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To: Senate Education Committee  
From: Neil Odell, President  
Re: S.226  
Date: January 24, 2020

Thank you for the opportunity to testify. My name is Neil Odell and I am the President of the Vermont School Boards Association Board of Directors. Before I share with you the board's position on S.226, I would like to start with our organization's mission and vision.

**Vision:** The Vermont School Boards Association (VSBA) envisions a state where every student has access to and is engaged in a world-class education, where local boards provide student-focused oversight of education systems, and where educators, families and communities are engaged partners, ensuring that the futures of all Vermont children are driven by their aspirations, not bound by their circumstances.

**Mission:** The VSBA works to achieve our vision for public education by supporting local and supervisory union boards to be effective trustees for their communities, and by providing a strong collective voice toward enhancing the cause of public education in Vermont.

## Staff

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The VSBA has a 24 member board of directors: a president, immediate past president and 22 regional representatives – 2 representatives elected by school board members from each of 11 regions. The VSBA is governed by bylaws, resolutions and policies. In the absence of a resolution on a particular topic, the VSBA board provides guidance to VSBA staff.

Act 11 required the VSBA to appoint five representatives of school employers to the Commission on Public School Employee Health Benefits (Employer Commissioners). The Employer Commissioners provided testimony to the Senate Education Committee on January 8, 2020 through their chief negotiator, Joseph McNeil, Esq., who reported on suggested modifications to the statewide bargaining process.

## **Concerns About Implications of Arbitrator's Decision**

For the past five years, school boards have been working to bring school employees' health benefits in line with those that are recognizable by other Vermonters. The arbitrator's decision in statewide bargaining reverses that progress and essentially recreates the plans school employees had in the past, causing serious cost considerations.

Most school employees are better off under this award than in 2017: compared to health care costs that school employees had under the VHP plan, they now have: lower premium costs, lower out of pocket costs (no more co-pays, no more first dollar out of pocket costs and deductible amounts have been held level since 2018) and more plan options available (parent/child, e.g.).

## **Requested Additions to S.226**

The VSBA requests the following changes to Act 11 which include the modifications suggested by the Employer Commissioners and a few additional changes identified by the VSBA. These changes should be incorporated into S.226 in order to clarify Act 11 and improve the process:

1. **Covered Employees:** Amend 16 V.S.A. §2101(2) to clarify that "school employee" includes all employees of public schools who meet the eligibility threshold established by the statewide benefit. The current language does not include supervisory, confidential, and certified employees such as business managers, food service directors, and certified therapists and this has caused confusion about whether these employees' benefits fall within (1) licensed teachers and administrators or (2) municipal employees.
2. **Employee Representation:** Amend 16 V.S.A. §2102(b)(2)(A)(i) to read:
  - a. four members appointed by the labor organization representing the greatest number of teachers, administrators, and municipal employees in this State, provided that at least one of the members shall be a licensed administrator.

The current language states that licensed administrators are covered school employees but it does not provide for their representation on the Commission.

3. **Alternates:** Amend 16 V.S.A. §2102(b) to clarify that Commission alternates shall not be permitted unless both parties agree to include them in the ground rules for the negotiation.
4. **Commission:** Strike provisions (d), (f) and (h) of 16 V.S.A. §2102.
  - (d) states that members of the Commission may be removed only for cause and that the Commission shall adopt rules pursuant to 3 V.S.A. Chapter 25 to define the basis and process for removal. Since Commission members are appointed for six-year terms, it is important for the appointing bodies to have the ability to remove a member who is not meeting expectations.
  - (f) states that Commission members shall be entitled to receive per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010. This entitlement was not funded by the legislature, thereby burdening VSBA (a non-profit membership



organization) with the cost. If the legislature is not going to fund this entitlement, it should be removed.

(h) states that the Commission may adopt rules or procedures, or both, pursuant to 3 V.S.A. chapter 25 as needed to carry out its duties. This language is unnecessary in the case of this Commission which exists for the purpose of collective bargaining of a statewide benefit.

5. **Scope of Bargaining:** Amend 16 V.S.A. §2103 by inserting a provision that would require the Commission to negotiate a grievance procedure for the statewide benefit, as well as cash-in-lieu of health insurance.

Act 11 does not contain a mechanism for resolving grievances relating to the interpretation and enforcement of its resulting agreement or award. Potentially conflicting interpretations arising from district by district grievance decisions should be precluded to avoid confusion.

Since Act 11 does not explicitly set forth cash-in-lieu of health insurance as within the duties of the Commission, there was disagreement about whether or not the Commission could address this topic. Clarifying the statute would allow the Commission to negotiate cash-in-lieu of health insurance, an important topic to address on a statewide basis when a statewide benefit is being provided.

