Joseph C. McNeil (1919-1978)
Joseph E. McNeil
John T. Leddy
Nancy G. Sheahan
William F. Ellis
Susan Gilfillian
Joseph A. Farnham
Kevin J. Coyle+
Colin K. McNeil
+Also licensed in New York

McNEIL LEDDY & SHEAHAN
ATTORNEYS AT LAW

T 802.863.4531
F 802.863.1743

271 South Union Street
Burlington, VT 05401

www.mcneilvt.com

July 22, 2015

HAND DELIVERED
Timothy J. Noonan, Executive Director
Vermont Labor Relations Board
133 State Street
Montpelier, VT 05633-6101

Re: #15-28, Vermont State Employees' Association v. Judiciary Department of the State of Vermont

Dear Mr. Noonan:

Enclosed for filing with the Board in the above-referenced matter please find our firm's Notice of Appearance and an original and four (4) copies of the Judiciary Department of the State of Vermont's Response to Unfair Labor Practice Charge. Please contact me with any questions or concerns.

Thank you for your assistance.

Very truly yours,

Joseph A. Farnham

JAF/bjh
Enclosures
400030-38

c: Patricia Gabel, Esq. (via first class mail)
Timothy Belcher, Esq. (via first class mail)

STATE OF VERMONT
LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION, Complainant	)	
v.	)	Docket No. 15-28
JUDICIARY DEPARTMENT OF THE STATE OF VERMONT, Respondent	)	

NOTICE OF APPEARANCE

Notice is hereby given of the appearance in this matter of the firm of McNeil, Leddy & Sheahan, P.C. on behalf of the Judiciary Department of the State of Vermont.

Dated at Burlington, Vermont, this 22nd day of July, 2015.

McNEIL, LEDDY & SHEAHAN, P.C.

By: _____

Joseph A. Farnham
271 South Union Street
Burlington, VT 05401

c: Patricia Gabel, Court Administrator
Timothy Belcher, Esq.

400030-38

McNEIL
LEDDY &
SHEAHAN

271 South Union St.
Burlington, VT 05401
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F 802.863.1743

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STATE OF VERMONT
LABOR RELATIONS BOARD

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JUDICIARY DEPARTMENT OF THE STATE OF VERMONT'S RESPONSE TO UNFAIR LABOR PRACTICE CHARGE

NOW COMES Respondent Employer Judiciary Department of the State of Vermont ("Judiciary"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., hereby responding to the Unfair Labor Practice Charge ("Charge") of Complainant Vermont State Employees' Association (VSEA), dated July 1, 2015 as follows:

INTRODUCTION

The Judiciary denies and opposes the present Unfair Labor Practice Charge ("Charge") brought by the VSEA, for reasons set forth herein. The Judiciary hereby reserves its right to file an answer to any unfair labor practice complaint which may subsequently issue.[1]

PARTIES

1. Assuming the "Vermont Employees' Association" is the same as the VSEA, undisputed.

2. Undisputed.

[1] *See* 3 V.S.A. 1030(b) and Section 56.11 of the Vermont Labor Board's Rules of Practice.

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FACTS

3. Undisputed.

4. Undisputed.

5. Undisputed.

6. Undisputed.

7. Undisputed.

8. The record in this regard will speak for itself. Here, VSEA effectively acknowledges the parties' past practice.

9. Denied.

10. The cited provision speaks for itself.

11. The cited provision speaks for itself.

12. The cited Article speaks for itself.

13. Denied to the extent VSEA has agreed to the language contained in Article 31 of "AGREEMENTS between the Judicial Department of the State of Vermont and the Vermont State Employees Association Inc., Judiciary Bargaining Unit, Effective July 1, 2014 – Expiring June 30, 2016" ("Agreement"). The language of Article 31 reflects the parties' explicit agreement to commence negotiations for a successor agreement no later than February 1, 2016. Denied that VSEA has a right to "demand that bargaining for a successor to the current agreement commence on or after July 1, 2015."

