

**IN RE: LBO ARBITRATION FOR VERMONT PUBLIC EDUCATIONAL  
EMPLOYEES**

**BEFORE: DR. ALLAN MCCAUSLAND, ARBITRATOR**

**DATE: NOVEMBER 18, 2019**

**POST LBO HEARING MEMORANDUM OF EMPLOYER COMMISSIONERS**

The Employer Commissioners to this proceeding respectfully submit their last best offer positions and the justification therefore on the basis of the evidence and testimony presented to the Honorable Arbitrator on November 1, 2 and 6 respectively.

**I. Last Best Offer Positions of Employer Commissioners:**

- A. **Duration:** Two and one-half years, commencing on July 1, 2020 and terminating on December 31, 2022.
- B. **Eligibility:** For teachers and administrators (T&A), status quo as it exists in the separate districts on December 31, 2019 (but without any changes thereto thereafter) until December 31, 2022, at which point the threshold requirement becomes 18.75<sup>1</sup> hours of work per week on average. For support staff (SS), current practices in the separate districts for the full duration of the Agreement.
- C. **Full time:** For T&A, status quo as it exists in the separate districts on December 31, 2019 (but without any changes thereto thereafter) until December 31, 2022, at which point the standard for full time status becomes 37.5 hours of work per week on average. For SS, current practices in the separate districts for the duration of this Agreement.
- D. **Premium Share:** For T&A, 80%/20% split of the Gold CDHP premium cost for those selecting the Gold CDHP Plan as well as the dollar equivalent for the Platinum or Gold Plan. For those T&A selecting the Silver CDHP Plan, 80%/20% of the Silver Plan premium. For SS, maintain the status quo in the separate districts for the first 18 months of the Agreement; then increase the employee share of the premium by 2% but not in excess of 80%/20% (under the same terms as for T&A) until December 31, 2022, at which point all SS shall pay on the basis of an 80%/20% split.
- E. **Out-of-pocket (OOP) share:** For the Gold CDHP, Platinum or Gold Plans employers shall contribute \$1625 for single coverage and \$3250 for two person and family coverage. For those selecting the Silver CDHP Plan, employers shall contribute \$2600 for single coverage and \$5200 for two-person and family coverage. All such contributions shall be on an employer first dollar basis, with employees having the choice of utilizing either an HRA or HSA where eligible.

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<sup>1</sup> Amended by the Employer Commissioners per discussions at the commencement of the LBO hearing. No representation is made that Employee Commissioners agreed or agree with this position

- F. **Tentative Agreements:** All Tentative Agreements as agreed to by the parties during the course of bargaining.

## II. **ARGUMENT IN SUPPORT OF EMPLOYER POSITIONS:**

### A. **The Big Picture:**

From the commencement of negotiations in April of this year, it has been the goal of the Employer Commissioners to continue to provide an excellent quality healthcare plan to educational employees at a cost which is both affordable and sustainable for Vt's school districts and the taxpayers who financially support them. It strongly believes its last best offer proposal (LBO or Employer proposal) accomplishes this goal in a manner that is superior to the position being taken by the Employee Commissioners. It believes that its proposal is more likely to moderately bend the cost escalation curve while still providing a healthcare plan that retains the highest possible rating of Platinum plus, a plan in the very top tier of healthcare plans offered in the United States.

Eligible K-12 public educational employees in Vermont are able to receive healthcare benefits through the auspices of the risk pool known and designated as the Vermont Educational Health Initiative, Inc. (VEHI). VEHI was established by the combination of the Vermont School Boards Insurance Trust and the Vermont NEA for the purpose of being able to deliver healthcare which is reasonably affordable to employers (and their supporting taxpayers) and employees. Two of the current plan offerings (Gold CDHP and Silver CDHP) are known and designated as "high deductible" type plans. This type of plan is encouraged by both the U.S. Affordable Care Act and Vermont's Act 85. The conversion to high deductible type plans by VEHI followed former plan offerings such as the "JY" and "dual option or VHP" plans. High deductible type plans are generally distinguished from their predecessors by having a lower premium cost but a higher time of service or out-of-pocket (OOP) cost. The intent of the transition to this type of plan was that there is apt to be a greater degree of moderation in the growth rate for healthcare plan costs when participants have a greater understanding of the cost consequences and when they are in a position to make informed choices as to alternatives.

