ARBITRATION BEFORE
ALLAN MCCAUSLAND

Vermont Employee Health Care Commissioners,	)	
	)	**POST-HEARING BRIEF OF**
and	)	**EMPLOYEE COMMISSIONERS**
	)	
Vermont Employer Health Care Commissioners.	)	

I. INTRODUCTION

The Employee Health Care Commissioners (hereinafter "Employee Commissioners" or "Union") submit this post-hearing brief in support of its position that the Employee Commissioners' last best offer should be selected.

The Employee Commissioners and the Employer Health Care Commissioners (hereinafter "Employer Commissioners" or "Employer") met on November 1, 2, and 6, 2019, before Arbitrator Allan McCausland at the Comfort Inn, in Berlin, Vermont. The arbitration hearing was conducted pursuant to Title 16, V.S.A. Chapter 61, entitled "Commissioner on Pubic School Employee Health Benefits."

At the hearing, both the Union and the Employer adduced testimonial and documentary evidence. The parties' final last best offers and post-hearing briefs in support of those offers are scheduled to be submitted to the arbitrator on or before November 18, 2019.

The only items that remain in dispute between the parties are the following issues:

- when employees become eligible for health insurance;

- whether proration of health insurance benefits should be determined via the statewide commission or locally negotiated collective bargaining agreements;
- premium cost-sharing for support staff;
- out-of-pocket cost sharing for all school employees, licensed and non-licensed; and
- the vehicles by which to implement out-of-pocket cost sharing.

As will be discussed below, the arbitrator should select the Union's last best offer because it is more equitable, fair and practicable than the Employer's proposal. The Union's proposal should also be selected because the relevant statutory language in 16 V.S.A. § 2105(3)(B) dictates that it must be. In keeping with 16 V.S.A. § 2105(3)(B), the Union's proposal is in the best interest and welfare of the public; it is less costly and provides more health care coverage than the Employer's proposal; it is more comparable to the health care benefits of similarly-situated employees in Vermont; and unlike the Employer's proposal, it is almost identical to existing health care benefits and coverage for school employees.

II. FACTS

For several decades prior to 2018, bargaining over health care for unionized public-school employees in Vermont occurred at the local level between individual school districts and their respective unions. Since the inception of collective bargaining for school employees, health insurance has been an important or dominant issue, and over the years, local negotiators have expended a considerable amount of time thinking about and negotiating over it.

Similar to statewide and nationwide trends, health care costs have continued to rise for Vermont public school employers and their employees. This has caused employers and employees to seek creative solutions to contain costs. Previous to 1993, Vermont public schools and their respective employee unions bargained over a variety of different insurance plans and used several separate health insurance providers. However, in the 1990s, as a result of the ever-rising costs of health care and the difficulty in implementing various health care plans from different insurance companies, Vermont-NEA and the Vermont School Boards Insurance Trust (VSBIT) partnered to create a trust called the Vermont Education Health Initiative ("VEHI").

After its inception in 1993, VEHI eventually became the exclusive health insurance provider for Vermont public schools. From 1993 to 2014, the VEHI governing board had equal voting rights between Vermont-NEA and VSBIT, with three management votes and three union votes. During this period, the great majority of VEHI members were enrolled in health insurance plans with model co-payments for most services; these plans prioritized keeping out-of-pocket exposure for employees and employers to a minimum.

In 2014, pursuant to the Affordable Care Act and Vermont state regulation, the balance on the VEHI Board shifted to three management representatives and two employee representatives. In 2016, the VEHI Board shifted again to four management representatives and one employee representative.

On January 13, 2016, the 3-2 management-controlled VEHI board voted to shut down its existing plans to active employees and offer new plans to public school employees with lower premiums and much higher out-of-pocket maximums. This meant, after collective bargaining over the new plans concluded, that the great majority of school

employees would find themselves in plans with substantially higher deductibles that applied to virtually all categories of medical care (indeed, 90 percent of school employees are in Gold CDHP). *Union Exhibit "UX"17.* It also meant that local unions understandably sought through collective bargaining to limit exposure to the medical and financial harm that such deductibles can cause workers and their families, especially those with low incomes.

The new "metal" plans had different actuarial values and were named as follows: "Platinum," "Gold," Gold CDHP," and "Silver CDHP" plan (CDHP stands for "Consumer Directed Health Plan"). The new plans went into effect on January 1, 2018.

