VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION AND STATE OF VERMONT (RE: NON-MANAGEMENT UNIT NEGOTIATIONS)	)	DOCKET NO. 15-42
VERMONT STATE EMPLOYEES' ASSOCIATION AND STATE OF VERMONT (RE: SUPERVISORY UNIT NEGOTIATIONS)	)	DOCKET NO. 15-44
VERMONT STATE EMPLOYEES' ASSOCIATION AND STATE OF VERMONT (RE: CORRECTIONS UNIT NEGOTIATIONS)	)	DOCKET NO. 15-45

MEMORANDUM AND DECISION

At issue is selection by the Vermont Labor Relations Board between the last best offers of the Vermont State Employees' Association ("VSEA") and the State of Vermont ("State") with respect to successor collective bargaining agreements between the parties covering the Non-Management Unit, the Supervisory Unit and the Corrections Unit.

The parties have proceeded through the statutory impasse resolution procedures of mediation and fact-finding. Fact Finder Gary Altman issued his Report and Recommendations on February 29, 2016. The parties filed last best offers with the Labor Relations Board on March 21, 2016. The last best offers indicate that the parties disagree on the following five issues: 1) wages, 2) weekend shift differential, 3) overtime compensation, 4) grievance arbitration, and 5) background checks. The parties also agreed on contract provisions previously in dispute when they submitted their last best offers. These are provisions relating to: 1) Step 1 of the grievance procedure, and 2) performance evaluation.

The parties filed various materials with the Board subsequent to the submission of last best offers and prior to the April 7, 2016, oral argument before the Board. They were: 1) the

memoranda submitted by the parties to the fact finder subsequent to the fact-finding hearing; 2) the Report and Recommendations of the Fact Finder; 3) a motion by VSEA to dismiss the State's last best offer accompanied by an affidavit, and a response to the motion filed by the State accompanied by an affidavit; 4) calculations agreed to by the parties on the costs of each party's respective last best offers; 5) economic analysis affidavits filed by both parties; 6) the admitted exhibits filed by each party at fact finding related to the issues in dispute in the last best offer process; and 7) briefs filed by the parties prior to oral argument before the Board in support of their positions on the last best offers. We have considered all of these materials in reaching a decision.

Oral argument on the last best offers occurred on April 7, 2016, in the Labor Relations Board hearing room in Montpelier before Board Members Gary Karnedy, Chairperson; Richard Park, James Kiehle (by telephone); Edward Clark, Jr., and Robert Greemore. VSEA General Counsel Timothy Belcher, VSEA Strategic Analyst Adam Norton, and VSEA Director of Labor Relations Gary Hoadley presented on behalf of VSEA. Attorney Joseph McNeil, State Director of Labor Relations John Berard, and State Economist Jeffrey Carr presented on behalf of the State.

Pursuant to the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.* ("SELRA"), the Board is to select between the last best offers of the parties, considered in their entirety without amendment. 3 V.S.A. §925(i). We first will set forth the differences between the parties on the issues presented in their last best offers.

Wages

The existing collective bargaining agreements between the parties, effective July 1, 2014 – June 30, 2016, provide for 2.5% across the board increases at the start of the first full pay

period each fiscal year beginning July 1. The agreements also provide for a Step Pay Plan, which provides as follows for all employees except for State Police Lieutenants (who have their own pay plan):

> . . .
> 4. The required time on each step in the Step Pay Plan shall be as follows:
> Step 1 (probation) – normally, six months
> Step 2 (EOP) – one year
> Step 3 – one year
> Step 4 - one year
> Step 5 – one year
> Step 6 – two years
> Step 7 – two years
> Step 8 – two years
> Step 9 – two years
> Step 10 – two years
> Step 11 – two years
> Step 12 – two years
> Step 13 – three years
> Step 14 – three years
> Step 15 – final step
> 5. Computation of Step Dates, and requirements for step movements for the Pay Plan, in effect on June 30, 1990, shall remain unchanged. At the beginning of the first full pay period following the employee's new Step Date, the employee shall advance to the next higher step in the pay grade upon completion of the required time on step.
> 6. . . . (M)ovement to a higher step hereunder is predicated on satisfactory performance, based on the annual performance evaluation. . .

The State Police Lieutenants are covered by the collective bargaining agreement covering the Supervisory Unit. The Step Pay Plan for State Police Lieutenants under the agreement provides:

> (a) Effective July 1, 2012, the required time on each step in the VSP Step Pay Plan for State Police Lieutenants shall be as follows:
> Step 1 (probation) – normally, 6 months
> Step 2 (EOP) – one year
> Step 3 – one year
> Step 4 – one year
> Step 5 – one year
> Step 6 – one year
> Step 7 – one year
> Step 8 – one year

Step 9 – one year
Step 10 – one year
Step 11 – one year
Step 12 – one year
Step 13 – one year
Step 14 – one year
Step 15 – final step

(b) Computation of Step Dates, requirements for step movements and other provisions for administration of the Pay plan . . . shall be applicable and remain unchanged, except as specifically modified herein. Implementation of the changes to the time required on each step, as reflected in subsection (a) above, shall be based on the day and month of the employee's next step date.