6. **Timing:** Amend 16 V.S.A. §2104(a)(1) to indicate that negotiations shall commence no later than October 15 of the year before the process is required to conclude. Amend 16 V.S.A. §2105(b)(3)(A) to require the arbitrator to hold a hearing prior to August 15 in the year before the agreement is set to expire. Modify other dates in the Act to conform with this timeline. Concluding the process in mid-December is too late in the year for effective budget development by the impacted school districts.
7. **Arbitration Panel Composition:** Amend 16 V.S.A. §2104(a)(3)(B)(ii) to require that if the parties cannot agree on an arbitrator, a panel will be created, which shall be constituted as follows:
  - a. One panelist selected by the Employer Commissioners who is a Vermont resident but is not an employee or consultant of the Vermont School Boards Association;
  - b. One panelist selected by the Employee Commissioners who is a Vermont resident but is not an employee or consultant of the Vermont-NEA or AFSCME; and
  - c. An arbitrator appointed by the American Arbitration Association.
8. **Arbitration Process:** Amend 16 V.S.A. §2105(b) as follows:
  - a. (b)(2): The representatives of school employees and the representatives of school employers shall submit to the arbitrator or arbitrators their last best offer on all issues remaining in dispute prior to the arbitration hearing. The arbitrator or arbitrators shall select one of the last best offers submitted by the parties prior to



the arbitration hearing in its entirety without amendment. The parties shall not be permitted to modify their last best offers post-hearing.

- b. (b)(3)(B): In reaching a decision, the arbitrator or arbitrators shall give weight to the evidence, documents, written material, and arguments presented, as well as the following factors: (vi) the actuarial value of the health benefits for the full term of the award proposed by each party as compared to health plans available through Vermont Health Connect; and (vii) the percentage increase in education spending that is likely to occur under either party's proposal for the full term of the award as compared to overall economic growth for the State of Vermont.
- c. (b)(4): The arbitrator or arbitrators shall issue their decision within 30 days after the hearing. The decision shall include a full cost estimate for the full term of the award for each of the last best offers submitted by the parties and a full explication of the basis for the decision. The cost estimate shall include a breakdown of costs borne by employers and costs borne by employees.

In the process that recently concluded, the arbitrator permitted the parties to change their last best offers post hearing but did not require them to provide an economic analysis of their final offers. The above change would ensure that the arbitrator has all of the evidence necessary to consider the factors set forth in 16 V.S.A. § 2105(b)(3)(B).

- 9. **Legislative Intent:** Strike subsection (a) of Section H.23 of Act 11 of 2018. It will be confusing for the next arbitrator to have this statement of legislative intent which was intended to address the first round of statewide bargaining for health benefits. Guidance to the arbitrator should be what is currently set forth under 16 V.S.A. §2105(b)(3)(B).

Subsection (a) of Section H.23 of Act 11 of 2018 states that in recognition of the existing disparities in health care benefits between different supervisory unions and school districts and between different categories of employees within the same supervisory unions and school districts, it is the intent of the General Assembly that the Commission on Public School Employee Health Benefits endeavor to transition school employees and school employers to more equitable health care coverage statewide in a manner that is fair and practicable for all parties involved.

16 V.S.A. § 2105(b)(3)(B) states “In reaching a decision, the arbitrator or arbitrators shall give weight to the evidence, documents, written material, and arguments presented, as well as the following factors:

- (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.



**10. Compensation for Commissioners and Commission Expenses:** The legislature should appropriate sufficient funds to cover the costs of this process, including but not limited to the costs of Commissioners' per diem and expenses, fiscal analysis, mediator, factfinder, arbitrator, and attorneys' fees, which are estimated to be \$175,000 for the Vermont School Boards Association.

### **Feedback on S.226 As Introduced**

Section 1: VSBA is not opposed to the proposed change which requires a school district that employs a member of the Commission to grant the Commission member time off to attend meetings of the Commission but there are associated costs to the school district employers, including substitute pay. If the Committee is considering this change, equal consideration should be given to appropriating sufficient funds to covering the costs of the Employer Commissioners' per diem and expenses.

Section 2: VSBA does not support the proposed change which would allow premium responsibility percentage for each plan to differ among participating employees based on the amount of the employee's salary. This change would add a new administrative burden to school districts. Further, an employee's salary may not be an accurate indicator of ability to pay.

Section 3: VSBA does not support the proposed change which would impose strict timelines and reporting orders on school districts, especially in the middle of budget season (November – February). There will be no need to impose reporting requirements in this time period if the timeline is changed as set forth in 6, above.

Section 4: VSBA does not support the proposed changes allowing the arbitrator(s) to select the recommendations of the fact finder or select among the last best offers which both discourage settlement and make the process less predictable. Rather, VSBA supports adding an arbitration panel as recommended in 7, above. Having Vermonters on the panel will ensure that the award reflects the best interests of Vermont.

### **Conclusion**

Thank you for the opportunity to testify today. In addition to the information provided today, VSBA would like the opportunity to testify at another time about problems with the functioning of the VEHI Board which is a closely related topic that must be addressed.

