

March 9, 2021

TO: Vt. Senate Committee on Education c/o Jeanne Lowell, Admin. Asst.
FROM: Joseph E. McNeil Esq., Employer Commissioners Chief Negotiator
RE: Technical Correction to H 81
DATE: March 9, 2021

Dear Mr. Chairman and Committee members:

My testimony today relates to what I believe to be a technical flaw in the wording of Section 5 a, which amends 16 VSA 2104 relating to the appointment of a last best offer (LBO) hearing panel in the event no agreement has been reach following direct bargaining, mediation and Factfinding.

Vermont NEA representatives Jeff Fannon Esq. and Suzanne Dirmaier and I met with House General Affairs Committee Chairman Stevens concerning this possible eventuality. The VSBA and the Employer Commissioners had been advocating that the VLRB should become the sole LBO forum rather than AAA arbitrators. Vermont NEA opposed this position in favor of continued use of AAA arbitrators. The compromise that both sides indicated to Chair Stevens they could live with was to make the VLRB a forum which could be used for LBO by mutual agreement, but in the absence thereof the default would be to either a single AAA arbitrator (if the parties agreed upon the individual) or a three member panel. For the round of negotiations beginning in April of this year, the panel would be appointed utilizing the AAA selection process. For rounds of negotiations thereafter, the Employee and the Employer Commissioners would each appoint a representative of their choosing, with the third panel member being selected through the AAA process if the parties could not agree on the selection of this individual.

Unfortunately, the actual language used in the Bill to reflect the above creates an ambiguity which we believe needs to be corrected. Section 2104 indicates only that the VLRB, a single arbitrator or an arbitration panel will be selected for the LBO process, but does not specify what the default will be if, for example, the parties cannot agree upon use of the VLRB or a particular arbitrator. To correct this ambiguity, the Employer Commissioners and VSBA recommend the following language correction in Section 2104 3 (b) (ii):

Section 5a, 16 V.S.A. 2104 3 (b) (ii) is hereby amended to read as follows: If the Commission is unable to agree on an arbitrator, it shall either request the Vermont Labor Relations Board (VLRB) to decide all matters remaining in dispute or, if the Commission does not agree to use the VLRB, form a three-member panel of arbitrators to be appointed as follows:

Hopefully, the Vermont NEA representatives present today will concur that this amendment as necessary to eliminate the unintended ambiguity present in the House passed version of the Bill. Thank you for your consideration.