Both parties propose a two-year agreement covering the period July 1, 2016, to June 30, 2018. The State proposes in the first year of the agreements a wage expenditure of step increases for covered employees of all bargaining units, and an additional across the board increase of 1% for covered employees of all bargaining units except State Police Lieutenants. 1.7% represents the historical cost per year of the continuing step advancement system currently in place for covered employees. However, for the first year of the contracts, the approximate estimated cost of step pay plan advancement is 1% due to the reduced number of state employees on the payroll. State Police Lieutenants, who have a different Step Plan, would receive step increases and an additional .5% across the board increase in the first year of the agreements.

The State proposes for the second year of the agreement a new additional wage expenditure averaging the estimated approximate cost of 3.15% for covered employees of all bargaining units, except State Police Lieutenants. 1.9% represents the estimated approximate cost of the continuing step advancement system. The remaining 1.25% is provided on an across the board basis. State Police Lieutenants, who have a different Step Plan, would receive step increases and a .5% across the board increase in the second year of the agreement.

VSEA proposes the wage increases recommended by the fact finder. This would result in a 2% across the board increase effective the first full pay period in July 2016, and a 2.25% across

the board increase effective the first full pay period in July 2017. In addition, employees would receive step increments each year of the agreements in the manner set forth in the Step Pay Plan provisions of the agreements.

Weekend Shift Differential

The existing 2014-2016 agreement for the Non-Management Unit provides for a $.40 per hour weekend shift differential. The State proposes to increase the weekend shift differential for the Non-Management Unit by $0.10 per hour to make it equal to the weekend shift differential rates in the contracts for the other bargaining units represented by VSEA. VSEA proposes the recommendation of the fact finder which provides for no increase in weekend shift differential.

Overtime Compensation

The Overtime article of the agreements for all units provides that "(e)mployees in classes assigned to pay grades 5 through 22 shall receive overtime compensation at the rate of one and one-half (1 ½) times their regular hourly rate for all hours worked in excess of eight (8) in any workday or (40) in any workweek." VSEA proposes to change this provision so that "(e)mployees in classes assigned to pay grades 5 through 24 shall receive overtime compensation at the rate of one and one-half (1 ½) times their regular hourly rate for all hours worked in excess of eight (8) in any workday or (40) in any workweek."

The VSEA proposal is consistent with the recommendation of the fact finder on this issue The State last best offer proposes no change to the existing contract language.

Grievance Arbitration

Prior to May 26, 2015, SELRA provided that the Labor Relations Board exclusively had the authority to make final determination on state employee grievances. In legislation approved by the Vermont General Assembly effective May 26, 2015, the scope of bargaining was expanded to include "whether an appeal to the Vermont Labor Relations Board or binding arbitration, or both, will constitute the final step in a grievance procedure." 3 V.S.A. § 904(a)(7). The legislation also added the following provisions to Section 926 of SELRA:

> . . .
> (b) A collective bargaining agreement may provide for binding arbitration as a final step of a grievance procedure, rather than a hearing by the Board. An agreement that includes a binding arbitration provision shall also include the procedure for selecting an arbitrator.
> (c) If a collective bargaining agreement provides for binding arbitration as a final step of a grievance procedure, the agreement may also establish:
> (1) procedural rules for conducting grievance arbitration proceedings;
> (2) whether grievance arbitration proceedings will be confidential; and
> (3) whether arbitrated grievance determinations will have precedential value.
> . . .
> (e) Any collective bargaining agreement that contains a binding arbitration provision pursuant to this section shall include an acknowledgement of arbitration that provides substantially the following:
> **ACKNOWLEDGMENT OF ARBITRATION**
> (The parties) understand that this agreement contains a provision for binding arbitration as a final step of the grievance process. After the effective date of this agreement, no grievance, submitted to binding arbitration, may be brought to the Vermont Labor Relations Board. An employee who has declined representation by the employee organization or whom the employee organization has declined to represent or is unable to represent, shall be entitled, either by representing himself or herself or with the assistance of independent counsel, to appeal his or her grievance to the Vermont Labor Relations Board as the final step of the grievance process in accordance with the rules and regulations adopted by the Board.

The existing collective bargaining agreements for all units provide that the final step of the grievance procedure is final determination by the Labor Relations Board. The Report and Recommendations of the Fact Finder provided as follows concerning grievance arbitration:

Discussion

. . .

I would recommend that the parties adopt arbitration as an additional alternative for the final step in the grievance procedure. The language set forth by the Association is reasonable and should be the basis for adding grievance arbitration to the parties' Agreement. . .

As there is still more work to be done before agreeing to arbitration as an alternative forum, the parties should continue their negotiations with a goal of implementing arbitration as the final step commencing July 1, 2017.

RECOMMENDATION – GRIEVANCE ARBITRATION

The parties should agree to add binding arbitration as an additional option as the final step in the grievance procedure. The parties should continue negotiations on the parameters of arbitration as set forth above, and implement this final step for grievances filed after July 1, 2017.

VSEA proposes that the recommendation of the fact finder be adopted. The specific language proposed by VSEA in its last best offer provides:

ARTICLE 15
GRIEVANCE PROCEDURE

. . .

3. GRIEVANCE PROCEDURE

. . .

(d) **STEP IV (Board Level)**

. . .