Concerned about rising healthcare costs for educational employees, Vermont Governor Phil Scott first recommended that healthcare be removed from collective bargaining to be dealt with on a statewide basis, as are pension obligations. When this recommendation did not pass the Vermont Legislature, Act 85 was then considered and passed. As was stated by Vermont's Commissioner of Financial Regulation Michael Piechak, Act 85 established bargaining targets for Vermont school districts with the intent of saving \$26 Million. The legislation recommended that educational employees should contribute 20% of the premium cost of the Gold CDHP Plan offered by VEHI. It also suggested that **employees** be required to pay the **first** \$400 of out-of-pocket cost for single coverage, the **first** \$800 for two-person coverage and the **first** \$1,200 for family coverage. To implement these goals, Vermont's Agency of Education was given authority to and exercised the authority to calculate the amount of money that would be saved in every school district if such targets were implemented, and to hold such funds back from all educational appropriations despite higher voter approved budgets.

Unfortunately, for a number of reasons, the target savings were not achieved by the separate Vermont school districts. Consequently, Act 11 was passed requiring that healthcare

bargaining for educational employees be henceforth handled on a statewide rather than on a district by district basis.

VEHI believed that the conversion to high deductible type plans was both a reasonable and prudent change in order to have a better opportunity to contain the double digit increases that have been plaguing the plan and causing the plan trustees to utilize built up reserves in order to somewhat moderate such cost escalation. For example, when VEHI first switched to high deductible plans in 2018 the cost thereof was underestimated, requiring an infusion of \$6.8 million of VEHI reserves. For fiscal year 2019 it once again became necessary to utilize VEHI reserves in the amount of \$6.8 million in order to reduce the necessary increase in cost from in excess of 16% down to 10.2%. For the current fiscal year, a 10.9% increase in plan cost was needed. yet now VEHI estimates it will subsidize the premium by 4 million. Despite these double digit increases, the premiums in 2020 will remain lower than those in 2017 due to the introduction of new plan designs (Employer Exhibit 10, Tab D)

There is no doubt that Vermont and its limited population of 600k+ does not have the financial capacity to continue to absorb VEHI plan cost increases of the magnitude it been experiencing. Moderation in cost escalation is consequently essential despite a currently good revenue receipt period. As was testified to by Vermont's Finance Commissioner Adam Greshin, this State is suffering the loss of six individuals from its work force every day of the year on average. It is also suffering the loss of three students daily from its statewide student population. It is also facing an opiate crisis in which one child is born into an opiate addicted family every single day on average. Additionally, the State's population is aging, Vermont faces huge deterioration of its physical infrastructure such its roads, bridges and culverts. Its most significant natural resource, Lake Champlain, as well as the other bodies of water within its borders are in need of significant additional revenues in order to preserve them from the continuing deterioration that threatens its critically important tourist industry. Most significantly, the State is facing underfunded pension and other post-employment benefits (OPEB), principally the cost of healthcare for retirees, amounting to some \$4.5 billion. The amortization of this underfunding has recently grown from a \$175 Million to a \$200 Million obligation annually.

As was made crystal clear by Vermont economist Arthur Woolf, there is no reason to believe there will be any short-term improvement in the State's economic outlook. Reference is specifically made to his testimony and to the exhibits he presented (Exhibit 9, Tabs AW-1 to AW-13.) The Unions' rejoinder that the situation could possibly improve if large numbers of refugees from around the world suddenly moved to Vermont or if a major employer did likewise is the evidentiary equivalent of speculative and wishful thinking.