14. Denied. The letter was signed by "The VSEA Judicial Unit Executive Committee," not Margaret Crowley. The letter does not mention the exercising of any "right pursuant to 3 V.S.A. §1036(e), to request that negotiations for a

McNEIL LEDDY & SHEAHAN

271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743

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successor agreement commence after July of 2015" as VSEA now represents.

Instead the letter in pertinent part, by its own text was a:

> ...[P]rofessional courtesy to provide notice of [VSEA's] desire to bargain a successor collective bargaining agreement during the month of July
> ...

That same letter goes on to state in pertinent parts:

> ...VSEA is aware that historically, the VSEA and the State of Vermont ("Judiciary") begin negotiations after February...
> ...
>
> Additionally, beginning to bargain in later summer or early fall of this year will be in accordance with Article 30 [sic] of the Collective Bargaining Agreement. This requires the parties to meet no later than February 1, 2016 to commence negotiations.

15. Denied. While VSEA's text here is a bit grammatically confusing, it is clear that the referenced letter does not state that the "Judiciary would refuse to commence negotiations as requested by the VSEA" as VSEA now represents. Instead, the letter states in pertinent part:

> The Judiciary must respectfully decline the invitation to commence negotiations in July...
> ...
> I am advised that this topic was a specific subject of our negotiations in our last round of negotiations, with VSEA proposing an earlier start date, the Judiciary opposing it, and the contract ultimately remaining unchanged. Both parties are of course fully entitled to the benefit of their bargain
> ...
> The Judiciary is facing a number of pressing matters in the next several months to which it must devote its attention. Also, much of the data that the Judiciary relies upon in its negotiations preparation is not even available to us until the late fall and early winter. As a result the Judiciary must

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271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743
www.mcneilvt.com

> respectfully decline your request to begin bargaining in July. At the same time, we note your desire to begin earlier than we did the last time around. We will take this into account once we have received and been able to review data related to negotiation preparations.
> ...

Conveniently, VSEA fails to share that on the same date as the Gabel letter, Ms. Crowley sent an e-mail to Ms. Gabel stating in pertinent part:

> We do not intend to bargain in July but within the same time frame as the Executive Branch which complies with... "not later than February 1 2016"... .

16. Undisputed that the referenced letter purports to be a "demand to commence bargaining in August of this year." The letter fails to explain the substantive shift in VSEA's position between VSEA Unit Chair Crowley's June 24, 2015 e-mail to Ms. Gabel (quoted immediately above in No. 15) and Mr. Morse's "demand" for commencement of successor agreement negotiations in August 2015. None of the correspondence between VSEA and/or Ms. Crowley and Ms. Gabel prior to the Morse "demand" letter specifically discuss August 2015 as a potential period for the commencement of successor agreement negotiations. In sum, VSEA's filing of the present charge on July 2, 2015, occurred weeks in advance of the "request" that Ms. Crowley forewarned of, and one day after VSEA's first overture (via Mr. Morse) to Ms. Gabel, with regard to negotiating in August 2015. Denied that 3 V.S.A. 1036(e) allows any party to a collective bargaining agreement to unilaterally choose the precise commencement date for negotiations of a new agreement, especially in circumstances like those present in this case where VSEA, in the exchanges leading up to the purported July 1 "demand,"

McNEIL LEDDY & SHEAHAN
271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743
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acknowledged that the Agreement "requires the parties to meet no later than February 1, 2016" to commence negotiations, in conformity with the parties historic treatment of the issue. *See,* Nos. 12 and 14 above.

17. Denied.

COUNT 1

(failure to bargain in good faith in violation of 3 V.S.A. 1026(1) and (5) and 1036(e))

18. Denied. The parties are in fact bound by the present Agreement to commence negotiations (concerning the successor agreement to commence July 1, 2016), during the year prior to the present Agreement's expiration on June 30, 2016. The parties have agreed to commence such negotiations no later than February 1, 2016, a date approximately five (5) months in advance of the present Agreement's expiration, and well within "the year preceding the expiration date" of the present Agreement. *See* 3 V.S.A. 1036(e). The Judiciary denies violating any right or statute or any provision of the present Agreement. The Judiciary denies failing to bargain in good faith. The Judiciary denies any interference, restraint or coercion of any kind. The Judiciary denies committing any unfair labor practice.