Upon implementation of binding arbitration as an alternative at Step IV, the appeal from the Department of Human Resources by VSEA shall be to binding arbitration as specified in 3(e) below or to the Vermont Labor Relations Board.

(e) **STEP IV (Binding Arbitration)**

The State and VSEA will continue negotiations on the parameters of binding arbitration as an alternative for VSEA at Step IV with the implementation of binding arbitration for grievances filed after July 1, 2017.

4. GENERAL PROVISIONS

. . .

(c) . . . Upon implementation of binding arbitration as an alternative as specified in 3e above, VSEA may appeal an employee dismissal directly to the Vermont Labor Relations Board or Binding Arbitration.

The State last best offer proposes no change in the contract language on this issue.

Background Checks

There are no provisions in the existing agreements for all units providing for background checks of employees. The fact finder recommended the addition of the following article on background checks:

> In order to comply with any Federal and/or State statute or regulation the State may conduct background checks limited to, fingerprint supported background checks, credit checks and registry checks. The results of any such background checks must remain confidential.
>
> Should the State determine that a classification is subject to a background check, as described above, the State shall notify the VSEA, and will meet, if requested, within ten (10) calendar days, on a regular basis, to negotiate the impact of such decision for up to forty-five (45) calendar days. If unresolved at the end of the forty-five (45) calendar day period commencing from the date VSEA requests negotiations, the State may implement the background check without further negotiations or recourse to the statutory impasse procedure.

VSEA proposes to accept the recommendation of the fact finder. The State proposes to accept the recommended language of the fact finder, except that:1) the language in the second line of the first paragraph providing "may conduct background checks" is replaced by "may conduct any background checks it deems appropriate including, but not limited to,"; and 2) in the first line of the second paragraph, the words "at its sole discretion" is added between "the State" and "determine".

MAJORITY DECISION

In selecting between the parties' last best offers "considered in their entirety without amendment", we determine which offer is more reasonable and in the public interest. VSEA and State of Vermont, 15 VLRB 107, 111-12 (1992). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB 89, 99 (1999). Vermont State Colleges Faculty Federation, UPV, AFT

Local 3180, AFL-CIO and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 28 VLRB 28, 43 (2005). The parties' offers differ with respect to: 1) wages, 2) weekend shift differential, 3) overtime compensation, 4) grievance arbitration, and 5) background checks.

The parties concur that the most important of these issues is wages. Among the factors to be considered in evaluating wage proposals are the comparability of state employees' wages with that of other employees, as well as contractual wage increases received by state employees in recent years. VSEA and State, 15 VLRB at 113. VSEA and State of Vermont, 19 VLRB 114, 123 (1996). The Board has looked to how state employees are currently positioned relative to other employees and whether comparability will be significantly altered by a wage determination. VSEA and State, 15 VLRB at 113.

The wage terms negotiated in recent collective bargaining agreements in the public and private sectors also are pertinent in evaluating wage proposals. Cost of living is another relevant factor. One factor not considered by the Board in evaluating wage proposals is ability to pay. The Board has indicated that it is up to the Vermont General Assembly to determine the funds it wishes to make available to support State government. Id.

There is one wage issue agreed upon by the parties. Both parties propose that employees who are eligible for step advancement under the Step Pay Plan should receive their step advancement on the appropriate date for both years of the contracts. This is an apparent recognition by the parties of the value of maintaining without pause a pay plan containing step increases based on experience, which has been included in the parties' collective bargaining agreements for decades. VSEA and State of Vermont, 15 VLRB at 112. The step pay plan promotes seniority, experience and retention of employees.

There is a fiscal impact of step pay increases just like other wage increases which needs to be considered in evaluating total wage proposals. VSEA and State of Vermont, 19 VLRB at 123. In this case, the step increases average an estimated cost of 1 % for all covered employees in the first year of the contracts, and average an estimated cost of 1.9 % in the second year of the contracts.

The State and VSEA disagree on the percentage of across the board increases to be provided to covered employees for the two years of the contracts. The State proposes an across the board increase of 1% for covered employees of all bargaining units, except State Police Lieutenants who would receive a .5% increase, in the first year of the agreements. The State proposal provides for a 1.25% increase on an across the board basis in the second year of the contracts except for State Police Lieutenants, who would receive a .5% across the board increase in the contract's second year. VSEA proposes the wage increases recommended by the fact finder. This would result in a 2% across the board increase effective the first full pay period in July 2016, and a 2.25% across the board increase effective the first full pay period in July 2017.

The parties devoted considerable time at fact finding and before the Board on the comparability of state employee wages relative to comparable positions in the private sector. VSEA contends that the wages of state employees are considerably behind the wages paid to comparable positions in the private sector. The State asserts to the contrary that there is no systematic disparity in pay between state government employees and employees in the broader Vermont economy. The information submitted by the parties on comparability at fact finding and to the Board is insufficient to draw any meaningful conclusions on the comparability of state employee wages to comparable positions in the private sector in Vermont.