Management members of the VEHI board reasoned that because the new high-deductible plans had larger out-of-pocket liabilities, employees would be dissuaded from accessing health care. Management board members were convinced that lower premiums combined with the fact that employees would suffer greater financial consequences when they accessed health care would lower health care costs. These board members also believed that employees, in addition to using less care, would somehow become better "consumers" of health, which in turn, would lower health care plan premiums. *Employer Exhibit "EX"10C.*[1]

Local school districts and unions had to bargain over the new plans to determine cost-sharing of out-of-pocket costs and premiums. All schools were required to notify VEHI of their local default plan no later than November 1, 2017.

---

[1] The evidence has not meted out management's hypothesis. Since the high deductible "consumer driven" health care plans went into effect on January 1, 2018, the rates have risen at double digit percentages each year. The rate increases for Gold CDHP plans in 2018-2019 was 10.1% (*UX24M)*; in 2019-2020 it was 11.8% (*UX24M)*, and in 2020-2021 it is projected to be 12.4% (*EX10P)*.

Historically, school districts and their respective unions had negotiated a variety of premium sharing arrangements across the state with some employee contribution levels as low as 5% of the premium with others as high as 20%. On average, employee premium percentages were lower for support staff employees than for teachers in recognition of their lower incomes. Additionally, school districts in lower income areas, mostly in more rural parts of the state, tended to have lower employee premium percentage contributions for both teachers and support staff, which offset low wages and helped these districts be more competitive in the recruitment and retention of staff.

Local bargaining over the out-of-pocket cost sharing under the new plans involved lengthy and detailed discussions of the best vehicles to cover these expenses. The two most utilized accounts to pay for qualified, out-of-pocket expenses (e.g. deductibles, co-insurance and co-payments) not covered by the VEHI insurance plans are "health reimbursement arrangements" (hereinafter "HRAs") and "health savings accounts" (hereinafter "HSAs").

HRAs are employer-owned accounts. Contributions to HRAs can only be made by the employer, and unused HRA funds are retained by the employer at the end of a plan year and can be rolled over to a subsequent plan year at the employer's discretion. *EX10V*. Since HRAs are employer-owned, when an employee no longer works for the employer HRA funds that were not utilized are no longer accessible to that employee. Employers thus have control over HRA funds not expended. *EX10X1*.

HSAs, or health savings accounts are investment portfolios set up by employees to use for payment of eligible medical expenses until the age of 65, at which point they become retirement funds. Both employers and employees can contribute to an HSA, but

the employee owns the HSA funds. When an employee separates from their position, the employee takes those funds with them.

The vast majority of school districts and unions throughout the state negotiated an HRA as the vehicle to cover out-of-pocket liability. In fact, 87% of the individuals covered by VEHI plans currently have HRAs[2]. The Chittenden County UniServ Director Sean Leach testified that the local unions he works with preferred HRAs because they were more flexible and less restrictive than HSAs[3]. Further, local unions felt strongly that employer contributions for out-of-pocket expenses should be available and allocated to those employees and their dependents who needed those financial contributions to cover medical expenses in any given year. Most local school boards agreed with this reasoning, as attested by the very low percentage of employees with HSAs.

In 2017, after local bargaining had commenced over the new high-deductible plans, Republican Governor Phil Scott vetoed the state's budget. Governor Scott's veto, in large part, was based on health care spending for school employees. *EX13D.* Although VEHI had considered that cost savings would already be made under the new high-deductible plans, Governor Scott believed another $26 Million could be saved if the legislature pressured school districts and their respective unions to move all employees to an 80%/20% split on premiums, and to limit assistance on an employee's out-of-pocket liability to $400 for employees with single tier coverage; $800 for employees with two-person or parent-child coverage; and $1200 for employees with a family plan. *EX20.* As a result of the

[2] The bargained for HRAs were designed to complement the Gold CDHP plans

[3] HSAs have several exclusions that HRAs do not, i.e. HSA funds ***cannot be used*** for out-of-pocket expenses for: adult children up to age 26 (unless adult child qualifies as tax dependent of is permanently disabled); Medicare participants; TriCare enrollees; V.A. beneficiaries; and Individuals using COBRA insurance. *UX24(B).* HSAs are also not compatible for employees who coverage under a spouse's non-HSA qualified health plan; or with Flexible Spending Accounts. *Id.*

veto, the legislature enacted Act 85. *EX7.* Pursuant to Act 85, if a school district bargained better conditions for its employees than 80%/20% and $400/$800/$1200, any of the funds over those amounts would be withheld from that district. *Id. at page 90.* This was referred to as a "claw back" and/or a "recapture" during the arbitration hearing.

