

Vermont-NEA UniServ Assistance Policy

I. INTRODUCTION

Within Vermont-NEA, it is the regional UniServ Directors who assist local Associations in the context, among other things, of organizing bargaining units, negotiating collective bargaining agreements, and processing grievances. It is also their responsibility to consult with a Vermont-NEA attorney to determine if, and at what procedural step, an individual Association member or affiliate requires and may obtain legal assistance. In general, it is left to the judgment of UniServ Directors, in concert with local Association officials, to determine the extent of their direct representation of individuals or local Associations in organizing, negotiations, grievance, and other matters. This UniServ Assistance Policy serves as the guidelines within which these Vermont-NEA professional staff perform their jobs and through which local Associations may and should call upon their UniServ Director for assistance.

II. STATEMENT OF PURPOSE

The purpose of Vermont-NEA's UniServ Program is to assist local Associations and their members in the context of organizing, collective bargaining, grievance processing, and certain other matters and to protect and broaden the rights of educators.

III. DEFINITIONS

For purposes of this policy, the following meanings shall apply:

"Collective bargaining" means the statutory process through which the terms and conditions of employment of bargaining unit members are determined.

"Days" means calendar days.

"Grievance processing" means the process through which disputes over the application or interpretation of terms of a collective bargaining agreement are resolved.

"Organizing" means the formation of a group of employees into one or more bargaining units for the purpose of collective bargaining and protection of employee rights.

"UniServ assistance" means the provision by UniServ Directors of training, advice, support, and/or direct representation to local Associations and their members in the context of organizing, collective bargaining, grievance processing, and certain other matters. It incorporates the process through which Vermont-NEA legal assistance is obtained.

"UniServ Director" means a field representative of Vermont-NEA assigned to provide UniServ assistance to local Associations and their members in a UniServ district.

"UniServ district" means the Vermont-NEA service region within which a local Association is located.

IV. ELIGIBILITY FOR UNISERV ASSISTANCE

A. Organizing Bargaining Units

1. Nature of proposed bargaining unit

a. Teachers. Teachers employed by the same employer, who are interested in organizing a bargaining unit and local affiliate of Vermont-NEA, shall seek to include within the bargaining unit all non-administrator teaching positions.

b. Education Support Personnel. Education Support Personnel employed by the same employer, who are interested in organizing a bargaining unit and local affiliate of Vermont-NEA, shall seek to include within the bargaining unit all non-administrator, non-teacher positions within their school district.

2. Pre-election. School employees interested in organizing a bargaining unit may request assistance from Vermont-NEA at any time. To obtain UniServ assistance with organizing, no less than 75% of the members of a proposed bargaining unit must pay to Vermont-NEA an organizing fee set by its Board of Directors. The Vermont-NEA portion of membership dues of any school employee who pays the organizing fee and who subsequently joins the new local Association shall be reduced by the amount of the organizing fee.

3. Post-election membership threshold. Following certification of a bargaining unit, and upon receiving confirmation that at least 60% of its members have joined the new local Association, Vermont-NEA will provide UniServ assistance to develop the bargaining unit's organizational capacity.

4. Organizational capacity for UniServ assistance. A bargaining unit will be eligible to receive UniServ assistance if it:

a. Installs members in the offices of president, grievance representative, and other positions required depending on the size and configuration of the bargaining unit;

b. Adopts and transmits to Vermont-NEA a constitution and bylaws that, among other things, incorporate a representative decision-making structure;

c. Develops a functioning internal member communication capacity;

d. Develops and implements a membership growth and maintenance program;

e. Commits itself to regular attendance at, and full participation in, the UniServ District's Regional Bargaining Council, whether or not it is engaged in pending collective bargaining;

f. Agrees to request of its employer that negotiations cover both teachers and education support personnel and that negotiations be conducted, where the employer is

one of several within a supervisory union, on a supervisory union level;

g. Transmits all dues collected on behalf of the state and national association in accordance with Vermont-NEA policy; and

h. Creates a negotiating team, composed of both teachers and education support personnel, at least two of whose members have undergone training in collective bargaining authorized and approved by its UniServ Director.