Instead, the more pertinent information before the fact finder and the Board is what has occurred in recent years with respect to wage growth in the private and public sectors, and the wage terms negotiated in collective bargaining agreements in the public and private sectors. During fiscal year 2009 through fiscal year 2015, private sector wages in Vermont experienced average annual increases of 2.1%. State government wages increased at the rate of 1.9% per year during this time. The average annual rate of inflation was 1.6% during this period. These six years, which begins with the year the great recession began, and runs through to the most recent completed fiscal year, provides a reasonable evaluation period to view state employee wage growth versus the private sector. The data on this period indicates that state employee wages on average have lagged slightly behind the private sector.

The information before us on wage terms negotiated in collective bargaining agreements in the public and private sectors is notably slim. No evidence was presented specifically on private sector collective bargaining agreements. The information before us on public sector negotiations is the following passage from the fact finder's report:

> The two other public sector entities covered under the State Employees Labor Relations Act, the University of Vermont and the Vermont State Colleges, reached contract settlements for their employees. In particular, the University of Vermont agreed with the full-time Faculty Unit to a 2% across the board increase, and an additional 2% merit pool for FY 2017. Service and Maintenance employees of the University agreed to a 3% increase effective July 1, 2017, and Part-Time Faculty agreed to a 3% increase for FY 2017. Similarly, the Vermont State Colleges agreed to 11% increases over a five-year period.

In evaluating this information on wage growth in state government and the private sector, and the wage terms negotiated in collective bargaining agreements in the public sector, along with all other economic information submitted by the parties, we conclude that VSEA has submitted the more reasonable wage proposal in concurring with the fact finder's recommendation. This provides for a 2% across the board increase effective the first full pay

period in July 2016, and a 2.25% across the board increase effective the first full pay period in July 2017, together with employees who are eligible for step advancement under the Step Pay Plan receiving their step advancement in the manner set forth in the contracts.

The parties' wage proposals are separated by a 1% difference in across the board increases for each year of the contracts, except for a separate provision for State Police Lieutenants of a .5% across the board increase. We conclude that maintaining the comparability of state employee wages with that of other employees is better served by the wage increase advocated by VSEA then those proposed by the State. VSEA is more in line with recent collective bargaining agreements of other parties under SELRA, and comparable to the increases received by state employees under the existing collective bargaining agreements. It further brings state employees more in line with the average wage increases of private sector employees over the past six years.

In reaching this conclusion, we give some weight, although not controlling, to the factfinder's recommendations and that one of the parties' last best offer was consistent with such recommendation. VSCFF and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB at 98. We find the recommendation of the fact finder on wages to be persuasive based on the information presented to him.

Also, although not determinative on our conclusion on the respective merits of the competing wage proposals, the State proposal providing for a separate and lower across the board increases for State Police Lieutenants weakens its last best offer. We recognize that the State justifies this separate treatment on the grounds that State Police Lieutenants, unlike other employees, are entitled to receive step increases every year which results in a higher average value of step increases for them than other employees. Nonetheless, all of the dispute resolution

procedures set forth in SELRA – i.e., mediation, factfinding, last best offer – are designed to encourage the parties to progressively narrow their differences and, hopefully, reach agreement. VSCFF and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB at 98. By introducing this separate treatment of State Police Lieutenants for the first time at the last best offer stage, the State proposal did not serve to narrow differences and promote the statutory scheme.

We do not grant VSEA's motion to dismiss the State's last best offer as legally void on the basis that the lower across the board increase for State Police Lieutenants creates a new two-tiered wage increase that was never discussed in bargaining. However, the State proposal in this regard did not further its interests in presenting a reasonable last best offer that would be selected.

Our conclusion that VSEA has presented a more reasonable wage proposal does not end our inquiry since we need to consider other components of the parties' last best offers before accepting an offer in its entirety without amendment. In evaluating other issues in dispute, we are most troubled by VSEA's proposal on grievance arbitration. VSEA proposes, pursuant to the recommendation of the fact finder, to add binding arbitration as an additional option to the Labor Relations Board at the final step of the grievance procedure effective at the beginning of the second year of the two year contracts.

The arbitrator recommended that the parties should agree to add binding arbitration as an additional option at the final step in the grievance procedure, and that they should continue negotiations on the parameters of arbitration and implement this final step for grievances filed after July 1, 2017. We are surprised and dismayed that the fact finder made such a recommendation, and VSEA adopted it in its last best offers, since the parties have reached no

agreement on any of the myriad procedural and substantive issues which need to be resolved to revise the dispute resolution system for grievances which has been in place since the enactment of the State Employees Labor Relations Act in 1969.

When the Vermont General Assembly passed legislation last year making grievance arbitration for the first time a subject of bargaining under SELRA, this enabled the parties to engage in good faith negotiations to attempt to reach agreement on any revisions to the grievance resolution process. The promotion of productive labor relations between the parties would best be served by a mutual agreement by the parties on any revisions to this process. The means by which grievances are resolved is one of the most important features of the parties' relationship. VSEA has presented a proposal to significantly alter this critical component absent agreement of the parties. It also requires negotiations between the parties on the parameters of arbitration during the term of the contract before binding arbitration is implemented. This is a short-sighted proposal not conducive to productive labor relations to present at the last best offer stage of proceedings merely one year after the enabling legislation was enacted.

