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H.63

Introduced by Representative Conlon of Cornwall

Referred to Committee on

Date:

Subject: Education; collective bargaining; Commission on Public School
Employee Health Benefits

Statement of purpose of bill as introduced: This bill proposes to make various
changes to the process for statewide collective bargaining for public school
employee health benefits.

An act relating to statewide public school employee health benefits

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 16 V.S.A. § 2101 is amended to read:

§ 2101. DEFINITIONS

As used in this chapter:

(1) “Participating employee” means a school employee who is eligible
for and has elected to receive health benefit coverage through a school
employer.

(2) “School employee” ~~means:~~

(A) includes the following individuals:

1 ~~(A)~~(i) an individual employed by a ~~supervisory union or school~~
2 ~~district~~ employer as a teacher or administrator as defined in section 1981 of
3 this title; ~~or~~

4 ~~(B)~~(ii) a municipal school employee as defined in 21 V.S.A. § 1722;

5 (iii) an individual employed as a supervisor as defined in
6 21 V.S.A. § 1502;

7 (iv) a confidential employee as defined in 21 V.S.A. § 1722;

8 (v) a certified employee of a school employer; and

9 (vi) any other permanent employee of a school employer not
10 covered by subdivisions (i)–(v) of this subdivision (2); and

11 ~~(B)~~ notwithstanding subdivision (A) of this subdivision (2), excludes
12 individuals who serve in the role of superintendent or in the role of the primary
13 school business official for a school employer.

14 (3) “School employer” means a supervisory union or school district as
15 those terms are defined in section 11 of this title.

16 Sec. 2. 16 V.S.A. § 2102 is amended to read:

17 § 2102. COMMISSION ON PUBLIC SCHOOL EMPLOYEE HEALTH

18 BENEFITS CREATED

19 * * *

20 (b) Composition and appointment.

1 (1) The Commission shall have 10 members, of whom five shall be
2 representatives of school employees and five shall be representatives of school
3 employers.

4 (2)(A) The representatives of school employees shall be appointed as
5 follows:

6 (i) four members appointed by the labor organization representing
7 the greatest number of ~~teachers, administrators, and municipal~~ school
8 employees in this State, provided that at least one of the members shall be a
9 licensed administrator; and

10 (ii) one member appointed by the labor organization representing
11 the second-greatest number of ~~teachers, administrators, and municipal~~ school
12 employees in this State.

13 (B) The five representatives of school employers shall be appointed
14 by the organization representing the majority of ~~the~~ public school boards in
15 this State.

16 * * *

17 (d) Removal of Commission members. Members of the Commission may
18 be removed ~~only for cause. The Commission shall adopt rules pursuant to 3~~
19 ~~V.S.A. chapter 25 to define the basis and process for removal~~ by the
20 appointing authority of the member without cause.

21 * * *

1 (f) Compensation. Commission members shall be entitled to receive per
2 diem compensation and reimbursement of expenses ~~pursuant to~~ as permitted
3 under 32 V.S.A. § 1010 for not more than 20 meetings per year.

4 * * *

5 (h) ~~Rulemaking. The Commission may adopt rules or procedures, or both,~~
6 ~~pursuant to 3 V.S.A. chapter 25 as needed to carry out its duties under this~~
7 ~~chapter.~~ Alternate members. Not more than two alternate members may be
8 appointed on behalf school employees and on behalf of school employers,
9 respectively. An alternate member may serve in the role as a member
10 appointed under subsection (b) of this section only in the absence of that
11 appointed member and shall not otherwise have participation or voting rights
12 in Commission business or attend or participate in joint negotiation sessions
13 between employer and employee members appointed under subsection (b) of
14 this section.

15 (i) Funding. The Commission shall request the Governor to include in the
16 Governor's annual budget a minimum of \$25,000.00 appropriated to the
17 Agency of Education for per diem compensation and reimbursement of
18 expenses for members of the Commission. Any unencumbered appropriation
19 shall revert to the General Fund in the year following the conclusion of an
20 agreement under subdivision 2104(b)(1) of this title.

1 Sec. 3. APPROPRIATION

2 The sum of \$25,000.00 is appropriated to the Agency of Education from the
3 General Fund for fiscal year 2022 for per diem compensation and
4 reimbursement of expenses for members of the Commission.

5 Sec. 4. 16 V.S.A. § 2103 is amended to read:

6 § 2103. DUTIES OF THE COMMISSION

7 (a) The Commission shall determine the percentage of the premium for
8 individual, two-person, parent-child, and family coverage under a health
9 benefit plan that shall be borne by each school employer and the percentage
10 that shall be borne by participating employees.

11 (1) The premium responsibility percentages shall remain in effect for ~~the~~
12 ~~entire plan~~ each year commencing July 1 and ending on June 30.

13 (2) Each school employer shall be responsible for paying, on behalf of
14 all of its participating ~~school~~ employees, the applicable percentages of
15 premium costs as determined by the Commission.

