To: Senate Education Committee
From: Joseph E. McNeil Esq., Employer Commissioners Chief Negotiator and Counsel
Re: S.226
Date: February 4, 2020

Good afternoon Chairman Baruth and Committee members:

Thank you for the opportunity to speak to you once again. I speak again on behalf of the Employer Commissioners. As the Employer Commissioners are aligned with the VSBA position on this matter, Chair Odell and I have divided our commentary as he indicated.

Thus, in addition to his comments, I would like to speak to Paragraphs 5, 7, 8 (b) and (c) and 9 of his January 24 submitted testimony, as well as to Section 4 of S.226 as introduced.

We believe that the statewide grievance procedure recommended by Paragraph 5, through which grievances are heard first by the Commission and then, if necessary, in arbitration is essential for developing a consistent jurisprudence regarding both agreements and imposed decisions under Act 11. We believe that allowing the individual districts to resolve interpretation and enforcement issues will inevitably result in conflicting decisions, thus emasculating the statewide force and effect of this statute.

It was my impression that the recommendation in Paragraph 7 to amend the composition of the arbitration panel created confusion for the Committee. I will thus attempt to clarify. What the Commission seeks with this proposed change is that the arbitration panel be constituted in the same manner as is currently established for Fact-Finding panels under the Labor Relations Act for Teachers, codified in 16 V.S. A. 2007 (b) and (c). Each side would appoint one panel member and if there is no agreement among them as to the third member, appointment would be made through the AAA rules and processes. Upon completion of the hearing, the panel members would deliberate and make a decision. In reality, the final decision will be made by the panel Chair, but informed through post hearing discussions/deliberation with the other panel members. Both school boards and Vt NEA have a long-time familiarity with this method. It will allow for a panel without the necessity of having the triple expense of all 3 members being chosen via AAA. While the Employer Commissioners would prefer that the two appointed panel members be Vermonters, this is a somewhat less critical component of the recommendation than the revised panel approach.

With regard to Paragraph 8 subsections (b) and (c), they are primarily about receiving decisions that offer a reasoned analysis of the parties' positions and why a particular recommendation was chosen. This sort of analysis is the modern standard for arbitration decisions and with so much taxpayer money at stake, compelling this type of analysis should not even be necessary, but our experience to date teaches otherwise. I will admit that the requirement of providing an actuarial value and the percentage increase in educational spending that will result is perhaps a bit daunting, but the requirement in subsection (c) for a full cost estimate of the submitted last best offers should not be so if the parties do their part and honestly provide their evidence of cost estimates.

Our primary point in Paragraph 9 continues to be that as representatives of school boards, the Employer Commissioners see their responsibility as providing excellent health care for eligible educational system employees at an affordable and sustainable cost. It has to believe that the Legislature has a similar goal for the results of this statutory process, but believes the statute can and should be more clear in this regard to avoid unnecessary mis-understandings.

Finally, the Employer Commissioners have anguished over the question of whether future arbitrations on health care should be on the basis of the "Solomon" (pick and choose among positions) model as recommended by Vt NEA and set forth in S.226 as introduced, or instead remain on the basis of the "baseball" (last best offer) approach currently set forth in Act 11. With great respect, we recommend staying with the current LBO system. In doing so, we are quite mindful of the arbitrator's declaration that had he been able to do so, he would not have chosen one party's submission in its entirety, but instead made selections from both submissions. We make our recommendation because we continue to believe that without the "nuclear deterrent" impact of an LBO process, many, many more future disputes will be taken to interest arbitration rather than being negotiated to the point of settlement.

Thank you for the privilege of once again offering testimony to the Committee. Once further advice is given as to the Committee's preferences, we will be happy to help the process by drafting statutory language for your consideration.