The State contends that the VSEA proposal in this regard must be regarded as deficient as a matter of law and dismissed because its proposed contract language does not include the "Acknowledgement of Arbitration" clause that SELRA mandates being present as a part of any contractual commitment to binding arbitration. The State is correct that SELRA mandates such a provision. 3 V.S.A. §925(e). It also mandates that a binding arbitration provision "shall . . . include the procedure for selecting an arbitrator". 3 V.S.A. §925(c). The VSEA proposal contains neither the "Acknowledgment of Arbitration" clause nor the procedure for selecting an arbitrator.

Nonetheless, this does not result in our conclusion that the VSEA proposal must be dismissed as a matter of law. This is because the proposal of VSEA provides for "the implementation of binding arbitration for grievances filed after July 1, 2017", and prior to then the parties will engage in negotiations on the parameters of arbitration. These negotiations would include addressing the issues of the "Acknowledgment of Arbitration" clause and the procedure for selecting an arbitrator. Any arbitration provisions which ultimately are the product of these negotiations would have to include the "Acknowledgment of Arbitration" clause and the procedure for selecting an arbitrator to comply with SELRA. The negotiations period before the July 1, 2017, implementation allows for the required statutory requirements to be met. If these provisions are not in place by July 1, 2017, then any binding arbitration provision would be invalid pursuant to SELRA. However, the VSEA proposal is not deficient at this time as a matter of law.

The circumstances of this case are distinguishable from those existing in VSEA and State of Vermont, 19 VLRB 114, 122 (1996). There, the State proposed a two-year agreement as part of its last best offer even though both parties only presented proposals for a one-year agreement throughout negotiations and to the fact finder. The Board cited the Section 925(i) of SELRA provision that "each party shall submit as a single package its last best offer on all disputed issues to the board", and concluded that the State offer was "seriously flawed" and prohibited by SELRA because the length of the contract was not a "disputed issue" in negotiations. Id. The Board determined as a result that it was required to accept VSEA's last best offer. Id. at 124.

Here, the situation is different from the1996 case. Grievance arbitration has been a "disputed issue" during negotiations unlike the term of the contract in the 1996 negotiations.

Our conclusion that the VSEA proposal in this regard is not deficient as a matter of law does not change our views on the objectionable nature of the VSEA proposal. We thus are in a position of favoring the wage proposal of VSEA over the proposal of the State, and conclude that the VSEA grievance arbitration proposal is undesirable. We need to select between the parties' last best offers considered in their entirety without amendment and thereby are statutorily constrained in our options. We must select one of the parties' offers even though we find components of both parties' offers comparatively inferior and undesirable. In choosing between the respective wage proposals versus the grievance arbitration issue, we give precedence to the wage issue. We thus would select VSEA's last best offers as more reasonable and in the public interest unless there are other provisions of the parties' last best offers which tip the balance to the State's last best offers.

One of the remaining provisions has to do with overtime compensation. VSEA proposes, consistent with the recommendation of the fact finder, that the eligibility for premium overtime pay (i.e., 1.5 times regular wage rate) increases from paygrade 22 to paygrade 24. The State opposes this provision on the grounds that the State had linked this proposal, which costs the State money, with another proposal, which saved money, that addressed what time off would be regarded as "good time" for overtime purposes. The State contends that the separation of this linked proposal by the fact finder was an inappropriate action that should not be allowed to stand. We would concur with the State if this issue was standing alone. However, we must view the merits of each party's total package. The extra overtime has a relatively minor cost equal to approximately one-seventh of one percent of an average wage increase, and this does not alter our preliminary conclusion to select the VSEA last best offers.

The remaining issues also do not have an appreciable impact on our decision to select VSEA's last best offers. The weekend wage differential for the Non-Management Unit proposed by the State has the approximate total cost of $20,682 per year, a minor overall cost with negligible effect in weighing the last best offers. The final issue is background checks. The respective proposals of both parties provide for a new contract article on background checks. The fact finder recommended a modified version of the State's proposal to conduct background checks in order to comply with any federal and/or state statute or regulation. VSEA has proposed the recommendation of the fact finder on this issue, and the proposed provision appears reasonable and does not affect our ultimate conclusion.

In sum, we select the last best offers submitted by VSEA as more reasonable and in the public interest. SELRA provides that, in selecting between the last best offers, "the decision of the Board shall be final, and the terms of the chosen agreement shall be binding on each party, subject to appropriations in accordance with subsection 982(d) of this title." 3 V.S.A. §925(k). In addition to VSEA's last best offers, the collective bargaining agreements covering the Non-Management Unit, the Supervisory Unit and the Corrections Unit incorporate all tentative agreements reached by the parties on issues which were not part of the last best offer process. Attachment A to this decision contains the list of tentative agreements.

3 V.S.A. §982(d) provides that the Board "shall determine the cost of the agreement selected and request the General Assembly to appropriate the amount determined to be necessary to implement the selected agreement." Attachment B to this decision contains the estimated costs agreed upon by the parties of the State and VSEA last best offers. The Board hereby requests that the estimated costs of the VSEA last best offers be appropriated to implement these agreements.

Dated this 19th day of April, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.