Against this backdrop, VEHI currently offers public educational employees four separate and distinct plans, namely the Platinum, Gold, Gold CDHP and Silver CDHP Plans. While the Act 11 Commissioners may make recommendations as to VEHI's plan designs, they may not alter them through their negotiations. Each of the offered plans provide for the same quality and breadth of medical and pharmaceutical services. The differences between them relate exclusively to premium and OOP costs. As set forth in the Exhibits of both parties, each of the four plans contains four separate tiers of coverage, namely single coverage, employee and spouse coverage, employee and child coverage and family coverage. (See Employer Exhibit 14, Tab O and Employee Exhibit 17)

The evidence at the hearing was clear that VEHI has also requested another 12.9% increase in its current rates for next fiscal year from its regulatory agency, the Vermont Agency for Financial Regulation.

**B. Duration:**

While there seems to be a technical differential between the parties, with the Employer Commissioners offering 2.5 years and the Employee Commissioners offering 2 years, it does not appear that there is a substantive difference of opinion. Both sides propose that this first contract terminate as of December 31, 2022. The difference relates to the first six months and is caused by the provisions of Act 11. Act 11 provides that the separate district contracts must expire between July 1 and September 1 of 2020, and that thereafter the statewide agreement with respect to Healthcare must be incorporated into every district's CBA or policy.

The technical glitch has been that school budgets operate on a July 1 through June 30 fiscal year basis, while IRS tax advantaged accounts operate on a calendar year basis. Consequently, the first real opportunity for change occurs with the plan year beginning January 1, 2021. The Employer proposal respects this reality by maintaining the status quo across the districts in all respects between July 1 and December 31, 2001. The Employee Commissioners' proposal attempts to secure the same result, but with the hope of a legislative fix, allowing the contract to commence on January 1, 2021. The Employer Commissioners submit that their approach is the more consistent with the existing legal framework, but admit that the end result intended by both parties in this respect is the same.

**C. Eligibility:**

The parties are not in accord with respect to the basic eligibility criteria for both T&A on the one hand and SS on the other. For T&A, the Employer Commissioners are proposing status quo in the separate districts until December 31, 2022 (but without further change) and then, as of the last day of the Agreement, a threshold requirement of 18.75 hours of work per week on average. The Employee Commissioners by contrast are proposing a 17.50 hours per week threshold. The status quo is being supported in order to give districts and their employees a sufficient 30-month lead-time to prepare for appropriate standardization. 18.75 hours of work per week on average is being supported by the Employer Commissioners as of the last day of the Agreement because the testimony and exhibits at the LBO hearing establish that 37.50 hours of work per week on average represents the preponderance of the standards for full time employment being currently utilized for T&A by districts across Vermont, with ½ of such time most typically being the threshold for an entitlement to prorated benefits. See Employer Exhibits 14, Tabs A, B and C and Employee Exhibits 20 H and I. This standard seems eminently fair when measured against the 20 hour per week on average threshold standard for benefits in other comparable entities such as the State of Vermont, University of Vermont, the UVM Medical Center etc. where the standard work week is 40 hours. See Employer Exhibits 16 A, B and C.

**D. Full Time:**

The parties also disagree on what should be the definition of full-time employment, and as to who should set the standard. While the Unions would have this standard set on an on-going

basis by the separate districts, the Employer Commissioners believe there ought to be a uniform standard following the allowance of a sufficient 30-month lead-time for the districts to achieve compliance. They propose that the uniform standard become applicable on the last day of the Agreement. The difference between the parties in this regard is significant with respect to the educational healthcare plan because a covered individual who meets the threshold requirement will be entitled only to prorated benefits if less than full time. Consequently, the difference in this regard can have a noticeable impact on the overall cost of the plan. The Unions were candid about the reasoning behind their proposal to leave the full-time employment definition to the separate districts. By doing this, they would be able to achieve participation as a fulltime employee to individuals working as few as 30 hours per week. The Employer Commissioners respectfully submit that their proposal for a full-time standard of 37 ½ hours per week as of the last day of the Agreement is a far more rational approach. It frankly stretches credulity to assert that 30 hours per week represents full time employment in the State of Vermont or in America. The Arbitrator can certainly recognize that the typical Vermont taxpayer who ultimately carries the cost for educational employees' benefits does not receive credit as a fulltime employee when assigned to work only ¾ of a typical work week.

