

**Supreme Court of Vermont
Office of State Court Administrator**

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To: Sen. Jeanette K. White, Chair
Senate Government Operations Committee

From: Patricia Gabel, Esq., State Court Administrator

Date: January 14, 2020

Re: Binding Arbitration for Judiciary and VSC

Dear Senator White:

Thank you for the opportunity to testify on this matter. The Vermont Judicial Branch supports the current system of having the Vermont Labor Relations Board (VLRB) serve as the final arbiter of any unresolved dispute over the terms of a collective bargaining agreement, rather than a private arbitrator, for the following reasons:

1. The VLRB is made up of Vermonters from a labor, managerial and neutral background who typically have at least a working understanding of the state's political and economic climate, as opposed to a single arbitrator (often for-profit professionals and typically from another state) appointed through the American Arbitration Association's check off process.
2. The VLRB has the advantage of having a full time executive director who is a labor relations expert totally familiar with the comparability and ability to pay precedents of both the VLRB and the National Labor Relations Board (NLRB) as well as emerging trends in the field of labor law and negotiations.
3. The VLRB has clear Rules of Practice and Procedure which make its protocols quite clear to the parties.
4. The VLRB has a more robust pre-hearing discovery protocol to avoid unnecessary surprises at its hearings.
5. The VLRB has historically conducted a thorough analysis of the issues separating the parties, and has rendered thoughtful decisions that provide a detailed analysis of the basis thereof that is tied back to the determined probative value of the evidence and testimony presented.¹

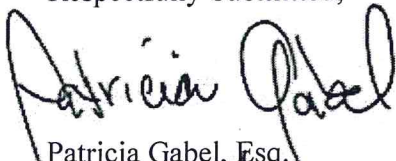
¹ By contrast, private arbitration decisions can often be much more cursory, offering far less guidance as to their basis. See, for example, the recent private last best offer arbitration decision relating to statewide health care for educational employees. While the differences between the parties were over several distinct issues and involved millions of \$ of difference, the arbitrator's decision was simply that he compared/contrasted the parties evidence and testimony and found one party's position "more closely aligned" to the statutory criteria. This decision is provided to the Committee in connection with my testimony

6. The VLRB creates and maintains a complete record of its proceedings which can be accessed in connection with any appeal.
7. The statute provides for the possibility of appeal to the Vermont Supreme Court on the basis of the record created, and with due deference to the subject matter expertise of the VLRB, in the event of a claim that legal error has been made.
8. The decisions of the VLRB are published, easily researched, and constitute thorough stare decisis precedents that serve as guides into the future.
9. As an existing entity created by law to perform such tasks the cost of the VLRB is already embedded in the overall cost of governmental services as opposed to the separate and distinct additional cost of a private arbitrator, the administrative fees of the AAA and the cost of a stenographer if one is utilized, which can be quite high.
10. The VLRB has a strong track record of protection of employee rights in accordance with law.

In short, the Vermont Judicial Branch is confident that the interests of all parties in a collective bargaining process, as well as the taxpayers of Vermont, are better served by the system that is now set forth in JELRA, the Judiciary Employees Labor Relations Act, than they would be if an individual unfamiliar with well-established Vermont labor law principles and unaccountable to the parties or Vermont taxpayers were substituted for this important role.

Thank you for this opportunity to be heard and I would be happy to answer any questions you may have for me.

Respectfully Submitted,



Patricia Gabel, Esq.
State Court Administrator

Enclosures

cc. Sen. Anthony Pollina, Vice Chair
Sen. Christopher Bray
Sen. Alison Clarkson, Clerk
Sen. Brian Collamore
Gail Carrigan, Committee Assistant

LAST BEST OFFER INTEREST ARBITRATION BETWEEN

Vt. Employee Commissioners on Public School Employee Health Benefits

And

Vt. Employer Commissioners on Public School Employee Health Benefits

**RE: Act 11, Title 16, Education, Chapter 061, V.S.A. 2101 et seq,
Commission on Public School Employee Health Benefits**

ARBITRATOR:

Allan S. McCausland, Ph.D.

HEARING DATES:

November 1st, 2nd & 5th, 2019

HEARING CLOSED:

November 18, 2019

AWARD DATE:

December 9, 2019

APPEARANCES FOR THE UNION:

Michael Campbell

Chair, Employee Commissioners

Suzanne Dirmaier

UniServ Director, Vermont-NEA

Rebecca P. McBroom, Esq.