DISSENTING OPINION

I respectfully dissent from my colleagues, and conclude that the State's last best offers are more reasonable and in the public interest. I first consider the issue agreed to by the parties as the most important of issues, that of wages. Among the factors to be considered in evaluating wage proposals are the comparability of state employees' wages with that of other employees, as well as contractual wage increases received by state employees in recent years. VSEA and State, 15 VLRB, 107, 113 (1992). VSEA and State of Vermont, 19 VLRB 114, 123 (1996). The Board has looked to how state employees are currently positioned relative to other employees and whether comparability will be significantly altered by a wage determination. VSEA and State, 15 VLRB at 113. Cost of living is another relevant factor on which the parties presented detailed information.

During fiscal year 2009 through fiscal year 2015, private sector wages in Vermont experienced average annual increases of 2.1%. State government wages increased at the rate of

1.9% per year during this time. The average annual rate of inflation was 1.6% during this period. This data indicates that state employees have experienced similar wage increases to employees in the private sector in recent years and have significantly outpaced inflation on a compounded basis. Also, as VSEA concedes in the information it presented at fact finding and to the Board, it is apparent that state employees receive significantly more in benefits compensation than other Vermont workers. The wages and benefits information indicates that state employees are currently positioned relatively well to other employees. Also, this is a time of low inflation, providing further justification for holding down wage increases.

Further, the average tenure of State employees is 12 years, which exceeds that of the private sector and is a strong indicator that total compensation is at least adequate. The State is not experiencing difficulties in recruiting to fill vacant positions with a few exceptions such as IT specialists, which are also a challenge to fill in the private sector.

In evaluating the wage proposals of the parties in light of this information, I conclude that the State has presented the more reasonable wage proposal. Both parties propose that employees who are eligible for step advancement under the Step Pay Plan should receive their step advancement on the appropriate date for both years of the contracts. This is an apparent recognition by the parties of the value of maintaining a pay plan containing step increases based on experience, which has long been included in the parties' collective bargaining agreements. VSEA and State of Vermont, 15 VLRB at 112.

In evaluating the merits of wage increases, I do not draw a distinction between step increases and across the board increases. A step increase is a wage increase by another name, and there is no less fiscal impact to such step pay increases as opposed to other types of increases. VSEA and State of Vermont, 19 VLRB at 123. In this case, the step increases average an

estimated cost of 1 % for all covered employees in the first year of the contracts, and an estimated cost of 1.9 % in the second year of the contracts.

The parties' wage proposals are separated by a 1% difference in across the board increases for each year of the contracts, except for a separate provision for State Police Lieutenants of a .5% across the board increase. The State proposes total wage increases, including step increases and general across the board increases, of approximately 2% in the first year of the contracts and 3.1% in the contracts' second year. VSEA proposes total wage increases of approximately 3.1% in the first year, and 4.4% in the second year.

I conclude that maintaining the comparability of state employee wages with that of other employees is better served by the wage increases proposed by the State than those of VSEA. VSEA's proposed wage increases are significantly higher than the average increases for state employees and private sector employees over the last six years. The State's proposals are more in line with maintaining comparability with private sector workers. Also, the State's proposal is more appropriate in a time of low inflation.

I next consider the binding arbitration issue. The arbitrator recommended that the parties should agree to add binding arbitration as an additional option at the final step in the grievance procedure, and that they should continue negotiations on the parameters of arbitration and implement this final step for grievances filed after July 1, 2017. VSEA adopted this recommendation in its last best offer.

I find this proposal unacceptable. I start with the fact that the parties have reached no mutual agreement on this issue. When the Vermont General Assembly passed legislation last year making grievance arbitration for the first time a subject of bargaining under SELRA, this was enabling legislation allowing the parties to engage in good faith negotiations to attempt to

reach agreement on any revisions to the grievance resolution process. I presume the legislature intended that, if binding arbitration was going to be implemented, it would be through agreement of the parties, not through a proposal of one party at the last best offer stage over the other party's objections.

A good dispute resolution process is an essential part of good labor relations. A unilateral procedure within the overall process is not beneficial to the public good. Under the VSEA last best offers here, only the union can initiate the alternative grievance resolution determination of arbitration. Creating a fair and balanced dispute resolution process with mutual agreement and understanding is essential for management, the employees and the public interest. To the best of my knowledge, having a collective bargaining agreement providing for one party deciding which issues proceed to arbitration is unique. VSEA's proposal creates the potential for significant harm to the parties' relationship.

Further, the VSEA proposal requires negotiations between the parties on the parameters of arbitration during the term of the contract before binding arbitration is implemented. The last best offer stage is designed to bring closure to the negotiations process. Instead, this proposal extends the process with the potential of creating much discord between the parties. I hope the majority opinion has not created a situation where the dispute resolution process established by statute will be invoked during the term of the contracts.

Also, no agreements have been reached by the parties on any of the myriad procedural and substantive issues involved in revising the dispute resolution process for grievances which has been in place since SELRA was enacted in 1969. Included among these issues are:1) the scope of matters which can be presented to arbitration, 2) how arbitrators are selected and paid, 3) the procedural rules for conducting arbitration proceedings, 4) whether arbitration proceedings

will be confidential, 5) the precedential value of Board decisions in arbitration proceedings, and 6) whether arbitration decisions will have precedential value.

