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VERMONT EMPLOYEE HEALTH CARE *
COMMISSIONERS *
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VERMONT EMPLOYER HEALTH CARE *
COMMISSIONERS *
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FACT FINDING REPORT AND RECOMMENDATIONS

BEFORE: John B. Cochran, Esq.

APPEARANCES:

For the Employee Commissioners: Rebecca P. McBroom, Esq.

For the Employer Commissioners: Joseph E. McNeil, Esq.
Colin K. McNeil, Esq.

HEARING DETAILS:

Dates of Hearing: August 10, 11 & 12, 2021

Location of Hearing: Virtual

INTRODUCTION

Pursuant to 16 V.S.A., Section 2104, the Employer and Employee members of the Vermont Commission on Public School Employee Health Benefits engaged in negotiations for an

agreement¹ covering the items set forth in Section 2103 of Chapter 16, including three days of intensive negotiations with a facilitator. Although the parties reached agreement on many issues, several key issues remained in dispute, and the parties mutually selected me to serve as a fact finder pursuant to Section 2104(a)(3)(A). I met with the parties virtually on July 7, 2021 in an effort to mediate the issues remaining in dispute. Because that mediation did not result in a settlement, I conducted a fact finding hearing on August 10, 11, and 12, 2021. Both parties presented extensive witness testimony and documentary evidence in support of their respective positions, and both submitted post-hearing briefs setting forth arguments in support of their respective positions.

Although there is no magic formula for determining the appropriate allocation of premium costs or OOP expenses between school districts and public school employees or other issues that remain in dispute following the parties' negotiations, 16 V.S.A., Section 2105((b)(3)(B) enumerates the following factors that should be considered:

- (i) The interests and welfare of the public

¹ The agreement would cover the period of January 1, 2023 to December 31, 2025.

- (ii) The financial ability of the Education Fund and school districts across the State to pay for the cost 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 price for goods and services commonly known as the cost of living, and
- (v) Prior and existing health care benefits and coverage for school employees

Accordingly, in making my recommendations on the issues in dispute, I must consider these factors in light of the evidence and arguments submitted by the parties.

THE HISTORY OF PUBLIC SCHOOL EMPLOYEE HEALTH CARE BARGINING IN VERMONT

To put my recommendations in context, it is instructive to briefly summarize the evolution of health insurance bargaining for public school employees in Vermont. Prior to 1993, local school districts and the unions representing their employees negotiated directly about health care plans for unionized public school employees. As health insurance costs continued to rise, health insurance negotiations at the local level became more challenging. Therefore, in the 1990's, the Vermont NEA and the Vermont School Boards Insurance Trust (VSBIT) jointly created the Vermont Education

Health Initiative (VEHI) to negotiate with Blue Cross/Blue Shield and to offer uniform health insurance plans for all public school employees in the state. For many years, the plans VEHI negotiated and offered were high premium, low deductible plans with modest co-pays, including the Blue Cross/Blue Shield JY plan and, subsequently, the Vermont Health Partnership Dual Option Plan (VPH). Although VEHI has been responsible for negotiating the available health insurance plans, each school district continued to negotiate with public school unions about how the VEHI plan offerings would be implemented for school employees and how the cost of those plans would be allocated between the employees and the school districts.

Despite the efforts of VEHI to contain health insurance costs for school districts and their employees, health insurance premiums continued to rise. Accordingly, in 2017, the Vermont Legislature enacted Act 85, which penalized school districts that negotiated contracts with their employees that did not have employees paying at least 20% of the premiums and did not limit the amount of assistance districts could give toward out-of-pocket (OOP) expenses so that employees would have OOP liability of no more than \$400 for single coverage, \$800 for two-person coverage, and \$1200 for family coverage. That legislation projected a savings

of \$26 million. If a district failed to meet its saving goals by agreeing to benefits that did not meet the goals in Act 85, it would lose a portion of its allocation from the State Education Fund.²

The enactment of the Affordable Care Act (ACA) and the continuing rise of health insurance costs prompted VEHI to re-think its existing insurance plan offerings and to explore alternatives that would slow down overall premium growth by offering "consumer directed" plans that would increase the OOP expenses that employees would have to pay on the theory that larger OOP liability for employees would cause employees to become better consumers, which, in turn, would reduce premiums by lowering utilization and overall health care costs. Accordingly, in 2018, VEHI switched from its existing plans and began offering new plans with lower premiums, higher deductibles, and higher OOP maximums.³ However, the parties at the district level continued to negotiate over the implementation of these plans, including premium splits, OOP expenses, and who would pay the first dollar toward the OOP

² Many districts continued to agree to health insurance benefits that did not meet the goals set by Act 85.