Legal Counsel, Vermont-NEA

APPEARANCES FOR THE EMPLOYER:

Elizabeth Fitzgerald

Chair, Employer Commissioners

Joseph E. McNeil, Esq.

**Legal Counsel, McNeil Leddy &
Sheahan, P.C.**

Colin K. McNeil, Esq.

**Legal Counsel, McNeil Leddy &
Sheahan, P.C.**

Issue

What should be the resolution of the outstanding issues in negotiations for the State of Vermont's first Public School Employee Health Benefits collective bargaining agreement?

Introduction

This issue was brought to arbitration under a Vermont State Statute enacted in 2018, Act. 11, incorporated into Title 16: Education, Chapter 61, Commission on Public School Employee Health Benefits, V.S.A. 2101 et seq. (hereinafter Act. 11). Act 11 created an independent commission called the Commission on Public School Employee Health Benefits (hereinafter Commission) to determine, in accordance with Section 2103 of this chapter, the amounts of the premiums and out-of-pocket expenses for Vermont school employee health benefits that shall be borne by school employers and by participating employees.

The duties of the Commission are to determine the percentage of the premium for individual, two-person, parent-child, and family coverage under a health benefit plan that shall be borne by each school employer and the percentage that shall be borne by participating employees. Act 11, Section 2103, further states:

- (a)(1) The premium responsibility percentages shall remain in effect for the entire plan year.
- (2) Each school employer shall be responsible for paying, on behalf of all of its participating school employees, the applicable percentages of premium costs as determined by the Commission.
- (3) The premium responsibility percentages for each plan tier shall be the same for all participating employees.
- (b)(1) The Commission shall determine the amount of school employees' out-of-pocket expenses for which the school employer and the school employees shall be responsible, and whether school employers shall establish a health

reimbursement arrangement, a health savings account, both, or neither, for their participating employees.

(2) The Commission also shall determine the extent to which the employer or employee shall bear first dollar responsibility for out-of-pocket expenses if using a health reimbursement arrangement and whether the balance in a participating employee's health reimbursement arrangement shall roll over from year to year.

(3) The school employers' and school employees' responsibilities for out-of-pocket expenses for each plan tier shall be the same for all participating employees.

(c) The Commission may make recommendations regarding health benefit plan design to any intermunicipal insurance association that offers health benefit plans to entities providing educational services pursuant to 24 V.S.A. chapter 121, subchapter 6.

(d) The Commission shall not make any determinations regarding school employer or school employee responsibilities with respect to stand-alone vision or dental benefits. (Added 2018, No. 11 (Sp. Sess.), § H.18.)

Section 2105 of Act 11 provides for dispute resolution if the Commissioners are unable to agree on what the Public School Employee Health Benefits should be. Procedures for resolution of disputes relevant to this Arbitration Award are in Act 11, Section 2105, and outlined below:

(a)(1) If the Commission is unable to reach agreement by August 1, the Commission shall meet with the fact finder selected pursuant to section 2104 of this chapter not later than August 15.

(2) The fact finder may schedule and hold additional meetings with the Commission as necessary. The Commission shall furnish the fact finder with all records, papers, and information in its possession pertaining to any matter remaining in dispute.

(3) The fact finder shall, before issuing his or her decision, attempt to mediate the matters remaining in dispute.

(4) If the mediation fails to produce an agreement, the fact finder shall, on or before September 15, submit a written report to the Commission

recommending a reasonable basis for the settlement of the matters remaining in dispute.

(b)(1) If the Commission is unable to resolve all matters remaining in dispute within 30 days after receiving the fact finder's report, the Commission shall submit the matters remaining in dispute to the arbitrator or arbitrators selected pursuant to section 2104 of this chapter for resolution. (emphasis added)

(2) The representatives of school employees and the representatives of school employers shall submit to the arbitrator or arbitrators their last best offer on all issues remaining in dispute. The arbitrator or arbitrators shall select one of the last best offers in its entirety without amendment. (emphasis added)

(3)(A) The arbitrator or arbitrators shall hold a hearing on or before November 15 at which the Commission members shall submit all relevant evidence, documents, and written material, and each member may submit oral or written testimony in support of his or her position on any undecided issue that is subject to arbitration.