B. Collective Bargaining

1. Introduction. Collective bargaining can consist of several stages, including negotiation, impasse, mediation, fact-finding, and post-factfinding. This policy separates collective bargaining into its component parts. It also distinguishes first-time and successor agreements.

2. Threshold for assistance. To qualify for UniServ assistance with collective bargaining, a bargaining unit must meet the conditions established in subsections A.3 and A.4 of this Article.

3. Nature of assistance

a. Negotiation – pre-impasse. Subject to a decision by the UniServ Director otherwise, a local Association is responsible for conducting its own negotiations, using consultation with its UniServ Director.

b. Impasse. The local Association shall consult with its UniServ Director in determining if, and if so when, to declare an impasse in negotiations. If impasse is declared, the UniServ Director shall become directly involved with the negotiating team for the balance of the collective bargaining process and shall be authorized by the local Association to coordinate all impasse proceedings.

c. Mediation. The local Association shall give serious consideration to the advice of its UniServ Director regarding whether to proceed to mediation, either before or after impasse. If the local Association does proceed to mediation, it shall follow the recommendation of its UniServ Director regarding representation of the local Association at mediation. If the local Association has complied with this policy, Vermont-NEA, in accordance with the provisions of its Rights Fund, will pay 50% of the local Association's cost of mediation.

d. Factfinding. The local Association shall give serious consideration to the advice of its UniServ Director regarding whether to conduct factfinding. If the local Association is involved in factfinding, it shall follow the recommendation of its UniServ Director regarding the exhibits and presentation of its position to the factfinder. If the local Association has complied with this policy, Vermont-NEA, in accordance with the provisions of its Rights Fund, will pay 50% of the local Association's cost of factfinding.

e. Absence of agreement. If, in the absence of or after fact-finding, the local Association and employer fail to

reach agreement, or if the employer announces its intention to impose an employment policy on members of the bargaining unit, the local Association shall inform and work in collaboration with its UniServ Director to determine what course of action to pursue.

f. Ongoing dispute. If the local Association determines not to reach agreement or accept an imposed employment policy, it shall work with its UniServ Director:

- i. to develop a strategy that may include a strike and attendant steps in anticipation of a strike;
- ii. if the Association faces a potential strike, to arrange, among other things, for education and information meetings to which Association members will be invited to learn about the status of collective bargaining and their rights;
- iii. to develop a further strategy to bring about settlement; and
- iv. if it has complied with the terms of this policy, to obtain access to financial assistance in accordance with Vermont-NEA policies.

g. Unfair Labor Practice Charges

- i. Against the employer. If the Association believes its employer has committed an unfair labor practice, it shall inform its UniServ Director, who shall decide, with legal counsel for Vermont-NEA, whether to file an unfair labor practice charge.
- ii. Against the Association. If an employer files an unfair labor practice charge against a local Association, Vermont-NEA will provide representation of the local Association.

iii. Costs. In accordance with its Rights Fund, Vermont-NEA will pay all costs associated with unfair labor practice proceedings it files or filed by an employer against a local Association.

C. Grievance Processing

1. Introduction. The grievance process in a collective bargaining agreement is used to resolve disputes over the interpretation or application of the agreement's provisions. Disputes may be general, in which case the resulting grievance is an "Association grievance," or they may affect individuals, in which case the resulting grievance is an "individual grievance." This section provides the standards for provision of UniServ assistance with the processing of grievances.

2. General. A bargaining unit will be eligible to receive UniServ assistance with the processing of grievances when:

- a. It has complied with the conditions established in subsections A.3 and A.4 of this Article;
- b. Its grievance representative has been trained or scheduled to be trained at Vermont-NEA's Summer Leadership Conference or alternative training as authorized and approved by its UniServ Director; and
- c. It has developed, and its officers have agreed to follow, a process through which, with respect to any possible grievances, the local Association investigates the facts, assesses the merits, adopts a position accordingly, and adheres to applicable timelines.