While it is conceded that the testimony produced at the hearing demonstrated that there were indeed some school districts which currently recognize 30 hours per week as full time, this is by no means the predominant standard. See Employee Exhibit 20 H. The Vermont Legislature created Act 11 for the purpose of achieving a rational standardization of the criteria for healthcare benefits for educational employees across Vermont. To make the outlier of 30 hours per week the ongoing definition of full-time employment would in reality be treating a fiction as fact, to the financial detriment of Vermont's school employers and Vermont's taxpayers, especially when school districts will have a full and fair opportunity to remedy any outlier situations over a 30-month period. This attempt to avoid standardization on a rational basis in order to preserve a potentially costly benefit enjoyed by substantially less than a majority of educational employees should be rejected.

**E. Premium Sharing:**

Unless the Silver CDHP Plan is selected, there is no difference to be resolved between the positions of the parties with respect to the percentage of healthcare premiums to be absorbed by employers and employees for the first Agreement with regard to T&A. The parties agree that for the Gold CDHP, Gold and Platinum VEHI plans, employers should contribute 80% of the premium cost of the Gold CDHP Plan (the dollar value of which can be applied to the Platinum or Gold plans if selected, and employees should contribute 20% of such costs.

Per the current rate structure, for the Gold CDHP Plan the premium rate is \$7,726 for single coverage, \$14,510 for employee and spouse coverage, \$11,945 for employee and child coverage and \$21,402 for family coverage. For the Gold plan, premium costs for a single plan is \$8,314, \$16,629 for an employee and spouse plan, \$13,914 for an employee and child plan and \$23,536 for a family plan. Finally, for the Platinum plan, the single coverage rate is \$8,666, \$17,331 for an employee and spouse plan, \$14,490 for an employee and child plan and \$24,515 for a family plan. (Employer Exhibit 14, Tab O).

However, there is a significant difference between the parties if the Silver CDHP Plan is selected. This plan requires a reduced annual premium of \$6,661 for single tier coverage,

\$13,322 for employee and spouse coverage, \$11,228 for employee and child coverage and \$21,402 for family coverage. Here, while the Employer Commissioners are proposing an 80%/20% split of the premium cost for this plan (emphasis added), the Employee Commissioners are proposing that the employers' premium contribution be on the basis of 80% of the cost of the Gold CDHP Plan. They then further propose that employees may then utilize this differential to further reduce the already reduced premium cost for such Silver CDHP Plan.

Calculating this cost differential, the Employer Commissioners are proposing to contribute \$5,329 for single coverage, \$8982 for employee and child coverage, \$10,658 for employee and spouse coverage and \$15,164 for family coverage. The Employee Commissioners, however, are proposing that employers remain obligated to contribute 80% of the Gold CDHP annual premium costs even if a covered employee chooses to participate in the CDHP silver plan. For single coverage, this would increase the employer contribution to 92.8%; for employee and child to 87.1%; for employee and spouse to 85.1% and for family coverage to 90.3%. (See Employee Commissioners 10-18-19 LBO submission and Employer Exhibit 2). This level of increased employer premium contribution, it is respectfully submitted, would be excessively generous and should be rejected.

There is also a significant difference between the parties with respect to the premiums to be paid by SS employees.<sup>2</sup> The Employer Commissioners agree with the testimony presented by the Unions' witness Sean Leach who noted that the current standards for both premium share and out-of-pocket (OOP) costs among SS were "all over the place" in Vermont, ranging from 5% to 30%, but clustered in the 15%-16% range per the Unions testimony. In presenting its proposal, the Employer Commissioners have attempted to find a fair balance between the widely divergent status quo for such employees and the Act 11 requirement that all eligible employees including T&A and SS selecting a particular tier of coverage must pay an equal percentage of the premium cost by the time the second agreement goes into effect.