³ The Gold CDHP and the Silver CDHP are the plans selected by most of the school employees in the state, although VEHI also offers coverage through Platinum and Gold non-CDHP plans.

expenses.

In 2018, the Legislature enacted Act 11, 16 V.S.A, Section 2101, *et seq*,⁴ which created a Commission on Public School Employee Health Benefits (Commission) to determine the amounts of premiums and OOP expenses that would be paid by school districts and public school employees throughout the state. The Commission consists of ten members, five who represent school districts and five who represent school employees. The Commission is charged with determining the percentage of health insurance premiums that will be paid by all school districts and all public school employees in the state and the amount of OOP expenses each shall pay in any calendar year. In addition, the Commission has the authority to negotiate a statewide grievance procedure for disputes concerning public school employee health insurance benefits. If the Employer and Employee Commissioners are unable to reach agreement on these items, the statute provides for mandatory fact finding and last best offer arbitration to resolve those disputes.

Unlike many administrative bodies, the Commission is comprised of ten members who serve in a partisan capacity as appointees of either school districts or public school

⁴ In 2021, the Legislature enacted Act 7, which amended Act 11.

employee organizations. Therefore, even though they share the same goals of identifying health care benefits that are affordable and equitable for all parties, they often do not agree about what level of benefits and cost sharing will best achieve those goals for their respective constituents. It was those differences that led to an impasse between the Employer and Employee Commissioners during their initial round of statewide bargaining for public school health benefits in 2019 and resulted in an arbitrator selecting the Employee Commissioner's last best offer, which established the *status quo* for the parties' current round of statewide bargaining.

Once again, the parties have reached an impasse in their negotiations over several key issues, which include:

1. Premium Cost Sharing
2. Out of Pocket Share
3. Eligibility
4. Cash In Lieu of Cap
5. Statewide Grievance Procedure for Health Care Issues

Therefore, I must make recommendations on each of these issues.

STATEWIDE BARGAINING OVER HEALTH CARE BENEFITS FOR PUBLIC SCHOOL EMPLOYEES

It is important for both parties and their constituents

to recognize that no recommendations I make here and no agreement the Employer and Employee Commissioners may ultimately reach will be perfect when applied to every school district. The practical reality is that school districts and their employees are all different and there is no "one size fits all" level of insurance benefits that will affect each district and bargaining unit employee in an identical way.

Traditionally, school districts and the unions representing their employees negotiated over health care insurance benefits at the local level as part of overall negotiations for a comprehensive collective bargaining agreement. That system provided the parties the flexibility to consider health insurance cost sharing along with wages and other economic benefits as part of a total compensation package. The current system, however, presents a unique challenge for both the Employer and Employer Commissioners. They are charged with negotiating a single economic issue for all public school employees in the state, without necessarily having the benefit of detailed information about all of the unique financial constraints facing individual school districts, the extent to which any additional cost sharing burden on employees will be offset by higher wages and other economic benefits, or the collective bargaining history between the local parties. Therefore, despite their best

efforts to determine a uniformly equitable and affordable allocation of health insurance costs for all school districts and their employees, the Commission's decisions may well have different impacts on individual districts or local bargaining units.

For example, any increase in health insurance costs to employees might well have an adverse economic impact on those at the top of a salary scale or on low wage support staff who are scheduled to receive only a nominal wage increase for the next few years. Conversely, a school district facing substantial infrastructure costs or a small, rural district that will not receive the same level of Federal stimulus aid as larger districts might have to reprioritize its budget to afford higher contributions toward employee health insurance. Therefore, although my recommendations on the issues in dispute may have disparate impacts in individual school districts, I must focus on the aggregate impact of any changes in current levels of health insurance benefits for public school employees based on the statutory factors set out above.

RECOMMENDATIONS ON ISSUES IN DISPUTE

ISSUE NO. 1

Premium Cost Sharing

Current Language

Licensed school employees shall contribute 20% of the premium for the Gold of the Gold CDHP plan or the Silver CDHP plan for any tier of coverage. For all other school employees, or support staff, the employee contribution toward premiums shall remain at their existing levels through December 31, 2021, but not more than 20% of the Gold or Silver CDHP plans, but beginning on January 1, 2022 will increase by up to 2% a year to a maximum of 20%.