VSEA'S PRAYER FOR RELIEF

The Judiciary respectfully requests that all of VSEA's requests as set forth in the PRAYER FOR RELIEF portion of its July 1, 2015 submission, be denied.

McNEIL LEDDY & SHEAHAN

271 South Union St.
Burlington, VT 05401
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F 802.863.1743

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AFFIRMATIVE DEFENSES/BARS TO CHARGE

VSEA itself highlights that the parties, by Article 31 of the Agreement, have established the "...Procedure for Negotiating Successor Agreement." That procedure, calling for the parties to "meet no later than February 1, 2016 to commence negotiations concerning the successor agreement" fully comports with 3 V.S.A. 1036(e), and reflects the parties agreement for more precision and foreseeability than 3. V.S.A. 1036(e) provides, by designating a specific "no later than" date, something the statute does not do. By purporting to invoke 3 V.S.A. 1036(e), VSEA is effectively seeking to supplement or renegotiate a provision of the Agreement without the Judiciary's consent in clear violation of law:

> A collective bargaining agreement shall be for a maximum term of two years. The agreement may not be cancelled, **supplemented or renegotiated during the term of the agreement unless both parties consent in writing, and file the written consent with the Board.**

3 V.S.A. 1036(a) (emphasis added).

If not in violation of 3 V.S.A. 1036(a), VSEA at a minimum has clearly demonstrated its view that despite the bargained-for text of the Agreement, it can unilaterally choose the commencement date for successor agreement negotiations by invoking 3 V.S.A. 1036(e). The Judiciary interprets the Agreement quite differently: As long as the parties commence such negotiations on or before February 1, 2016, the Agreement and the law will be honored. Such a difference in interpretation is proper for the grievance procedure, and should not serve as the basis for an Unfair Labor Practice charge.

> The Board has decided in many unfair labor practice cases whether to defer to a contract's grievance procedures in lieu of issuing an unfair labor practice complaint. The Board has not ruled on unfair labor practice

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Burlington, VT 05401
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F 802.863.1743

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> charges where the Board believed the disputed involved the interpretation of a collective bargaining agreement and employees had an adequate redress for the alleged wrongs through the grievance procedure. Parties to a collective bargaining agreement are required to exhaust available contractual remedies before a statutory unfair labor practice complaint will lie.

International Union of Public Employees, Hartford Police Union v. Town of Hartford, 32 VLRB 357, 361. *See also*, Fouts v. Chittenden County Transportation Authority, 32 VLRB 27 (proper avenue for charge was grievance under collective bargaining agreement); Hurley v. Superintendent of Rutland Public Schools, 15 VLRB 422 (grievance process under contract was proper avenue for dispute).

In the present case, the Agreement's Article 14 "Grievance and Arbitration Procedure" states in pertinent part:

> It is expected that employees and supervisors, and the VSEA will make a sincere effort to reconcile their differences as quickly as possible at the lowest possible organization level.

If VSEA is dissatisfied with the Judiciary's interpretation as to Article 31 of the Agreement, VSEA should be required to exhaust its grievance efforts pursuant to Article 14 of the Agreement.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Respondent Employer Judiciary Department of the State of Vermont respectfully requests that the Board decline to issue an unfair labor practice complaint as a result of the present charge, dismiss the charge, and deny all of VSEA's requested relief, with prejudice.

McNEIL LEDDY & SHEAHAN

271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743

www.mcneilvt.com

DATED at Burlington, Vermont this 22nd day of July 2015.

JUDICIARY DEPARTMENT
OF THE STATE OF VERMONT

By: _____

Joseph A. Farnham, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401

c: Patricia Gabel, Court Administrator
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400030-00038

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