Section H.7 of Act 85 established the "Vermont Educational Health Benefits Commission" which was tasked with determining "whether and how to establish a statewide benefit plan for all teachers, administrators, and other employees of supervisory unions and school districts." *Id. at page 193.* The Act 85 Commission consisted of management representatives, Governor Scott appointees, a Speaker of the House appointee, a Senate appointee, and union representatives. Management representatives and Governor Scott's appointees outnumbered the union representatives four to three. After meeting on several occasions, the Act 85 Commission issued its findings and recommendations on December 18, 2017. These findings and recommendations were not a consensus, but rather a "majority" report. The three (3) labor representatives dissented from the majority, notably on the issue of whether to recommend moving to a statewide bargaining process. The majority report recommended that negotiations occur on a statewide level. The employee representatives disagreed. However, all Commission members agreed that if there were statewide negotiations, all employees should be able to access health care benefits, including those who were not currently offered coverage (*UX19, at page 5*). The entire commission also agreed that income-sensitized premiums would provide a mechanism for addressing and alleviating disparities across different employee classes and bargaining units (*Id. at page 7*). Interestingly, all Commission

members also agreed that no costs savings would result from shifting to statewide negotiations (*Id.*)[4].

In 2018, Governor Scott vetoed the budget and the education funding bill. The Governor was again motivated to veto the budget based on his goal to cut education spending and property tax rates. During the special session that followed the governor's veto, the General Assembly enacted Act 11. Act 11 was passed into law in haste, and revisions were being made to the law until the last moment. Some of the last-minute changes were modifications that VTNEA advocated for in the eleventh hour.

Act 11 was incorporated into law in 16 V.S.A. § 2101 *et seq.* (add citation). The parties began negotiations on April 1, 2019. The parties reached impasse on July 17, 2019. The fact-finding hearing occurred on August 12, 2019. Multiple attempts at mediation have been made.

Interestingly, although Governor Scott insisted on cuts to educational funding and reducing property tax rates in 2017 and 2018, Vermont's economy is doing well by all indices. Unemployment in Vermont is at a record low and is actually the lowest unemployment rate in the country. In addition, Vermont taxpayers have historically approved their local school budgets with a 96 – 98% passage rate. This holds true in today's economy. The worst school budget passage rate that Vermont has seen is decades occurred in 2014 and even in that year, 90% of school budgets were passed by local taxpayers. As Paul Cillo testified at the arbitration hearing, Vermont has one of the most progressive school funding structures in the country, and over 65% of Vermonters pay for school funding based upon their income rather than their property value. Furthermore, the

[4] Including Vermont Department of Financial Regulation Commissioner Michael Piacek, who testified on behalf of the Employer Commissioners at the arbitration hearing.

funding of public schools and other social programs is a political prerogative rather than a budget constraint. Monies can be found to adequately fund Vermont schools, notably by raising taxes on the wealthiest 1%.

Since Act 11 was enacted and bargaining has commenced under the law, VTNEA has had discussion with key legislators concerning modifications that should be made to the statute. VTNEA is currently advocating for modifications that would change the effective date of the statute from July 1, 2020 (which both parties have agreed is troublesome) to January 1, 2021. It has also recommended changing the final dispute resolution procedure from a last-best-offer arbitration scenario; and permitting an income-sensitized system for payment towards premium and out-of-pocket expenses.

III. LEGAL FRAMEWORK FOR ARBITRATOR'S LAST BEST OFFER SELECTION

The dispute resolution for statewide health care is outlined in 16 V.S.A. § 2105(b)(1). To date, the parties have completed fact-finding and presented their respective cases to the arbitrator through the submission of relevant evidence, documents, written materials, and oral testimony. It is now the arbitrator's charge to select one of the party's last best offer in its entirety without amendment. 16 V.S.A. § 2105(b)(2).

It is important to emphasize Act 11 was enacted in 2018, and that the parties and arbitrator are operating under this new law for the very first time. Given that the parties and arbitrator are in unchartered territory, the intent of Vermont's General Assembly when it enacted Act 11 should be closely followed

Pursuant to Act 11, Section H.23 entitled "Health Care Benefit Transition; Legislative Intent," the General Assembly stated that its intent in enacting Act 11 was "that

the Commission on Public School Employee Health Benefits [would] endeavor to transition school employees and school employers to more *equitable* health care coverage statewide in a manner that [would be] *fair* and *practicable* for all parties involved" (emphasis added). Sec. H.23 Health Care Benefit Transition; Legislative Intent, page 250.

In the same section of Act 11, the General Assembly also stated that

> Notwithstanding any provision of 16 V.S.A. § 2103 to the contrary, for the agreement for school employee benefits to take effect on July 1, 2020, the Commission may agree to establish, or the arbitrator's decision may provide for, one set of contribution levels towards premiums and out-of-pocket expenses for teachers and administrators and a different set for municipal school employees.