Employee Commissioners Proposal

The Employee Commissioners propose that, for licensed school personnel, the employees' share of the premium for the CDHP Gold or Silver will be changed to 17% on January 1, 2023, 18% on January 1, 2024, and 19% on January 1, 2025. For non-licensed personnel, premium contribution rates will be frozen. In support of their proposal on this issue, the Employee Commissioners contend that their proposal most closely aligns with the statutory factors set out in Chapter 16, Section 2105(b)(3)(B).

First, the Employee Commissioners assert that its proposal is in the best interest and welfare of the public

because the 33,000+ active school employees and dependents who are covered by VEHI comprise a significant portion of the state's population, and it would be in the best interest of the public to make their health care more affordable. Further, the Employee Commissioners emphasize that meaningful salaries and benefits are essential for attracting and retaining qualified school personnel. However, the median salary for licensed school employees is \$61,309 and for non-licensed personnel it is \$25,847. Many teachers in the state, barely earn a livable wage, and support staff lag far behind livable wage requirements. Therefore, for Vermont schools to remain competitive and stem the ongoing loss of school personnel, neither licensed staff nor support staff can continue to be expected pay an increasing percentage of their health insurance premiums and see their earning power eroded further. Therefore, for the wellbeing of school personnel, Vermont families, and students, this is not the time to cut employee benefits, as the Employer Commissioners are proposing.

Next, the Employee Commissioners contend the both the State Education Fund and school districts across the state have the ability to pay for the premium split the Employee Commissioners are proposing. The Educational Fund has a current surplus of \$28.7 million and projects a surplus of

\$66.7 million for Fiscal year 2022. Further, the Legislative Joint Fiscal Office forecasts the Education Fund will continue to grow at a strong rate through fiscal year 2026. Individual school districts have also received an infusion of Federal Covid-19 relief funds of almost \$400 million, much of which remains unspent. Accordingly, both the Education Fund and individual school districts are better able than at any time in the recent past to continue the level of health care benefits enjoyed by public school employees, and there is simply no fiscal reason to reduce those benefits.

According to the Employee Commissioners, similar public employees in Vermont pay either the same or a lower premium contribution rate as public school employees. Although many State employees in various bargaining units pay 20% toward their premiums, the premium contributions for several others, including both faculty and staff at state colleges and universities is income based and does not reach the 20% contribution level until the employee's annual wage exceeds \$70,000. Therefore, given the wide range of wages earned by public school employees, the graduated premium contribution approach used for public higher education employees is the most comparable and should be adopted here.

In support of their position, the Employee Commissioners also emphasize that the cost of living in

Vermont is particularly high. For example, the median household income in 2019 was only \$61,973, but an annual livable wage for a family of four in 2020 was between \$85,452 and \$99,044, which shows that the average Vermont household does not make a living wage. This disparity is further compounded by the scarcity of affordable housing that has been exacerbated by residential property sales to out-of-state buyers seeking to escape the Covid-19 pandemic.

Finally, the Employee Commissioners contend their proposal is closely aligned with existing and prior levels for school employees. The *status quo* is that licensed employees are currently paying 20% toward their health insurance premiums, but non-licensed school employees in many districts, who were effectively grandfathered by the prior arbitration award are paying far less, and even with the 2% increase scheduled to take effect on January 1, 2022, they will be paying less than 20%. Accordingly, the Employee Commissioners' proposal more closely aligns with existing benefits than the increase in premium contributions proposed by the Employer Commissioners.

Employer Commissioners Proposal

Like the Employee Commissioners, the Employer Commissioners have a two-tiered proposal for premium cost

sharing that distinguishes between licensed and non-licensed public school employees. For licensed employees, who currently pay 20% of the Gold CDHP premium, the Employer Commissioners are proposing to increase their premium contribution to 21% on January 1, 2024 and to 22% on January 1, 2025. For non-license support staff, the Employer Commissioners are proposing that no employee shall be paying less than 15% nor more than 20% of the cost of their health insurance premiums as of January 1, 2023. Any employee whose premium contribution share is less than 20% as of December 31, 2024 will begin paying a 20% share effective January 2, 2025.