16 * * *

17 (b)(1) The Commission shall determine the amount of ~~school~~ participating
18 employees' calendar year out-of-pocket expenses for which the school
19 employer and the ~~school~~ participating employees shall be responsible, and
20 whether school employers shall establish a health reimbursement arrangement,
21 a health savings account, both, or neither, for their participating employees.

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(d) The Commission shall not make any determinations regarding school employer or ~~school~~ participating employee responsibilities with respect to stand-alone vision or dental benefits.

(e) The Commission shall negotiate a statewide grievance procedure for disputes concerning public school employee health benefits.

(f) Any cash payments in lieu of receipt of healthcare benefits shall be determined by the Commission on a statewide basis. In no case shall an employee receive cash in lieu of receipt of healthcare benefits from one school employer while simultaneously receiving health care benefits from another school employer.

Sec. 5. 16 V.S.A. § 2104 is amended to read:

§ 2104. NEGOTIATION; TIME TO BEGIN; GOOD FAITH; WRITTEN
AGREEMENT

(a)(1) The Commission shall commence negotiation of the matters set forth in subsections 2103(a) and (b) of this chapter not later than April 1 of the year before the existing agreement pursuant to this section is set to expire.

(2) The Commission shall meet together at reasonable times at the call of the Chairs to first agree on ground rules for the negotiations and thereafter shall negotiate in good faith on all matters set forth in subsections 2103(a) and (b) of this chapter.

1 (3)(A) ~~The~~ As a part of its ground rules, the Commission shall select a
2 person to serve as a mediator and a person to serve as a fact finder to assist it in
3 resolving any matters remaining in dispute in the event that the Commission is
4 unable to reach an agreement ~~by August 1~~. Mediation may occur at the request
5 of either the employer or employee members if no agreement has been reached
6 on or before June 1. The factfinding hearing shall be completed on or before
7 August 1, and the factfinder's report and recommendations shall be delivered
8 to the parties on or before September 1. The mediator and fact finder shall be
9 selected by a vote of a majority of the representatives of school employees and
10 of a majority of the representatives of school employers. If the Commission
11 cannot agree on a mediator or fact finder ~~by on or before April 5, the American~~
12 ~~Arbitration Association shall be asked to appoint the fact finder~~ appointment
13 shall be made utilizing the American Arbitration Association's selection
14 process.

15 (B)(i) The Commission shall mutually agree on an ~~arbitrator by~~
16 arbitration panel on or before April 5 to decide all matters remaining in dispute
17 if it is unable to reach an agreement within 30 days after receiving the fact
18 finder's report.

19 (ii) If the Commission is unable to mutually agree on an ~~arbitrator~~
20 arbitration panel, it shall form a three-member panel of arbitrators to be
21 selected as follows:

1 (I) One ~~arbitrator~~ panelist shall be selected by the
2 representatives of school employees ~~from a list prepared by the American~~
3 ~~Arbitration Association~~ who is a Vermont resident but is not an employee of or
4 consultant for the labor organization representing the greatest number of
5 school employees in the State or the labor organization representing the second
6 greatest number of school employees in the State.

7 (II) One ~~arbitrator~~ panelist shall be selected by the
8 representatives of school employers ~~from a list prepared by the American~~
9 ~~Arbitration Association~~ who is a Vermont resident but is not an employee of or
10 consultant for the organization representing the majority of public school
11 boards in the State.

12 (III) The ~~Commission shall request the services of the~~
13 ~~American Arbitration Association for the appointment of the third arbitrator~~
14 Chair of the Vermont Labor Relations Board shall designate one of the
15 Vermont Labor Relations Board's neutral members to serve as the Chair of the
16 arbitration panel.

17 (b)(1) The Commission shall enter into a written agreement incorporating
18 all matters agreed to in negotiation.

19 (2) The terms of the agreement or arbitration panel's award shall be
20 deemed to be incorporated by reference into all collective bargaining
21 agreements for school employees, which shall include a reference to the

1 availability of the agreement or arbitration panel's award on the websites of the
2 appointing authorities.

3 * * *

4 Sec. 6. 16 V.S.A. § 2105 is amended to read:

5 § 2105. DISPUTE RESOLUTION

6 (a)(1) ~~If the Commission is unable to reach agreement by August 1, the~~
7 ~~Commission shall meet with the fact finder selected pursuant to section 2104~~
8 ~~of this chapter not later than August 15.~~

9 (2) The fact finder may schedule and hold ~~additional~~ meetings with the
10 Commission as necessary. The Commission shall furnish the fact finder with
11 all records, papers, and information in its possession pertaining to any matter
12 remaining in dispute.

13 (3)(2) The fact finder shall, before issuing his or her decision, attempt to
14 mediate the matters remaining in dispute, provided that both the employer and
15 employee members agree to mediation by the fact finder.

16 (4)(3) ~~If mediation fails to produce an agreement~~ no agreement has been
17 reached, the fact finder shall, on or before September 15 1, submit a written
18 report to the Commission recommending a reasonable basis for the settlement
19 of the matters remaining in dispute.