Both provisions of Act 11 Sec. H.23 recognize that one of the General Assembly's central objectives in passing Act 11 was to protect the lowest paid employees and to provide the most fair and equitable health care coverage to as many school employees as possible.

Act 11 has been codified into statute in 16 V.S.A. § 2101, *et. seq.* The dispute resolution procedure for statewide health care bargaining is included in 16 V.S.A. § 2105. This section lays out dates at which the arbitrator must be selected, what materials the parties should furnish the arbitrator to make his decision, and what the arbitrator must take into consideration while making his final determination.

According to 16 V.S.A. § 2105(b)(3)(B),

> In reaching a decision, the arbitrator... shall give weight to the evidence, documents, written material, and arguments presented, as well as the following factors:
> (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.

Thus, according to the General Assembly the purpose of the statewide healthcare negotiations is to make health care for school employees as equitable, fair and practicable as possible. The arbitrator is thus tasked to determine which of the parties' last best offers most closely achieves these goals; and which offer best aligns with the factors outlined in 16 V.S.A. § 2105(b)(3)(B). It should also be noted that political appointees' opinions of the state's ability to pay is a political determination rather than a financial one, and that is not therefore an appropriate issue for consideration during these proceedings.

IV. ARGUMENT

A. *Duration*

The Employee Commissioners agree with the Employer Commissioners' proposal that if permissible under law, the duration of the agreement shall be 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 insurance plan's calendar year status and IRS regulations regarding HRA/HSA funding.

B. *Eligibility*

The issue of eligibility is limited to the standard an employee must meet in order to participate in the employer-sponsored health insurance plans.

The Employee Commissioners have demonstrated through testimony and exhibits that it is customary for this eligibility standard to be 17.5 hours. The insurance carrier, Blue Cross-Blue Shield of Vermont relies on the Statute (8 V.S.A. § 4080) which clearly sets out the minimum standard consistent with the Employee proposal. VEHI Administration Rules mandate the same 17.5 hours as the minimum number of hours an employee must work to enroll in a health insurance plan *UX15A – C*. Unrefuted testimony showed that most Collective Bargaining Agreements throughout the state reference the same rules expressed as either "subject to the regulations of the carrier" or specific language of 17.5 hours.

The proposed language of 17.5 hours represents the standard for status quo in the vast majority of districts. There is no reason to delay adoption of the union language until a future round of bargaining.

C. *Premium Cost-Sharing Employers and Employees*

1. The Parties Have Agreed That Teachers and Licensed School Administrators Will Pay 20% of Their Premium Contribution

The parties have agreed that beginning on the effective date of this agreement for teachers and licensed school administrators, the Employer will contribute eighty percent (80%) of the Gold CDHP for any tier of coverage towards the premium costs for the Platinum or Gold Plan. In addition, the Employer will contribute eighty percent (80%) of the Silver CDHP plan for any tier of coverage.

The Employee Commissioners have offered a large concession in agreeing to raise all teachers to a twenty percent (20%) premium contribution level. As it currently stands, the weighted average of teachers' contribution level in Vermont is 18.5%. *UX20E.* The median teacher's contribution level among all collective bargaining agreements across the State is 17%. *Id.* Both the Employer Commissioners and Employee Commissioners estimated that the shift to 20% will cost teachers across the state approximately three million dollars ($3M).

Overall, this shift will hit teachers working in rural, economically challenged areas of Vermont the hardest. For examples, towns located in the Orleans Southwest Supervisory Union and the Northeast Kingdom are some of the more economically depressed areas of the state. Teacher salaries in these areas are also lower in comparison to other areas of Vermont such as those in Chittenden County. It is difficult for school districts in these areas to attract and retain quality teachers, notably based on wages and lack of other employment in these areas. These districts often offer health insurance to their employees at a lower cost, given this disparity and in an attempt to recruit and hold on to good teachers. For examples, teachers in Orleans Southwest Supervisory Union pay 13% of their health insurance premiums. In the Northeast Kingdom, all but one supervisory union pay under 20% of the premium. In North Country teachers pay 12%-15%, Essex North teachers pay 15%, and Caledonia Central teachers pay 12-18%. *UX20(C).*

Teachers in these rural communities such as Will Adams, who testified at the arbitration hearing, will see a significant increase to their health care costs as a result of this concession by the Union. Mr. Adams' premium contribution under the Gold CDHP

will rise from $1,886.35 to $2,902.08. This is a 65% increase (just in premium) for employees like Mr. Adams.