These all are significant issues which need to be negotiated by the parties, and at this point the parties have reached no agreement on any of these issues. It is unacceptable to have binding arbitration as an option to be implemented during the term of the contract given how far the parties are from resolving these issues. Too many absolute and potential uncertainties remain for the grievance arbitration provision to go into effect.

Further, the grievance arbitration provision included in the last best offers of VSEA does not conform to the statute passed by the General Assembly that gives the parties the ability to bargain the alternative process. The State contends that the VSEA proposal must be regarded as deficient as a matter of law, because its proposed contract language on grievance arbitration does not include the "Acknowledgement of Arbitration" clause that SELRA mandates being present as a part of any contractual commitment to binding arbitration. The State's position highlights the inadequacy and inappropriateness of the VSEA proposal.

Section 926(d) of SELRA provides:

> Any collective bargaining agreement that contains a binding arbitration provision . . . shall include an acknowledgement of arbitration that provides substantially the following:
>
> **ACKNOWLEDGEMENT OF ARBITRATION**
>
> (The parties) understand that this agreement contains a provision for binding arbitration as a final step of the grievance process. After the effective date of this agreement, no grievance, submitted to binding arbitration, may be brought to the Vermont Labor Relations Board. . .

I interpret this statutory provision to provide that, in order for a binding arbitration provision to be valid, the binding arbitration provision and this "acknowledgment of arbitration" clause must be implemented at the beginning of the term of the collective bargaining agreement.

That is not the case with respect to the VSEA binding arbitration proposal since arbitration would not be implemented until the second year of the contracts.

I view this situation as analogous to the circumstances existing in VSEA and State of Vermont, 19 VLRB 114, 122 (1996). There, the State proposed a two-year agreement as part of its last best offer even though both parties only presented proposals for a one-year agreement throughout negotiations and to the fact finder. The Board cited the Section 925(i) of SELRA provision that "each party shall submit as a single package its last best offer on all disputed issues to the board", and concluded that the State offer was "seriously flawed" and prohibited by SELRA because the length of the contract was not a "disputed issue" in negotiations. Id. The Board determined as a result that it was required to accept VSEA's last best offer. Id. at 124.

Here, I recognize that the situation is not identical to the 1996 case because grievance arbitration has been a "disputed issue" during negotiations. Nonetheless, it is similar because the VSEA binding arbitration proposal does not comply with SELRA' s provisions and is deficient as a matter of law. This should contribute to an ultimate determination that VSEA's last best offers are seriously flawed and should not be accepted.

The final issue of significance has to do with overtime compensation. VSEA proposes, consistent with the recommendation of the fact finder, that the eligibility for premium overtime pay (i.e., 1.5 times regular wage rate) increases from paygrade 22 to paygrade 24. The State opposes this provision on the grounds that the State has linked this proposal, which costs the State money, with another proposal, which saved money, that addressed what time off would be regarded as "good time" for overtime purposes. The State contends that the separation of this linked proposal by the fact finder was an inappropriate action that should not be allowed to stand.

I concur with the State on this issue. There is a perverse result in implementing this proposal. The State desired to save money on overtime costs through its "good time" proposal and only offered the increase in eligibility for premium overtime as a linked proposal. The result of accepting VSEA's proposal is that the State does not receive what it desired in cost savings, and instead perversely has to absorb increased costs in overtime pay.

There are no other issues in dispute which have a significant effect on my weighing of the parties' respective last best offers. In sum, I conclude for the above reasons that the State offers are more reasonable and in the public interest.

/s/ Richard W. Park

Richard W. Park

DISSENTING OPINION

I respectfully dissent from my colleagues, and conclude that the State's last best offers are more reasonable and in the public interest. I agree with my fellow board member in his dissent concerning the grievance arbitration and overtime compensation issues, but disagree with his conclusions on the respective wage proposals.

I concur with the majority that the VSEA's wage proposal is more in line with the evidence presented relating to past and future inflation, movement of the consumer price index and pay raise determinations for other workers in Vermont's economy. However, when the wage package is considered together with the grievance arbitration provision and the enhanced overtime provisions contained in VSEA's last best offers, the effect is to disproportionally skew the results of the collective bargaining process to the benefit of the VSEA collective bargaining

units. This significantly impacts the labor relationship of the State and its workers and therefore is not in the public interest of the State of Vermont.

Therefore, I do not support choosing the VSEA's last best offers as being in the public interest. While sympathetic to the wage proposal, the overall package could have far more impact on labor relations within state government and the future cost of government services. Choosing the State's offers would not etch into stone a unilateral process and would allow the parties to negotiate a mutually acceptable dispute resolution process.