3. Prior consultation. A local Association should consult with its UniServ Director prior to filing a grievance and, if it determines to file a grievance, it may consult further with its UniServ Director regarding the contents of the grievance itself.

4. Steps

a. Generally. Grievance procedures generally contain several increasingly formal steps, potentially culminating, if the grievance is not resolved at a "lower" level, in arbitration. The substance of a grievance may be about matters that are or are not disciplinary in nature. As a general rule, a local Association is responsible for managing through the first levels grievances that are non-disciplinary in nature, such as meetings or hearings with a principal or superintendent.

b. Disciplinary matters. Subject to subparagraph c., in the case of a disciplinary matter, the UniServ Director shall determine to what extent to represent the grievant directly at lower levels of the grievance process.

c. Job security matters. In the case of a grievant subject to potential loss of employment, including but not limited to a corrective action plan, suspension, non-renewal, layoff, or dismissal, the UniServ Director shall consult with Vermont-NEA legal counsel to determine if legal assistance should be provided.

d. School board hearings. A local Association whose grievance process includes a hearing before the school board is responsible for providing representation at the

hearing. It may request direct representation by its Uniserv Director, who shall make a decision to do so or not do so based on the complexity of the issues, their merit, the potential for the result to have broad applicability, and any other relevant considerations.

5. Grievants who are not members of the Association. A local Association has an obligation to provide grievance representation to members of the bargaining unit regardless of their membership in the Association itself. This is called the duty of fair representation and arises from the status of the local Association as the exclusive agent for all members of the bargaining unit. A local Association with questions about the extent of this obligation should consult with its UniServ Director.

6. Conditions for receipt of UniServ assistance. As conditions for receiving UniServ assistance, a grievant expressly authorizes the UniServ Director:

a. To share statements or information with local Association officials that may be relevant to the processing of the grievance;

b. To share statements or information with Vermont-NEA staff that may be relevant to the determination by Vermont-NEA to continue or discontinue UniServ assistance;

c. To keep Vermont-NEA informed of developments in connection with the grievance, including any settlement offers made or received by the grievant; and

d. To provide Vermont-NEA copies of documents prepared in connection with representation of the grievant, for possible use by Vermont-NEA after redacting from any non-public document any references identifying the grievant.

7. Termination of UniServ assistance

a. Basis. Vermont-NEA may terminate UniServ assistance at any stage of a grievance if:

- i. It becomes aware of relevant facts it did not, and could not reasonably have been expected to, know when it made its initial determination to provide UniServ assistance;
- ii. The controlling law has changed, as a consequence of which there is little or no likelihood of success;
- iii. The grievant does not remain eligible for UniServ assistance under the criteria set forth above;
- iv. The grievant fails to comply with the provisions of this policy;
- v. The grievant fails to cooperate with, or takes actions that interfere with the ability of, the UniServ Director to perform his or her professional duties;
- vi. The grievant retains an advocate unaffiliated with Vermont-NEA without Vermont-NEA consent;
- vii. The grievant rejects a reasonable settlement proposal or other disposition of the grievance as advised by the UniServ Director; or
- viii. Continued UniServ assistance would, in the opinion of the UniServ Director, not advance the goals and objectives of the Association.

b. Notice. If the UniServ Director terminates assistance, he or she shall, in the case of an Association grievance, notify the local Association and, in the case of an individual grievant, the grievant and the local Association, providing a clear statement of the basis for the termination and of the grievant's right to appeal that termination under Article V of this policy.