The shift to 20% for all teaches should also be considered a meaningful concession by the union because it is a higher premium percentage than other similar employees in the public sector of Vermont pay. *UX21A.* Although all state employees pay 20% of their premiums, Vermont State College employees pay based of their income. Teachers in Vermont make an average salary of $59,000 per year. A Vermont State College employee making $59,000 per year would pay 16% towards their health insurance premium and a member of the University of Vermont United Academics would pay 16.8%. Both the Vermont State Colleges and University of Vermont United Academics have a sliding scale for employee premium contribution based on their income. The Union tries to also achieve income sensitivity for employees covered by these negotiations, but as it currently stands the law does not allow for a true income-sensitized plan to be devised.

At the arbitration hearing, Mr. Adams testified that one of the main reasons that the Employee Commissioners were willing to make this concession was to contain health insurance costs for the support staff, who are the lowest paid employees in Vermont's public schools.[5] This is one of the reasons that the Union adamantly opposes that support staff contributions move to 20% on the last day of the contract, December 31, 2022.

2. <u>All Other School Employees Will Stay at Status Quo for Premium Contribution for the First 18 Months, Then Increase by 2%, Thereafter, Not to Exceed 20%</u>

The Union adopts the Employer's proposal to the extent that the premium contribution split for support staff will be status quo in the separate districts for the first

[5] The current average teacher salary in Vermont is $59,000 per year, while the average support staff salary is $22,150 per year.

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. The Union also adopts the Employer's proposal that 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. However, the Union does *not* agree that support staff employees' premium contributions should move to 20% on December 31, 2022.

Non-licensed public-school employees such as paraeducators, custodians, food service workers, and bus drivers provide vital services for Vermont public school students. The average salary among this group in $22,150. Many of these employees such as Loriann Darrell, who testified at the arbitration hearing, work second, third, and even fourth jobs to make ends meet. Currently, support staff workers pay anywhere from 5% to 20% of their health insurance premiums. The percentage levels across the state are extremely variable.

The Union has aligned its proposal to match the Employer's proposal to keep all support staff employees at status quo for the first 18 months of the contract, then to increase the contribution by 2% for all employees under 20%, not to exceed 20%. This is a large concession by the Union from its last position at the arbitration hearing, in which all support staff pay would pay 12% of the contribution in the first year of the contract, and 15% of the contribution in the second year of the contract. The Union believed this proposal to be reasonable based on the money that would be saved by school districts in moving all teachers to 20% on the effective date of the agreement.

In comparison with other similarly-situated public employees in Vermont, public school support staff are paying more towards their premiums than many of their

counterparts. The average support staff salary is $22,150, and the average support staff premium contribution is 16%. *UX22C.* An employee with the same salary at the Vermont State Colleges would pay 4% towards their health insurance premium, and an employee in the University of Vermont United Academics Bargaining Unit would pay 9.6%. These figures demonstrate the Union's move form 12% in year one and 15% in year two to its current position, was a substantial shift, notably given that support staff will still be paying more than similarly-situated employees.

The Employer's proposal of moving all support staff members to a 20% premium contribution on the last day on December 31, 2022 is objectionable for several reasons. First, such a shift on the last day of the agreement violates that plain language of the bargaining statute. Second, it would pre-condition future bargaining because in order to lower the premium for the support staff the Union would be forced to bargain down from 20% (unfortunately this is extremely rare when it comes to bargaining over health insurance premiums). Third, the Vermont General Assembly has two years to make modifications to the bargaining law before the next round of negotiations, and VTNEA is already advocating with key legislators to modify the statue to permit the parties to bargain over income-sensitivity.

The Employer's proposal that support staff premium contribution should jump to 20% on December 31, 2022 violates 16 V.S.A. §2103(a)(1) which provides that "premium responsibility percentages shall remain in effect for the entire plan year." If the Employer's proposal went into effect, an employees' premium responsibilities would change during the same plan year, once on January 1, 2022, and again on December 31, 2022. This shift,

which would amount to as much as a 13-point increase[6] for some employees, is a direct violation of the statute.

Furthermore, the Employer's proposal to jump to 20% on the last day of this contract is a blatant attempt to precondition bargaining into the next round of negotiations. The Employer is simply endeavoring to achieve a concession for future rounds of negotiations that it cannot achieve today.

As VTNEA Political Organizer Colin Robinson testified at the arbitration hearing, Act 11 has been in flux since its initial formulation. The law was enacted in the eleventh hour during a special session following Governor's Scott's 2018 veto. In fact, modifications were made to the Act in the minutes before it became law. Robinson also testified that VTNEA already has efforts underway through conversations with key legislators to modify the law in a way which would permit bargaining over income sensitivity.