The Employer Commissioners attempt to accomplish this appropriate balancing by a gradual movement towards standardization. They are recommending that there be no change in the status quo for premium contributions by SS members for the first 18 months of the Agreement. Then, commencing with the first day of the last year of the Agreement, January 1, 2022, all such employees who are below an 80% employer/20% employee premium split will be obligated to increase their contribution rate by 2%, but in no case in excess of an 80%/20% split. It is not until the very last day of the Agreement, namely December 31, 2022, that the premium to be paid by SS will become identical to that being paid by T&A. It is submitted that this gradual transition fully complies with the requirements of the Section H 23 of Act 11, the section setting forth the "Health Care Benefit Transition; Legislative Intent" (Employer Exhibit 8 at page 250 of 275) instructions. This section of the law demands that there be a transition towards the standardization required in the second agreement that is "equitable, practicable and fair" to all parties. The Employer Commissioners' proposal is fully compliant with this legal obligation.

In stark contrast, the Unions are proposing that the premium share paid by SS employees should be 12% through December 31, 2021, and then increased to 15% from January 1 to

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<sup>2</sup> The parties agree that for these purposes the term T&A pertains to those employees requiring a professional educator's license from the state of Vermont while the term SS applies to all other employees including positions such as bus driver and food service worker to business manager, HR director and IT director.

December 31, 2022. In making this proposal, the Unions acknowledged that many SS employees throughout Vermont are currently paying either 20% or a percentage that is greater than what they are proposing. In the view of the Employer Commissioners, this movement away from the standardization required in the second contract makes absolutely no sense. It creates an even larger gap in the overall cost of the plans that must be covered by school districts and their supporting taxpayers, but also will make bargaining for the second agreement much more difficult than it ought to be. This proposal by the Unions does not create a fair, practicable and equitable transition to standardization. Instead, it creates just the opposite. Consequently, this portion of the Employee Commissioners' proposal should be regarded as fundamentally flawed and cause for rejection of their proposal.

**F. Contribution to Out-Of-Pocket (OOP) Costs:**

Without a doubt, the most significant disagreement between the parties in this proceeding relates to the out-of-pocket cost that must be absorbed by participating employees at the time they receive medical or pharmaceutical services.

While the Employer Commissioners propose a common standard for the OOP costs of all covered employees, the Employee Commissioners propose different standards for T&A on the one hand and for SS on the other.

**1. As to the Gold CDHP OOP:**

In excess of 90% of eligible educational employees currently select the Gold CDHP Plan, so this Memorandum first concentrates on the differences between the parties here. The Employer Commissioners propose that employers make a \$1,625 first dollar contribution (again, a most significant concession made during the course of bargaining from the employee first dollar obligation preferred by the Legislature) towards a maximum single coverage OOP obligation of \$2,500. For all other tiers, the contribution by employers would be a \$3,250 first dollar contribution towards a maximum OOP obligation of \$5,000. By contrast, for T&A, the Employee Commissioners are proposing a \$2100 contribution towards single coverage OOP and a \$4,200 contribution toward all other tiers of coverage. For SS they propose an increased contribution to \$2,200 for a single plan and to \$4400 for all other tiers. As was acknowledged during the hearing, OOP utilization patterns in the United States are typically at the rate of approximately 65% of the maximum obligation. The Employer Commissioners have based their proposed contributions to OOP for the Gold CDHP Plan on this basis. Given the extensive scope of the medical and pharmaceutical coverages offered by the VEHI plans, the potential OOP cost differential between the employer and employee positions do not seem excessive or unreasonable. This maximum potential cost differential is \$475 annually (\$375 for SS) for single coverage and \$950 annually (\$850 for SS) for all other tiers of coverage.

