining representative, after ratification or an agreement imposed on the parties pursuant to section 1018 or 1019 of this title shall be submitted to the court administrator who shall request sufficient funds from the general assembly to implement the agreement. If the general assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the general assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the general assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

3 VSA §1036 (c).

11. The Act further provides as follows:

(e) An agreement shall terminate at the expiration of its specified term. Upon request of either party, negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time during the year preceding the expiration date of the agreement. Negotiation may be commenced at any time before that time with the consent of both parties.

3 VSA § 1036 (e).

12. Article 31 of the collective bargaining agreement provides as follows:

Duration and Procedure for Negotiating Successor Agreement

The duration of this Agreement shall be from July 1, 2014 to midnight June 30, 2016. The parties agree to meet no later than February 1, 2016 to commence negotiations concerning the successor agreement to commence July 1, 2016.

13. The VSEA has never waived its right to demand that bargaining for a successor to the current agreement commence on or after July 1, 2015.
14. By a letter dated May 29, 2016 from VSEA Unit Chair Margaret Crowley to State Court Administrator Patricia Gabel, Esq., the VSEA informed the Judiciary that it would exercise its right, pursuant to 3 VSA § 1036 (e), to request that negotiations for a successor agreement commence after July of 2015 for a successor to the current agreement, which expires by its terms on June 30, 2016.
15. On June 24, 2015, by a letter from Ms. Gabel to Ms. Crowley, responding that the Judiciary would refuse to commence negotiations as requested by the VSEA, and asserting that it had the right to decline to commence negotiations before February of 2016, and thereby insisted that it would not conduct negotiations on a schedule that would permit the parties to reach agreement before the Court Administrator submits funding requests to the General Assembly.
16. On July 1, 2015, by letter from VSEA Union Representative Brian Morse to Court Administrator Gabel, VSEA formally exercised its right to demand that bargaining over a successor agreement commence in August of 2015.
17. By insisting that negotiations will not commence until after the Court Administrator submits funding requests to the General Assembly, and by refusing to commence negotiations in August of 2015 as requested by the VSEA, the Judiciary Department deprived bargaining unit employees any opportunity to bargain for financial terms and conditions of employment.

COUNT I

(Failure to bargain in good faith in violation of 3 VSA §§1026(1) and (5) and 1036(e))

18. By refusing to commence negotiations during the year preceding expiration of the current agreement at the time requested by the union, and by insisting that negotiations commence after the Court Administrator has already submitted requests for funds to the General Assembly to be included in the budget to take effect July 1, 2016, the Respondent Judiciary Department has violated its duty to bargain upon request “at any time during the year preceding the expiration date of the agreement;” failed to bargain in good faith; and thereby interfered, restrained, and coerced employees in the exercise of rights protected by 3 VSA §1012, all in violation of 3 VSA §§1026(1) and (5), as well as 3 VSEA § 1036(e).

PRAYER FOR RELIEF

WHEREFORE, VSEA respectfully requests that this Board schedule this matter for consideration on an expedited basis and:

- a. Take jurisdiction of this matter;
- b. Issue an unfair labor practice complaint;
- c. Set a date for hearing;
- d. Determine that the Judiciary Department of the State of Vermont has committed and continues to commit unfair labor practices in violation of 3 V.S.A. §§1026 (1) and (5) and has violated rights protected by 3 V.S.A. §1036 (e);
- e. Order the Respondent to immediately cease and desist from engaging in any and all of the above-described activities that constitute unfair labor practices;

f. Order that Respondent post, in conspicuous worksite locations in all its courts and field offices around the State, notice that it committed the unfair labor practices described herein, and that it will immediately cease and desist from engaging in such conduct;

g. Order that the Respondent, in addition to physical posting of paper notices, post on intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means;

h. Order that any employee who has suffered an adverse action as a result of any of the Respondent's unfair labor practices described herein be made whole;

h. Order such other relief as this Board deems just and fair.

Dated this ____ day of July 2015 at Montpelier, Vermont.

VERMONT STATE EMPLOYEES ASSOCIATION, INC.

By:

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STATE OF VERMONT
WASHINGTON COUNTY

Subscribed and sworn to me on this ____ day of July, 2015.

Notary Public
My Commission Expires on: .

cc: Patricia Gabel, Esq.