At the outset, the Employer Commissioners emphasize that the Employee Commissioners produced no evidence to justify their proposal to reduce the employees' share of premium contributions. Similarly, they were largely mute concerning the Employer Commissioners proposal to gradually increase the premium contribution share for both licenses and unlicensed employees during the life of a new agreement. Therefore, the Employer Commissioners contend I should summarily reject the Employee Commissioners proposal on this issue.

The Employer Commissioners' argument does not end there, however. They argue more broadly that the health insurance benefits public school employees currently enjoy were not the

result of an agreement between the parties. Rather, the existing premium cost splits and allocation of OOP expenses were imposed on the parties with little explanation by the arbitrator and should not be given the same weight as an agreement negotiated by the parties. As a result of the first-round arbitration award, the Employer Commissioners argue, the savings to school districts anticipated by Act 11 did not materialize. Rather, it resulted in increased financial obligations to school districts by lowering eligibility standards for health insurance and providing overly generous last dollar OOP obligations for employees. As a result, the actuarial value (AV) of the current benefits enjoyed by public school employees in Vermont is 97% on the ACA calculator, which is in excess of the 95% AV of the health insurance plan enjoyed by State of Vermont employees. According to the Employer Commissioners' witnesses, therefore, it is necessary to rebalance the superior, "platinum plus" level plan enjoyed by Vermont school employees by increasing employee premium contributions and OOP expenses by a modest amount, which would still result in a 93% AV value for the benefits received by public school employees.

Next, the Employer Commissioners assert that it would be fiscally dangerous to rely on the recent, short-term infusion

of funds into the State Education Fund and directly to school districts. Relying on the testimony of Jeffrey Carr, an economist and consultant to the Governor's office, the Employer Commissioners emphasize that, although the State has benefitted greatly from the one-time infusion of hundreds of millions of dollars into the economy, the Federal government is not in a position to continue injecting money into the economy and it is likely the Vermont economy will return to pre-pandemic levels. Similarly, Ethan Latour, the Deputy Commissioner for the Department of Finance and Management, which oversees the State budget, testified convincingly that the State does not plan to include the one-time infusion of Federal money into the budget because it is not a reliable source of sustainable income.

Finally, the Employer Commissioners point to the testimony of officials from several school districts who noted that the Federal funds they have received are being used to offset the unplanned expenses created by the pandemic. At the same time, local school districts need to fund both critical educational programs and essential infrastructure needs for which there is currently no State aid. Therefore, escalating health insurance costs will force the districts to divert money from existing programs and infrastructure.

Recommendation

At the outset, I want to note that my recommendation on this issue cannot be viewed in a vacuum. Rather, it should be viewed in conjunction with my recommendation about how OOP expenses should be allocated between school districts and their employees. In other words, it is one component of overall health insurance costs and how they should be allocated.

Currently, licensed teachers and administrators pay an average of 20% toward their insurance premiums, with licensed staff in twenty districts paying slightly less than 20% and those in seventeen districts paying slightly more. Unlicensed support staff pay an average of approximately 16.64% toward their premiums, with those in twelve districts paying less than 15%. The respective proposals of the Employer and Employee Commissioners reflect their differing philosophical approaches to the parties' negotiations. In the Employer Commissioners view, there is a need to rebalance what they believe are the overly generous insurance benefits awarded by the arbitrator in the last round of bargaining. In contrast, the Employee Commissioners have focused heavily on the importance of insurance benefits that reflect the income inequality among public school employees. Consistent

with these approaches to their bargaining, the Employer Commissioners are seeking to gradually increase the percentage contribution for all licensed school personnel in the state to 22% on January 1, 2025 and the support staff premium contribution to 20% by the same date. However, the Employee Commissioners are proposing a freeze in contributions for non-licensed employees and a 1% a year decrease in premium costs for licensed personnel. The challenge is to identify a middle ground that balances both parties' interests.

The arbitrator in the parties' first round of negotiations recognized that the economic impact of health insurance costs affects licensed school employees and lower paid support staff differently and adopted the proposal of the Employee Commissioners based on those differences. Similarly, the collective bargaining agreements covering employees of the University of Vermont and the State Colleges have incorporated graduated premium contribution rates for their employees based on income. This distinction mirrors my experience as a mediator and fact finder for public school negotiations, which have routinely led to different levels of insurance premium contribution rates for licensed and support staff. Here, the record before me reflects that the median wage for non-licensed school personnel is \$25,847 or

approximately 42% of the median licensed teacher salary, which is \$61,309. Therefore, I find this income disparity, along with prior and existing health care benefits, justifies continuing different premium contribution levels for licensed and unlicensed school employees in the state.