It must be remembered that the standard recommended by the Vermont Legislature in Act 85 was that employees pay the first \$400 of OOP for single tier coverage, the first \$800 of OOP for two person coverages and the first \$1,200 of OOP for family coverage. (Employer Exhibits 7 and 10 K). As a major concession in this bargaining, the Employer Commissioners have agreed to make the employer contributions to OOP on a first dollar basis. They have done this with full awareness that there is no OOP charged to participating employees for preventative and wellness medications annually, and in the strong belief that based upon the 65% utilization

rate, almost no employees except the most intense users of medical and pharmaceutical plan dollars will have limited, if any out of pocket obligations annually.

For their part, the Employee Commissioners are proposing that T&A get the best of both worlds. While they claim to have adopted the legislative standard of \$400 OOP for single coverage and \$800 for two-person coverage, they most conveniently disregard the legislative recommendation for a \$1,200 OOP contribution towards family tier coverage, and that employee contributions be first dollar to ensure equitable participation upfront. Additionally, and most significantly, they recommend using these legislatively suggested contribution amounts as last dollar rather than first dollar obligations. It is respectfully submitted that the combination of these proposals will completely shield a large majority of T&A from any obligation to make any level of OOP contribution, leaving this obligation to be completely paid by educational employers. This, it is respectfully submitted, would not be “equitable, practicable or fair.”

## **2. As to the Silver CDHP Plan:**

Through the course of the LBO hearing, the Employer Commissioners proposed a \$3,200 first dollar contribution towards OOP cost for the silver CDHP single plan and a \$6,400 contribution towards OOP cost for all other tiers. The Unions objected strenuously to this proposal, arguing that the availability of an HSA (as well as with an HRA) would cause too many dollars to cease being available for healthcare purposes, thus adding unnecessarily to VEHI’s cost escalation pattern, because they would end up remaining in the property of resigning or retiring employees. The Employer Commissioners do not share this assessment, and in fact believe it to be more likely to be the case that eligible employees will make informed choices as to their year to year use of healthcare dollars, saving dollars appropriately and using them intelligently.

However, in order to ameliorate any such concerns, the Employer Commissioners have decided to amend their position so as to offer an OOP contribution to those selecting the Silver CDHP Plan at the same 65% of the maximum OOP obligation as is being proposed for those selecting the Gold CDHP Plan (reflective of established utilization patterns). The Employer Commissioners strongly believe that on this basis, covered employees should be afforded the choice of either of these two tax advantaged OOP assisting vehicles in wide use throughout the U.S. They believe that covered employees should be given fair opportunity to make their own choice in this regard, and that the denial of such a choice is both overly paternalistic and dismissive. Furthermore, since an employee’s choice can be changed annually, it can be adjusted as needed to meet changing life circumstances.

Against the maximum out-of-pocket obligations of \$4,000 for the single tier and \$8,000 for all other tiers in the Silver CDHP Plan category, the Employer Commissioners thus now propose as its LBO a \$2,600 first dollar contribution to OOP cost for those selecting single coverage and a \$5,200 first dollar OOP contribution for all other tiers of coverage, while the Unions continue to propose a first dollar employer contribution of \$2,100 for the single tier for T&A (\$2,200 for SS) and \$4,200 for all other tiers (\$4,400 for SS).

The \$2600 contribution to OOP proposed by the Employer Commissioners would result in a maximum OOP obligation of \$1,400 for a single plan participant. As proposed by the Employee Commissioners, their \$2,100/\$2,200 contribution to OOP would result in a maximum

obligation of \$1,900/\$1,800 for single plan coverage. This \$500/\$400 differential cannot now be rationally argued to be such an excessive incentive that large amounts of healthcare dollars will be used for non-healthcare purposes, resulting in a compelling necessity to deny choice to participating employees.

Thus, the additional contribution the Employer Commissioners propose towards OOP costs of the Silver CDHP Plan will not incent the migration of significant dollars away from the plan to be used for non-legitimate healthcare purposes regardless of whether an HSA or an HRA is chosen. Instead, the Employer Commissioners proposed contributions to OOP for both the Gold and the Silver CDHP Plans would generate the opportunity for an informed choice by plan participants based upon their particular healthcare needs and personal circumstances.