(B) In reaching a decision, the arbitrator or arbitrators shall give weight to the evidence, documents, written material, and arguments presented, as well as the following factors: (emphasis added)

- (i) the interests and welfare of the public;
- (ii) the financial ability of the Education Fund and school districts across the State to pay for the costs of health care benefits and coverage;
- (iii) comparisons of the health care benefits of school employees with the health care benefits of similar employees in the public and private sectors in Vermont;
- (iv) the average consumer prices for goods and services commonly known as the cost of living; and
- (v) prior and existing health care benefits and coverage for school employees.

(4) The arbitrator or arbitrators shall issue their decision within 30 days after the hearing. The decision of the arbitrator or arbitrators shall be final and binding upon the Commission and all school employees and school employers. The decision shall not be subject to ratification.

Arbitrator's Discussion and Analysis

This will be the first collective bargaining agreement between the Employee and Employer Commissioners for the State of Vermont Public School Employee Health Benefits. Both Parties have proposed a contract that runs from July 1, 2020 (per the Statute) through December 31, 2022; with implementation of the new statewide health benefits taking effect from January 1, 2021 through December 31, 2022. The delayed implementation is in recognition of the need to transition existing public school contracts, as well as the health insurances' and the IRS' calendar year regulation schedules.

The implementation of the State public school employee health care benefits negotiated/legislated here needs time to allow school districts and employees to replace existing school employee health benefits/policies. The evidence and testimony submitted indicate that there are currently a variety of collective bargaining agreement provisions in the different school districts throughout the State. This program will cause a number of changes for the employees, as well as the school districts throughout the State of Vermont. The health care benefit changes will impact wages and other benefits offered by the school districts. The Parties are wise to give the school districts and employees time to adjust. This health care collective bargaining agreement is for only two and a half (2.5) years. There will be time to refine it in future negotiations.

The Parties have been bargaining since at least April of 2019, and have agreed on most of the contract provisions. However, neither mediation nor advisory fact finding was able to close the gap on the remaining issues. The remaining issues are: Duration (which appears to have been agreed on in the "Last Best Offers"); Eligibility, including full-time and part-time eligibility for health benefits; Premium cost sharing; and Out-of-Pocket cost sharing.

The Parties' "Last Best Offers" were submitted to me as per Section 2105, (b)(2), dated and received by me on November 18, 2019. Both Parties' proposals have merit and demonstrate that a lot of time, thought and research have been put into them. The exhibits submitted and the testimony by witnesses during the three (3) long days of hearings clearly demonstrate the time, talent and thought put into each Party's positions. If I had the authority I would mix, match and modify from both Parties' "last best offer" positions. But I do not have that option. The statute states unequivocally in Section 2105, (b)(2) that: "The arbitrator or arbitrators shall select one of the last best offers in its entirety without amendment." (emphasis added)

I have reviewed each the Party's "Last Best Offer," the exhibits placed into evidence, as well as the testimony and arguments presented during the three days of hearings. The exhibits, testimony and arguments were given weight in accordance with Section 2103, and the criteria outlined in Section 2105, (3)(B), of the Statute. Based on the weight of the evidence, testimony and arguments presented I have determined that the Vermont Employee Commissioners on Public School Employee Health Benefits "Last Best Offer," dated November 18, 2019, shall be implemented on July 1, 2020, to resolve the remaining outstanding collective bargaining issues. The Employee Commissioners' "Last Best Offer" aligns most closely with the factors in Section 2103, and in the weight instructions to the Arbitrator in Section 2105, (3)(B), of the Statute.

It is important for the Parties to keep in mind that this first Vermont Statewide Public School Employee Health Benefits collective bargaining agreement is in many ways a transition agreement. The Employee Commissioners' "Last Best Offer," dated November 18, 2019, has been appended to this Award as an addendum so that there is no confusion as to what has been selected.

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Allan S. McCausland, Ph.D.
Arbitrator/Mediator/Economic Consultant

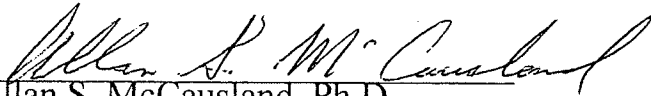
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Award

The resolution of the outstanding issues in negotiations for the State of Vermont's first Public School Employee Health Benefits collective bargaining agreement shall be the Vermont Employee Commissioners on Public School Employee Health Benefits "Last Best Offer," dated November 18, 2019. The Vermont Statewide Public School Employee Health Benefits collective bargaining agreement shall begin July 1, 2020, and be implemented statewide on January 1, 2021.