The Employee Commissioners have proposed reducing the average premium contribution for licensed employees by 1% a year beginning January 1, 2023. However, the average premium contribution for licensed school employees in the state is already 20%, with teachers in many districts paying slightly more. All State employees are also paying 20%. Further, the goal of the Legislature when it enacted Act 85 was to incentivize local school districts to negotiate a 20%/80% premium split for all their employees. Although licensed personnel in some school districts were paying slightly less than 20% toward their health insurance premiums as of June 2020, the average was at that level. Therefore, absent some compelling evidence that 20% is out of line with the current norm, I am not convinced that that premium contribution rate for licensed employees should be reduced, as the Employee Commissioners propose.

Nevertheless, the Employer Commissioners have proposed increasing the 20% premium contribution rate for licensed employees by 1% on January 1, 2024 and 1% on January 1, 2025,

for a total of 22%. This would make premium contribution rates for licensed employees 2% higher at the end of the agreement than State employees or any employee of the Vermont college and university systems are contributing toward their health insurance. Although the Employer Commissioners' proposal to increase contribution rates for licensed personnel by a modest amount in the second and third years of a new agreement, I am not convinced that, in the current economic climate in Vermont, increasing premium contribution rates for licensed personnel beyond what comparable employees contribute and beyond the savings goals contemplated by Act 85 is warranted.

Further, the Employer Commissioners proposal to increase the premium contribution rate for support staff by 2% a year through 2024, with all support staff paying 20% by January 1, 2025. Although support staff in some districts are already paying 20% toward their health insurance premiums, those in many districts were paying less than 15% as of January 1, 2021. Even with the 2% increase that takes effect January 1, 2022 pursuant to the prior arbitration award, there will still be many support staff in the state paying less than 15%. The Employer Commissioner's proposal could result in premium contribution increases of as much as 100% over a four-year period for some support staff. Further, a premium

contribution increase at the magnitude proposed by the Employer Commissioners could significantly erode an employee's annual wage. Although I find it is reasonable for the Employer Commissioners to want to move the contribution rate for support staff closer to the 20% objective, its proposal would disadvantage some of the lower wage public school support staff. Therefore, I recommend that premium contribution rates for non-licensed school personnel, which are already scheduled to increase by 2% on January 1, 2022 be increased more gradually than the Employer Commissioners are proposing: 1% on January 1, 2023, 1% January 1, 2024, and 1% on January 1, 2025. I believe this gradual approach will bring them closer to the 20% contribution goal identified in Act 85, without imposing a significant financial burden on lower paid, non-licensed employees in any one year.

In making this recommendation, I have considered the respective arguments of the parties that prospective employees will be deterred from seeking jobs in public education or that some employees will take jobs in public education merely for the rich insurance benefits. Although both parties offered anecdotal evidence in support of their arguments, I am not convinced from the record that insurance benefits, particularly the level of premium contributions, are either a significant attraction or deterrent for

candidates considering positions in public education in Vermont.

In sum, I recommend the parties adopt the following premium contribution rates for their successor agreement:

Licensed Personnel

Effective January 1, 2023 - All covered, licensed personnel shall contribute 20% toward their health insurance premiums based on the VEHI Gold CDHC Plan or lower priced plans for any tier of coverage, and the employers shall pay 80% of the premium. The amount of premium contribution available to employees toward the CDHC Gold Plan can be credited to higher priced plans employees may select.

Unlicensed Personnel/Support Staff

January 1, 2023 - The health insurance premium contribution rate for all covered, unlicensed personnel in effect on that date shall increase by 1% based on the Gold CDHC premiums but in no event be more than 20%.

January 1, 2024 - The health insurance premium contribution rate for all covered, unlicensed personnel in effect on that date shall increase by 1% based on the Gold CDHC premium, but in no event more than 20%.