### **3. HRA's and HSA's:**

As above referenced, the Employer Commissioners' proposal allows participating employees a choice of four plans with six discreet options, four with an HRA and two with an HSA as the vehicle they will utilize to assist with their OOP costs (such differentiated plan choices can also offset future premium cost increases and employee personal costs), while the Unions would only permit HRA's. These vehicles are known and designated as health reimbursement arrangements (HRA's) and health savings accounts (HSA's). Both such vehicles were anticipated by the Affordable Care Act and by Vermont's Act 11. Both the vehicles may be utilized to assist with OOP costs in a tax advantaged manner. The primary difference between the two vehicles is that HRA's are owned by the employer although fully committed to the potential healthcare needs of a covered employee. HSA's on the other hand are owned by the employee from the time the deposit is made, but also must be utilized for authorized healthcare purposes subject to both IRS penalties and tax imposition for non-healthcare expenditures before age 65 and tax imposition thereafter. There are certain delineated situations such as covered children to age 26 and military service where use of HSA dollars may be limited. If the child is not a tax dependent, benefits cannot be paid for with tax advantaged dollars. Benefits are still afforded and in some cases may be paid in full by the plan, if that dependent's care is submitted after the out-of-pocket maximum is already reached by the family. Benefits maintained by veterans through the Government are considered being enrolled in another plan. When enrolled in an HSA, a member cannot be enrolled in another plan. For these specific situations, an HRA option is available. There are distinct advantages to each as depicted on Employer Exhibit 10 at Tabs U, V, X-1, X-2, X-3, X-4 and X-5 as presented in connection with Employer Commissioners' Chair Elizabeth Fitzgerald's testimony.

While the Employee Commissioners would ask the Arbitrator to absolutely prohibit the use of HSA's, clear testimony was presented by several educational employees covered by Act 11 who indicated that they have the benefit of an HSA currently, that they enjoy such benefit and that they would very much prefer to be able to keep it. They also indicated that they were never surveyed or contacted by the Employee Commissioners who are charged by statute to represent their interests.

Although one of the Employee Commissioners' witnesses raised the specter that employees with an HSA are likely to accumulate dollars in their individually owned accounts that should be used for healthcare and instead use such dollars to "buy a boat" or make a similar types of non-healthcare related expenditures, this assertion is wildly speculative and quite

unlikely. The Employer Commissioners strongly contend that this kind of reasoning totally disregards the ability of Vermont's educators to think intelligently and make informed choices based on their needs. Most fundamentally, the thinking person will be mindful that these dollars are being accumulated to assist with healthcare needs and should be used for this purpose, and that consequently utilizing the accumulated funds in their HSA account for non-healthcare purposes would be a most unwise decision. The Employee Commissioners' proposal to prohibit HSA's must be rejected as most unwise.

**III. PAYMENTS IN LIEU OF HEALTHCARE BENEFITS:**

In light of the Arbitrator's discussion with the parties concerning his view of the threshold issues the Employer Commissioners withdraw their proposal to prohibit such practices with one exception. This exception is that the CBA should be written to prohibit two educational employees covered by the plan but working for either the same or separate Vermont school districts, and who are able to cover each other, from choosing two-person, parent and child or family coverage from one district and receiving a payment in lieu of the receipt of healthcare benefits from another. This practice would in fact represent a fraud on VEHI's healthcare plan. Instead, the cost of the two-person or family plan should be allocated between the two school districts.

**IV. GRIEVANCE PROCEDURE IN THE CBA:**

Although the Employer Commissioners strongly believe that there will need to be a grievance procedure in the statewide healthcare contract in order to provide a uniform and standardized framework to implement the new state-wide contract, avoid disputes over the meaning of language and enforce the provisions of the CBA, they hereby withdraw their inclusion of such a provision in the first CBA in light of the discussions with the Arbitrator concerning threshold issues.

This last best offer is respectfully submitted to the Arbitrator on behalf of the Employer Commissioners this 18th day of November, 2019.

Respectfully submitted on behalf of Employer Commissioners

BY: Joseph E. McNeil and Colin K. McNeil  
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