8. Arbitration. Most collective bargaining agreements provide access of the local Association to binding arbitration by a neutral decision-maker if the grievance is not resolved within the employment setting. The following provisions address UniServ assistance in that context.

a. Application. Under the terms of its collective bargaining agreement, a local Association has the capacity to request or demand arbitration. It may do so before determining if it will receive assistance with arbitration under this policy. To obtain assistance with arbitration, the local Association shall file with the UniServ Director a completed application and executed memorandum of agreement, attached as Appendices A and B.

b. Basis for authorization. The UniServ Director or, in the case of a grievance involving job security, the General Counsel, may authorize arbitration if:

- i. The grievant is eligible for UniServ assistance;
- ii. The grievant's position has legal merit;
- iii. To do so is consistent with Vermont-NEA policies; and
- iv. Granting the request would advance the goals and objectives of Vermont-NEA to an adequate extent.

In accordance with the provisions of the Vermont-NEA Rights Fund, Vermont-NEA will pay 75% of the local Association's cost of arbitration.

c. Direct representation. If arbitration is authorized, Vermont-NEA will provide direct representation of the grievant throughout the arbitration process, solely through the UniServ Director or attorney.

D. Other. A bargaining unit will be eligible to receive other forms of UniServ assistance when it has complied with the conditions established in subsections A.3 and A.4 of this Article. Other forms of UniServ assistance include:

1. Developing and/or executing local Association programs and activities to maintain membership, insure membership growth and organize new members;
2. Developing and/or executing local Association political action, community/public relations, legislative support and professional development activities and programs;
3. Developing and/or executing local Association programs in member rights and human relations;
4. Improving and maintaining the organizational health of the local Association through leadership training and development, internal communications, business management, and conflict resolution; and
5. Coordinating and advocating national and state association programs and priorities with local Associations and members.

E. Non-Discrimination. In determining whether to provide UniServ assistance to members and local affiliates of Vermont-NEA, Vermont-NEA shall not discriminate on the basis of race, color, religion, national origin, creed, age, gender, sexual orientation, disability, marital status, or economic status.

V. APPEALS

A. General. If the UniServ Director (1) denies a request for UniServ assistance, (2) grants a request for Uniserv assistance for a particular stage of a proceeding but denies UniServ assistance for a subsequent stage, or (3) terminates UniServ assistance, an individual or local Association may appeal the decision to the Executive Director.

B. Filing. To receive consideration, an appeal must be filed within twenty (20) days after the grievant receives written notice of the UniServ Director's decision by delivering in hand or by certified mail written notice to the Executive Director.

C. Preservation of rights. At the request of a grievant who files an appeal, the UniServ Director shall take steps necessary to preserve the grievant's rights. If the appeal is denied, the grievant shall reimburse Vermont-NEA for any resulting expenses it incurred.

D. Executive Director review. As soon as practicable, the Executive Director shall review the circumstances underlying the appeal and render a decision in writing to the grievant and the UniServ Director.

E. Appeal to Board of Directors. The individual or local Association may appeal the Executive Director's decision to the Board of Directors. To receive consideration, an appeal must be filed within ten (10) days after the grievant receives the Executive Director's decision by delivering in hand or by certified mail written notice to the Executive Director.

F. Board of Directors review. The Board of Directors may hold a hearing, request written submissions, or take other actions it deems appropriate to rule on the appeal. It shall render its decision as soon as possible, and shall give the appellant, the UniServ Director, and the Executive Director written notice of its decision, which shall be final.

VI. EFFECTIVE DATE AND AMENDMENTS

A. Effective date. This policy shall become effective as of July 1, 2000, and shall supersede all previous Vermont-NEA policies dealing with the same subject matter, provided that any request for UniServ assistance made prior to that date shall be processed in accordance with the policy in effect at that time.

B. Amendments. The Vermont-NEA Board of Directors may amend this policy from time to time, provided that any request for UniServ assistance that was filed prior to the effective date of such amendment shall be processed in accordance with the policy in effect at that time.

Adopted: June 10, 2000

Appendix A: Application for arbitration
Appendix B: Memorandum of understanding re arbitration