20 (b)(1) If the Commission is unable to resolve all matters remaining in
21 dispute within 30 days after receiving the fact finder's report, the Commission

1 shall submit the matters remaining in dispute to the ~~arbitrator or arbitrators~~
2 arbitration panel selected pursuant to section 2104 of this chapter for
3 resolution.

4 (2) The representatives of school employees and the representatives of
5 school employers shall submit to the ~~arbitrator or arbitrators~~ arbitration panel
6 their last best offer on all issues remaining in dispute prior to the arbitration
7 hearing. The ~~arbitrator or arbitrators~~ arbitration panel shall select one of the
8 last best offers without amendment submitted by the parties prior to the
9 arbitration hearing in its entirety ~~without amendment~~. The parties shall not be
10 permitted to modify their last best offers post-submission. Prior to the
11 issuance of the arbitration panel's decision, nothing shall prohibit the parties
12 from settling the matters in dispute.

13 (3)(A) The ~~arbitrator or arbitrators~~ arbitration panel shall ~~hold a~~
14 complete its hearing on or before ~~November 15~~ October 15 at which the
15 Commission members shall submit all relevant evidence, documents, and
16 written material, including a full cost estimate for the full term of the proposal
17 with a breakdown of costs borne by employers and costs borne by employees
18 on a statewide basis, and each member may submit oral or written testimony in
19 support of his or her position on any undecided issue that is subject to
20 arbitration.

1 (B) In reaching a decision, the ~~arbitrator or arbitrators~~ arbitration
2 panel shall determine which of the two submissions most appropriately
3 balances appropriate access to health care benefits and reasonable cost
4 containment to ensure the financial sustainability of the plan. The arbitration
5 panel shall also give weight to the evidence, documents, written material, and
6 arguments presented, as well as the following factors:

7 (i) the interests and welfare of the public;

8 (ii) the financial ability of the Education Fund and school districts
9 across the State to pay for the costs of health care benefits and coverage;

10 (iii) comparisons of the health care benefits of school employees
11 with the health care benefits of similar employees in the public, nonprofit and
12 private sectors in Vermont;

13 (iv) the average consumer prices for goods and services
14 commonly known as the cost of living; ~~and~~

15 (v) prior and existing health care benefits and coverage for school
16 employees;

17 (vi) the actuarial value of the health benefits for the full term of
18 the award proposed by each party as compared to health plans available
19 through Vermont Health Connect; and

1 (vii) the percentage increase or decrease in education spending
2 that is likely to occur under either party's proposal for the full term of the
3 award as compared to overall economic growth for the State of Vermont.

4 (4) The ~~arbitrator or arbitrators~~ arbitration panel shall issue ~~their~~ its
5 written decision within 30 days after the hearing. The decision shall include
6 the full cost estimates for the full term of the award for each of the last best
7 offers submitted by the parties and a full explication of the basis for the
8 decision. The full cost estimates shall include a breakdown of costs borne by
9 employers and costs borne by employees on a statewide basis. The decision of
10 ~~the arbitrator or arbitrators~~ arbitration panel shall be final and binding upon the
11 Commission and all school employees and school employers. The decision
12 shall not be subject to ratification.

13 (5) Upon the petition of a ~~Commission member~~ majority of the
14 employer or the employee members within not more than 15 days following
15 the arbitration decision, a Superior Court shall vacate the decision if:

16 (A) it was procured by corruption, fraud, or other undue means;

17 (B) there was evident partiality or prejudicial misconduct by the
18 ~~arbitrator or~~ arbitration panel or by one or more individual arbitrators;

19 (C) the ~~arbitrator or arbitrators~~ arbitration panel exceeded ~~their~~ its
20 power or rendered a decision requiring a person to commit an act or engage in
21 conduct prohibited by law; or

1 (D) there is an absence of substantial evidence on the record as a
2 whole to support the decision.

3 (6) At any time prior to the issuance of a decision by the ~~arbitrator or~~
4 ~~arbitrators~~ arbitration panel, the Commission may notify the ~~arbitrator or~~
5 ~~arbitrators~~ panel of any additional issues on which a majority of the
6 representatives of school employees and of the representatives of school
7 employers have reached agreement.

8 (7) If any provision of this subsection is inconsistent with any other
9 provision of law governing arbitration, this subsection shall govern.

10 (c) The ~~arbitrator or arbitrators~~ Vermont Labor Relations Board shall have
11 the authority to address complaints that either party has engaged in or is
12 engaging in unfair bargaining practices, including a refusal to bargain in good
13 faith. If the ~~arbitrator or arbitrators find~~ Board finds upon a preponderance of
14 the evidence that a party has engaged in or is engaging in any unfair bargaining
15 practice, ~~the arbitrator or arbitrators~~ it may include in the decision a remedy for
16 the unfair bargaining practice that is consistent with the provisions of
17 21 V.S.A. § 1727(d).

18 Sec. 7. EFFECTIVE DATE

19 This act shall take effect on passage.