January 1, 2025 - The health insurance premium contribution rate for all covered, unlicensed personnel in effect on that date shall increase by 1% based on the Gold CDHC premium, but in no event more than 20%

ISSUE NO. 2

OUT-OF-POCKET EXPENSED

Current Language

For employees and their dependents enrolled in the

VEHI Gold CDHP, the employer will pay medical and pharmacy out-of-pocket (OOP) costs with the first dollar contribution through an HRA in the following amounts: for licensed administrators and teachers: \$2100 for single tier coverage and \$4200 for all other tiers of coverage; for support staff \$2200 for single tier coverage and \$4400 for all other tiers of coverage. His amount of money can be credited at the employee's discretion toward the OOP of any other VEHI plan. For employees enrolled in the VEHI Silver CDHP, employers will pay medical and pharmacy OOP costs with first dollar contributions through an HRA or HSA, at the individual employee's discretion, in the following amounts: for licensed teachers and administrators: \$2100 for a single tier and \$4200 for all other tiers; for support staff: \$2200 for a single tier and \$4400 for all other tiers.

Employee Commissioners' Proposal

The Employee Commissioners are proposing to increase the amounts of the school districts' first dollar share of OOP expenses, based on a sliding income scale as follows:

For employees with income from their public school employer of less than \$35,000: \$2,400 for single tier coverage and \$4,800 for all other tiers.

For employees with public school income of \$35,000 to \$70,000: \$2,300 for single tier coverage and \$4,600 for all other tiers.

For employees with public school income of more than \$70,000 per year: \$2,200 for single tier coverage and \$4,400 for all other tiers.

The Employee Commissioners' proposal defines income from a public school employer includes wages of salary from their primary public school employment, excluding supplemental income, including overtime, shift differentials, stipends, and extra/co-curricular compensation.

The central position of the Employee Commissioners is that

their proposal more closely aligns with the statutory factors and reflects the need for income sensitivity recognized by the Legislature when it enacted Act 7, which deleted the requirement in 16 V.S.A., Section 2103 that the OOP expense be the same for all participating employees.

First, the Employee Commissioners assert that higher OOP expenses are not in the best interests of the public. In their view, when employees are confronted with high OOP costs, particularly those in lower income categories, they are either unable to afford necessary medical care and medications or are placed in a precarious financial position if they do seek care. Relying on the testimony of Dr. Himmelman and Steve Kappel, the Employee Commissioners contend that increasing OOP liability does not lower health care costs. Rather, they penalize employees with serious health issues, women, and low-income employees. Therefore, the Employee Commissioners dispute the Employer Commissioner's claim that increasing OOP costs will decrease VEHI premium costs, creating a savings for both school districts and their employees. To the contrary, 60% of health care spending under the VEHI plans is by only 10% of covered employees, and those costs will continue, despite increases in higher OOP expenses for employees.

According to the Employee Commissioners, the impact of

burdening employees with higher OOP expenses is also a significant deterrent for employees, particularly low wage earners, to seek treatment for minor health issues that could result in more severe conditions requiring even more costly medical treatment if not caught and treated early. Therefore, the Employee Commissioners proposal better promotes the public interest in having a healthy public school workforce with access to affordable medical care.

Next, the Employee Commissioners point out that the Education Fund and school districts in the state can well afford their proposed decrease in employee OOP expenses. In support of this argument, they point to the unprecedented surplus in the Education Fund, which is projected to continue at least through 2026 and the \$400 million dollars in direct Federal aid school districts across the state have received as a result of Covid-19 relief legislation.

The Employee Commissioners also emphasize that their proposal most closely aligns with thirteen other public sector bargaining units in the state, all of which have lower OOP expenses than the plans currently available to Vermont public school employees. For example, employees in State bargaining unit have only modest copays, which are far less than a last dollar obligation of a public school

employee. Similarly, state college and authority employees who have similar high deductible plans have maximum OOP liability far lower than that currently available to public school employees.

Finally, according to the Employee Commissioners, their proposal mirrors the status quo, with only slight modifications for the lowest paid school employees, which is consistent with recent legislation. In contrast, the Employer Commissioners proposal would result in OOP liability increases of between 300-400%, which is simply untenable.

Employer Commissioners' Proposal

The Employer Commissioners are proposing to reduce the districts' first dollar contribution to OOP costs to \$1250 annually for single tier coverage and \$2,500 for all other tiers for those employees selecting an HRA. Their proposal also provides that districts will make a first dollar contribution of \$1,00 for those employees who select an HSA.

