To: Senate Education Committee
From: Joe McNeil, Chief Negotiator, Act 11 Employer Commissioners
Neil Odell, President, VSBA
Re: S.226, Draft 1.1
Date: February 14, 2020

We are writing to express strong concerns about Draft 1.1 of S.226. While the Committee Chair requested that we submit additional requests to the Committee for consideration for inclusion into S.226, we will refrain from doing so until we are satisfied that the Committee's bill does in fact address the areas of mutual agreement between the parties. Version 1.1 does not. As a reminder, here are the areas of agreement between the Employer Commissioners and the Vermont-NEA:

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. Strike provision (d) and (f) of 16 V.S.A. §2102.
    a. (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.
    b. (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 VSBA S.226 Testimony 1/24/20 Page 3 organization) with the cost. If the legislature is not going to fund this entitlement, it should be removed.
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. Alternatively, the number of alternates given to each side would be limited by statute.

Our specific concerns are as follows:

1. **The creation of the term "unionized employee"** (pg 1, line 13-18): The use of this term throughout the bill is very problematic and has the effect of excluding employees from the process, whereas the agreement we had with the Vermont-NEA was to ensure all employees are covered and can participate in the process.
    a. We do not see any need to change the definitions as they currently exist in the law; we are asking for an addition to the definitions that states that supervisory or managerial employees who are otherwise not covered by the definition of school employee under (2)(A) or (B) be treated as a school employee under (2)(A), and that non-supervisory or confidential employees who otherwise are not covered by the definition of school employee under (2)(A) or (B) would, for the purposes of this provision of law, be treated as employees under (2)(B). This language would solve the "loophole" problem we identified regarding business managers, executive assistants, food service directors, etc.

b. The term "unionized employee" as it is used in Draft 1.1 would have the following effects:
    i. Exclude all superintendents and managers who are not organized in a bargaining unit from the arbitrator's award (see page 10, line 21). **This is inconsistent with the original intent of Act 11 and is not supported by both parties.**
    ii. Exclude all support staff who are not organized in a collective bargaining unit from the arbitrator's award (see page 10, line 21). **This is inconsistent with the original intent of Act 11 and is not supported by both parties.**
    iii. Prevent superintendents and business managers from ever being appointed to serve as Employee Commissioners. **This is inconsistent with the original intent of Act 11 and is not supported by both parties.**
c. Furthermore, it is not clear how "participating employees" are different from "unionized employees" – what is the intent here? The practical effect is to exclude all non-union employees from the process, but if the parties agree and do not go to arbitration they are covered by the agreement? **This is inconsistent with the original intent of Act 11 and is not supported by both parties.**
    i. If it is the intent to exclude superintendents and supervisory employees from the statewide health insurance, then the bill should explicitly say so in order to avoid confusion. It would not be proper to exclude these employees from representation at the table, which this bill would do, while still requiring them to be covered by a benefit that they had no role in negotiating. This is inconsistent with the fundamental tenets of labor law, which require employees to be represented in negotiations with their employers.

2. **Release time** (pg 4, line 15)**:** The parties did not agree to this language.
3. **Modification of proposals post-hearing.** We are fine with this language but disagree with the use of the term "unionized employee" as stated above.
4. **Arbitrator's Decision** (pg 10, line 14): The parties did not agree to this language. We think this language will further confuse the conversation about whether cost should be considered by the arbitrator. Terms such as "appropriate detail" and "may include observations" are vague and not helpful to the process.