/s/ Robert Greemore

Robert Greemore

ATTACHMENT A

The State of Vermont and the Vermont State Employees' Association have agreed to the following list of tentative agreements reached during negotiations for successor agreements covering the Non-Management, Corrections, and Supervisory Units:

NON-MANAGEMENT UNIT
Article 5 No Discrimination or Harassment; and Affirmative Action - S to V 10/13/15
Article 7 Labor Management Committee – S to V 10/13/15
Article 27 On Call, Standby Duty and Available Status – V to S 10/13/15
Article 33 Injury on the Job – V to S 3/18/16
Article 56 Uniforms – V to S 9/22/15
Article 56 Uniforms – S to V 10/13/15
Article 57 Employee Hand Tools – V to S 10/13/15
Article 57 Employee Hand Tools – S to V 10/13/15
Article 68 Special Snow Season Status – S to V 3/18/16
Article 77 Short and Long Term Disability and Sick Leave Study – S to V 10/13/15
Appendix L Canine Feeding Time – Side Letter Agreement 9/11/15

CORRECTIONS UNIT
Article 5 No Discrimination or Harassment; and Affirmative Action – S to V 10/15/15
Article 7 Labor Management Committee – S to V 9/30/15
Article 20 Employee Workweek/Work Location/Work Shift – V to S 10/18/15
Article 24 Corrections Competency Training – S to V 3/17/16
Article 73 Accelerated Step Advancement – S to V 3/17/16

SUPERVISORY UNIT
Article 5 No Discrimination or Harassment; and Affirmative Action – S to V 10/15/15
Article 7 Labor Management Committee – S to V 10/15/15
Article 24 Corrections Competency Training – S to V 3/17/16
Article 29 Shift and Weekend Differential – V to S 9/30/15
Article 31 On Call, Standby Duty and Available Status – V to S 9/30/15
Article 41 Tuition Reimbursement – V to S 9/30/15
Article 61 Uniforms And Clothing – V to S 9/30/15
Article 61 Uniforms And Clothing – S to V 9/30/15
Article 62 Employee Hand Tools – V to S 9/30/15
Article 62 Employee Hand Tools – S to V 9/30/15
Article 76 Transportation Resident Engineer Allowance – S to V 9/30/15
Article 78 Special Snow Season Status – V to S 9/30/15
Article 78 Special Snow Season Status – S to V 9/30/15
Article 81 Accelerated Step Advancement – S to V 3/17/16

ATTACHMENT B

ESTIMATED COSTS AGREED UPON BY PARTIES OF STATE AND VSEA LAST BEST OFFERS

STATE LAST BEST OFFER

Non-Management Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 3,110,581	$ 3,993,870
Steps	$ 3,052,531	$ 6,045,156
Weekend Differential	$ 20,682	$ 20,682
Benefit Costs	$ 4,261,113	$ 4,679,211
TOTAL	**$10,444,907**	**$14,738,918**

The above costs are in addition to $43,109 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $10,488,016 in FY 2017 and $14,782,027 in FY 2018**. 1% has a value of $3,110,581 in FY 2017 and $3,195,096 in FY 2018.

Supervisory Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 684,479	$ 869,193
Steps	$ 779,508	$ 1,453,031
Lieutenant Proposal	$ 73,000	$ 103,161
Benefit Costs	$ 902,636	$ 990,320
TOTAL	**$ 2,439,623**	**$ 3,415,704**

The above costs are in addition to $5,713 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $2,445,336 in FY 2017 and $3,421,417 in FY 2018**. 1% has a value of $757,478 in FY 2017 and $773,587 in FY 2018.

Corrections Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 527,223	$ 676,935
Steps	$ 493,922	$ 1,024,614
Benefit Costs	$ 728,744	$ 800,687
TOTAL	**$ 1,749,889**	**$ 2,502,236**

The above costs are in addition to $289,000 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $2,038,889 in FY 2017 and $2,791,236 in FY 2018**. 1% has a value of $527,223 in FY 2017 and $541,548 in FY 2018.

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ATTACHMENT B (Continued)

ESTIMATED COSTS AGREED UPON BY PARTIES OF STATE AND VSEA LAST BEST OFFERS

VSEA LAST BEST OFFER

Non-Management Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 6,221,163	$ 7,260,143
Steps	$ 3,052,531	$ 6,361,657
Change in Premium Overtime	$ 460,590	$ 478,783
Benefit Costs	$ 4,261,113	$ 4,679,211
TOTAL	**$13,995,397**	**$18,779,795**

The above costs are in addition to $43,109 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $14,038,506 in FY 2017 and $18,822,904 in FY 2018**. 1% has a value of $3,110,581 in FY 2017 and $3,195,096 in FY 2018.

Supervisory Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 1,515,201	$ 1,768,251
Steps	$ 792,748	$ 1,549,419
Change in Premium Overtime	$ 373,691	$ 388,452
Benefit Costs	$ 902,636	$ 990,320
TOTAL	**$ 3,584,275**	**$ 4,696,441**

The above costs are in addition to $5,713 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $3,589,988 in FY 2017 and $4,702,154 in FY 2018**. 1% has a value of $757,478 in FY 2017 and $773,587 in FY 2018.

Corrections Unit	**FY 2017**	**FY 2018**
Across the Board Increase	$ 1,054,446	$ 1,230,547
Steps	$ 493,922	$ 1,078,259
Change in Premium Overtime	$ 14,855	$ 15,442
Benefit Costs	$ 728,744	$ 800,687
TOTAL	**$ 2,291,968**	**$ 3,124,935**

The above costs are in addition to $289,000 per fiscal year in costs for various provisions already agreed upon by the parties. This results in a **total cost of $2,580,968 in FY 2017 and $3,413,935 in FY 2018**. 1% has a value of $527,223 in FY 2017 and $541,548 in FY 2018.

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