D. *Out-of-Pocket Cost Sharing: Employers and Employees Exposure*

1. The Union's LBO Should Be Selected Because it is More Equitable, Fair and Practicable.

    (i) *The Union's Out-of-Pocket Proposal is Comparable to Existing Benefits for School Employees*

In any negotiations dispute, a heavily relied upon standard when weighing a proposal against change is comparability. One of the major factors that the statute outlines for the arbitrator to use in determining the proposal to select is consideration of the prior and existing health care benefits for school employees:

[6] At the 2019-2020 Gold CDHP rates for a family plan, this increase would amount to $2,782.

- 87% of all school employees, as previously noted, have elected an HRA. *UX24A*
- Out-of-pocket cost sharing arrangements differ between teacher and support staff bargaining agreements. Support staff are provided with more generous out-of-pocket subsidy consistent with employee levels of compensation.
- 65% of all teachers are provided with subsidies that leave maximum liabilities of either $400 or $800 depending on the tier of coverage elected. The remaining teacher contracts provide employer subsidies that are higher only for the family tier of coverage at an amount of $900-$1200. *UX20F*
- Support staff generally are offered greater employer assistance. Almost half of the bargaining units (divided between school year and full year employees) are expected to pay from $0 to $500. The remaining employees have liabilities from $350 to $1200 with just one outlier. *UX20G*

The Union proposal is well supported in the comparability data. The majority of school employees in Vermont (90%) are enrolled in the Gold CDHP. Under the Union proposal employees enrolled in Gold CDHP would be given employer paid subsidies leaving a final liability of $400/800 for licensed employees and $300/600 for support staff consistent with the range of what is currently offered in collective bargaining agreements.

(ii) *The Union Proposal Provides Better Health Care Coverage at Less Cost*

The Union is aware that some employees who are represented in this bargaining participate in an HSA. 13% of school employee who currently have an HSA, and, prospectively, for others who may wish to avail themselves of an HSA in the future, the Union proposal would allow that choice, but limited to enrollment in the Silver CDHP plan.

The selection of Silver CDHP with this choice is consistent with the factors that the arbitrator must consider.

The Union proposal allows for choice but avoids incentivizing choices that benefit a singular class of employees at the expense of others. Disparately large subsidies, such as the employer's out-of-pocket proposal, that typically reward the highest paid employees are certainly problematic for the Union and local school districts alike. This is not a paternalistic view but is consistent with how a fiscally responsible union should analyze the short- and long-term consequences of a proposal of this sort. Local unions, in other words, must look to future years, not just the next two years. The same logic applies to school boards. While we are bargaining for an agreement with a duration ending in December 2022, the impact of the proposal selected will influence bargaining and school budgets in more areas than health care in the years to come.

The Silver HSA under the Union proposal provides choice to employees while containing costs to the school districts to a much greater extent than the Employer proposal. The employees who testified in favor of HSA selection were all management employees making two- or three-times what teachers earn and more than seven times what an average school year support staff employee earns annually. Business managers will fall into the non-licensed support staff category and school administrators into the licensed category, along with teachers, for purposes of this agreement. Business managers and school administrators are more likely to be able to afford to add to their employer's HSA contributions funds from their wages. They are already risk tolerant as they have chosen a funding mechanism that did not cover the full amount of out-of-pocket.

The Union proposal then offers a choice that meets the individual needs of employees at a cost school districts have already demonstrated can be met by virtue of current contract provisions.

The Union proposal also provides the best value for employees and school districts that wish to continue to support the choice of enrollment in an HRA. Dollars earmarked in this fashion for out-of-pocket expenses will be expended solely on health care costs. This funding mechanism, as discussed above, will continue to provide the greatest protection to the greatest number of people and avoid punishing those individuals with chronic medical conditions. Plus, money not utilized on health care costs will be retained by the districts to cover future health care needs.

The Employer may argue that administering HSA arrangements are much simpler than an HRA. Both require the use of a third-party administrator (TPA). Under the HSA model money is deposited into an account for employee use and then the employee is responsible for all other aspects of paying for out-of-pocket costs, compliance with IRS rules and paying penalties if money is inadvertently used for non-medical expenses. In the HRA model the employer pays monthly sums to a TPA to cover the costs paid on behalf of the employee. The Employer would have the arbitrator believe that the ease of administration – several deposits into an employee account versus monthly deposits to a TPA vendor outweighs the total cost of a providing 100% of the value of the HSA benefit regardless of the health care needs of the employee.