Respectfully submitted,


Allan S. McCausland, Ph.D.
December 9, 2019

Addendum

Employee Commissioners' Last Best Offer, dated November 18, 2019

Page 1

DURATION OF STATEWIDE AGREEMENT

Two and one-half years commencing July 1, 2020 (per statute) with the stipulation that the status quo prevailing in the various districts with respect to health care will remain in effect between July 1, 2020 and December 31, 2020 and to then implement the new state-wide changes on January 1, 2021 in order to correspond to the Plan's calendar year status and IRS regulations regarding HRA/H.S.A. funding.

ELIGIBILITY FOR HEALTH BENEFIT COVERAGE

1. Beginning on the effective date of this agreement, all public-school employees who work on average a minimum of 17.5 hours per week during the school year or calendar year shall have the right to enroll in a health benefit plan with an employer subsidy to pay for premium and out-of-pocket (OOP) costs. Employees may elect coverage for themselves, their spouses and other qualified dependents from any of the four (4) tiers (e.g., single, two-person, parent/child[ren] and family) in any of the four (4) plans (e.g., Platinum, Gold, Gold CDHP or Silver CDHP) offered by the Vermont Education Health Initiative (VEHI). Spouses of employees shall include those by marriage, domestic partnerships, or civil unions.
2. Full-time status for determining the amount of employer-subsidized coverage for premium costs will be based on current FTE or hourly requirements for benefit eligibility per work classifications as stipulated for recognized bargaining units covered by existing collective bargaining agreements or as codified in individual contracts and school policies for school personnel not in recognized bargaining units.
3. Employees who work less than full time but a minimum of 17.5 hours per week during the school year or calendar year shall be entitled to pro-rata health benefit contributions toward premiums. Employer contributions to a Health Reimbursement Arrangement or Health Savings Account will be made in full and not pro-rated.
4. Employees will not be subject to a probationary period before being permitted access to health insurance coverage for which they are eligible.
5. Health insurance coverage for new employees or employees newly eligible for health insurance coverage will start at the earliest possible date consistent with current VEHI/BCBSVT enrollment rules.

Page 2**PREMIUM COST-SHARING: EMPLOYERS AND EMPLOYEES**

1.1 For Teachers, Certificated School Administrators: Each employer will contribute eighty (80%) percent of the Gold CDHP or eighty (80%) percent of the Silver CDHP for any tier of coverage. The amount of money available for Gold CDHP can be credited at the employee's discretion toward the premium costs for a tier of coverage in the Platinum or Gold (non-CDHP) VEHI plans.

1.2 For all Other School Employees: The premium split for support staff will be status quo in the separate districts for the first eighteen months of this agreement, July 1, 2020 through December 31, 2021, but in no case shall exceed twenty (20%) percent for any tier of coverage. Beginning on January 1, 2022 all support staff who are not at the 20% level will increase the employee contribution by not more than two (2%) percent, not to exceed twenty (20%) percent for any tier of coverage.

PRESERVING AND EXPANDING ACCESS TO ALL TIERS OF VEHI BENEFIT PLAN COVERAGE

Any employee that meets the eligibility requirements of eligibility will be eligible to select any tier of coverage beginning in the first year of this agreement.

OUT-OF-POCKET COST-SHARING: EMPLOYERS AND EMPLOYEES

For employees and their dependents enrolled in the VEHI Gold CDHP, employers will pay medical and pharmacy out-of-pocket (OOP) costs with first dollar contributions through a health reimbursement arrangement in the following amounts. For licensed administrators and teachers: \$2100 for a single tier and \$4200 for all other tiers; for support staff \$2200 for a single tier and \$4400 for all other tiers. This amount of money can be credited at the employee's discretion toward the out-of-pocket costs for a tier of coverage in another VEHI plan. For employees enrolled in the VEHI Silver CDHP, employers will pay medical and pharmacy out-of-pocket (OOP) costs with first dollar contributions through a health reimbursement arrangement or a health savings account, at the individual employee's discretion, in the following amounts. For licensed administrators and teachers: \$2100 for a single tier and \$4200 for all other tiers; for support staff \$2200 for a single tier and \$4400 for all other tiers

TRANSITIONING TO A STATWIDE TPA AND TPA SERVICES IN THE INTERIM

1. Employers shall pay the administrative expenses charged by the TPA.
2. Autopayment to providers will be the default payment method unless requested otherwise by employees.
3. The TPA chosen shall be able to provide debit cards to facilitate payments when auto-payment is not an option. Debit cards must be provided to employees prior to January 1st of each year of this agreement.