(iii)*The Union's Proposal is More Comparable to the Health Care Benefits of Similarly-Situated Employees in Vermont*

The Employee Commission also presented comparable data for large unionized employers in the state. *EX21A.* The largest being Vermont State Employees' Association

who notably *do not have a high deductible plan and have low out-of-pocket obligations.* VSEA employees have paid a 20% premium share on their insurance plan for decades. The second group of employees are divided between the State Colleges and the University of Vermont. Only employees at the State Colleges hired after 2017 have a high deductible plan. No employee group has an HSA.

2. The Employer's LBO Should Not Be Selected Because it is More Costly than the Union LBO, it is Not in the Best Interest and Welfare of the Public, and it Will Hurt Vermont's Rural Schools.

The Employer's proposal has several disadvantages to both local school boards and local bargaining units. In general, it failed to meet the test of a consideration of "the welfare and interests of the public;" it ignored consideration of the "financial ability of ... school districts across the state to pay for the costs of health care benefits and coverage;" and it would hit Vermont's rural and lower income areas the hardest.

(i) *The Employer Proposal is More Costly than the Union Proposal*

The Employer proposal simply costs more. At the hearing the parties agreed that the overall cost of the two proposals for Gold CDHP were nearly the same. The parties differed, however, on the cost of the Silver CDHP out-of-pocket subsidies. Employer witness Steven May spoke to *Ex14O,* labeled "Employee Cost Illustration". Testimony on cross examination indicated that the numbers are not correct. In other cases, the Employer agreed that they took the worst-case scenario and did not apply the 65% HRA rate of utilization of HRA funds that Elizabeth Fitzgerald testified to as being the national average. The Union, on the other hand, provided testimony from Steve Kappel, who explained his methodology and made multiple calculations to ensure a more detailed and accurate estimate of total cost. The Union calculated the Employer proposal for Silver CDHP was

$27.9 million more expensive than the Union proposal absent any cost reduction by virtue of lower premium spend. Even with these reductions, the Employer conceded its proposal would cost more than the Union.

Union exhibit *24G3* illustrates the effect of a highly incentivized Silver CDHP HSA for a single plan tier, licensed employee. Using actual utilization data provided by Blue Cross-Blue Shield of Vermont ("BCBSVT") for VEHI's covered lives and applying it to 1,000 of them with single tier coverage, an employee would be guaranteed a fixed amount of money ($3,200) regardless of health care needs under an HSA (red column). The Union proposal (green column) assumes the school district would fund only the amount of health care out-of-pocket costs up to a maximum of $2100. The out-of-pocket amounts in the Employer proposal at the time of hearing would cost 186.6% more than the Union proposal. There is an evident choice here, but at what cost?

(ii) *The Employer's LBO is Not in the Best Interest of the Public*

(a) The Employer Proposal is Less Value for the Cost Compared to the Union's Proposal

The Union believes a smarter, more affordable compromise is to limit HSA selection to Silver CDHP, with funding for it at the same level as the Gold CDHP. Aligning out-of-pocket funding for both CDHP options at the same level, as the Union proposal does, accomplishes three objectives:

- Employees and their families with greater health care needs and costs can remain in the Gold CDHP, which has lower out-of-pocket maximums and be shielded from medical and financial hardship;

- Employees and their families who are more risk tolerant or require little or less costly health care will have the choice of an HSA in the Silver CDHP with lower premiums and higher out-of-pocket maximums;
- School districts will be able to offer the choice of an HRA and HSA at a more affordable and sustainable cost. Those districts with a higher percentage of enrollment in an HRA will also be able to retain unused funds for future health care costs.

The Union proposal, then strives to balance the needs of employees and their families with the costs to school districts. It offers choice and lower, more sustainable costs overall.

(b) The Employer's Proposal is Likely to Negatively Affect Wages for School Employees.

Under the Employer proposal the Silver CDHP plan is intentionally incentivized at a cost that is fiscally irresponsible. The Employer would force local school boards to budget the maximum out-of-pocket subsidy, leaving little, if any funds to bargain wages. The overall effect would be devastating particularly for school year support staff who on average earn $22,150 a year.

If the Employer proposal is chosen these low wage employees will be facing at least a 2-point increase in premiums and potentially a much larger jump on the last day of the agreement. In addition to the negative financial impact of these premium contribution increases, low wage support staff would also face greater difficulty than ever at the bargaining table negotiating reasonable wage increases.

Traditionally employees have traded premium share dollars for wage increases. If the average support staff member were to receive a 3% wage increase it would yield a $665

gross annual increase. Two additional premium points for an employee on a family plan at current Gold CDHP rates would eat up 64% of that increase or $428. Faced with that reality, many school boards will simply say, "We have no money left because we have to budget for the maximum HSA deposit."

The testimony of Will Adams, a teacher in Hardwick, Vermont, supports the bargaining dilemma that both boards and unions will face in poor rural and small-town districts throughout the state should the Employer proposal be chosen. Historically the bargaining in Hardwick (Orleans Southwest) traded health care dollars in the form of lower premiums to raise teacher salaries. Recent 3.2% new money settlements with 13% premium splits on Gold CDHP bears this out. Under the Employer proposal, in order to remain at least "level" teachers in Mr. Adams's district would need to bargain a six percent increase in salary, a highly unlikely scenario especially when paired with large HSA payments in the Employer proposal.

(c) The Employer's Proposal Would Diminish Low Income Communities' Ability to Attract and Retain Staff

The Employer proposal does not meet the test of "interests and welfare of the public". Foremost, all school employees are members of the public and secondly the ability of school districts to attract and retain employees in all categories of employment would be diminished without the funds available for wage growth. Stagnant wage growth for both teachers and support staff in the rural areas will only increase.

Franklin Northeast is a small district in the rural northwest sector of Vermont. Morgan Daybell, Business Officer for that district as well as Suzanne Dirmaier, the Union's Uniserv Director for that area both testified that teacher retention is a problem in the Franklin Northeast. Between 30 and 40 teachers out of 240 teachers leave each year for

different reasons including pursuit of better salaries in other districts *UX21D*. Will Adams in a similarly-situated district also testified that young teachers work a few years and then leave for higher paying jobs. This scenario is common and persistent in rural areas across the state. These teachers who leave poorer rural districts for better paying jobs elsewhere will also take with them HSA funds, potentially large amounts under the Employer proposal.

Conversely the Union proposal provides for sustainable choice while allowing funds to be available for wages.

(d) The Employer Proposal Would Cause Future Bargaining Dilemmas

The effect of the Employer proposal will also impact future bargaining in other ways. Should large numbers of employees be enticed to enroll in the Silver CDHP with an HSA, inevitably the money to fund the out-of-pocket costs at the level proposed by the Employer will be impossible to sustain in future bargaining years. This kind of funding arrangement, simply put, is neither responsible nor sustainable.

As more employees migrate to the Silver CDHP in large numbers, the likelihood is great that at some point the Gold CDHP plan will no longer be offered. Shrinking employer subsidies and ever rising out-of-pocket liabilities for employees will be the norm. This would harm the lowest paid employees and those with the highest health care needs.

(iii)The Employer's Proposal is Not Comparable to Similarly-Situated Employees

There is no correlation between the Employer's proposal and health care benefits of similar employees in other public and private sectors in Vermont. The Employer provided no reliable data and did not meet any burden of proof in this area. Additionally,

the Employer's proposal is not justified by comparability standards within the public-school sector.

E. Cost of Moving to All Tiers of Coverage

The Employer may also argue that increased costs to providing all tiers of coverage to all employees should be given great weight. The Union believes that again, the cost calculations of the Employer is imprecise. Mr. May assumed support staff behavior would mirror that of teachers when offered all tiers of coverage. Making behavioral assumptions is difficult particularly when taking into consideration the large difference in wages between teachers and support staff.

The Employer used teacher enrollment patterns and applied them to the support staff to come up with an estimated $18.6 million increase in costs. Mr. May, under cross examination, conceded that this would be somewhat unlikely and, perhaps cutting the figure in half and rounding it to $10 million would be more in line with actual behavior.

Mr. Kappel, on the other hand, testified that the Union used figures based upon the population of support staff currently offered all tiers and applied that take-up rate to support staff without access to tiers of coverage beyond a single. U*x22G.* Accepting that no projection will be one hundred percent correct, the Union nonetheless believes that Mr. Kappel's methodology yields a more likely scenario – a cost of $1.7 million dollars.

V. CONCLUSION

For all of the foregoing reasons the Employee Health Care Commissioners respectfully request that Arbitrator McCausland select its last best offer. The Union has more closely aligned its proposal with the legislative intent of Act 11 and the statutory factors as outlined in 16 V.S.A. § 2105(b)(3)(B).

Sincerely submitted,

Vermont Employee Health Care Commissioners

Date: 11/18/2019

By: [signature]
Suzanne Dirmaier
UniServ Director
Vermont-NEA
Email: sdirmaier@vtnea.org

Date: 11/18/2019

By: [signature]
Rebecca P. McBroom
Legal Counsel
Vermont-NEA
Email: rmcbroom@vtnea.org