The Employer Commissioners acknowledge that they are proposing an increase in the OOP obligation of covered employees. However, they contend this change is justified for several reasons. First, the goal of changing from the

JY and Dual Option VHP plans to the current VEHI plan offerings was to substantially reduce the cost of health insurance through lower premiums and OOP expenses that would encourage employees to be better consumers of medical care and prescription drugs by choosing less costly options. As a result of the arbitration award in the parties' first round of bargaining, however, covered employees received the advantage of a lower premium plan without any increase in their OOP obligations. Therefore, the switch to the new plans has failed to achieve the anticipated cost savings. Rather, the AV of the Gold CDHP plan used by most public school employees in the state is 98% fall into the "platinum plus" category, the highest level of plans recognized by the ACA. In contrast, the health care plans available to most State of Vermont employees has an AV of 95% because the covered employees pay a higher premium and do not have the benefit of an employer HRA or HSA to offset their OOP costs.

According to the Employer Commissioners, its proposal seeks to address this imbalance, which will save school districts approximately \$28 million that can be used toward direct educational programs and needed infrastructure improvements. At the same time, the covered employees will retain an excellent health care plan that with an "platinum

plus" AV value of 93%.

Recommendation

There can be no dispute that health care costs in Vermont, like those in the rest of the country are rising at an alarming rate. According to Dr. David Himmelstein (Himmelstein) the Employee Commissioners' health care expert, the major driver in this steady increase in health care costs is consolidation of providers and the inefficiencies in insurance companies. Although he acknowledged that patients in the United States often receive useless or unnecessary care, he attributes that to the providers, rather than patient choices. In his opinion, patients themselves are unable to distinguish between needed and unneeded care and will delay or avoid treatment for needed care for chronic health issues like heart conditions, breast cancer or asthma as OOP expenses rise. In contrast, Elizabeth Soares (Soares), President of the Vermont School Board Insurance Trust (VSBIT) testified that there is a direct correlation between OOP exposure and the amount of low volume health care they receive. Therefore, increasing OOP costs will reduce utilization and reduce overall premiums for both school districts and public school employees.

Even if higher OOP costs does reduce overall utilization, they might well have a disproportionate impact on lower paid support staff. According to the Employee Commissioners, providing an incentive to decrease utilization by increasing OOP costs for employees could have adverse effects by leading school employees not to seek care for minor ailments, which could result in more serious conditions if not treated. Similarly, they argue that low wage employees who genuinely need health care might forgo it altogether. Conversely, the Employer Commissioners assert that creating an incentive for employees to avoid unnecessary treatments or insisting on brand name drugs would help reduce premiums. Similarly, the Employer Commissioners contend that higher OOP costs would make employees better consumers by providing an incentive to avoid unnecessary medical care or to seek out generic medications.

The Employer Commissioners are proposing to reduce the school districts' first dollar contribution by approximately 41% for licensed school employees and 43% for unlicensed personnel. The increase in potential OOP costs for school employees would be approximately \$6.6 million. In my view, the proposed reduction in employer support for employees' OOP costs goes far beyond simply rebalancing

what admittedly is a generous health insurance benefits and could have serious financial impacts on those employees with serious health conditions and those at the lower end of the wage scale.

However, I am equally troubled by some aspects of the Employee Commissioners proposal. In a nod to income sensitivity, the Employee Commissioners have proposed three tiers of OOP cost to be borne by the districts, based on employee compensation, but the rationale for the three particular income levels they are proposing is not readily apparent. Further, it is troubling that the Employee Commissioners proposed income levels are not based on total compensation, but only base wages and salaries. As I noted above, unlicensed support staff on average earn significantly less than licensed teachers and administrators, and the insurance benefits currently available recognize that income differential by including different OOP obligations for licensed and unlicensed public school employees. Therefore, I am not convinced that there is any reason to deviate from the existing distinction between licensed and unlicensed employees and recommending benefit distinctions based on the three proposed income categories at this time.

As I noted above, neither the share of premium

contribution paid by the parties nor OOP costs can be viewed in a vacuum because they are both components of the total cost of health insurance benefits. I have recommended no premium contribution increase for licensed personnel and modest, gradual increases in the amount of premium contributions paid by unlicensed employees to move the districts closer to the 20% contribution rate sought by the Employer Commissioners, which is consistent with the goal of Act 85. That recommended increase should help minimize the impact of increasing insurance premiums for school districts, without creating an undue financial burden for school employees that might erode wages in any one year. Therefore, I must determine what would be a fair and reasonable OOP cost allocation, considering the increased premium costs I have recommended for unlicensed support staff.

Although I can appreciate the Employer Commissioners' goal of rebalancing OOP costs, I do not believe this is the appropriate time to shift OOP costs to employees by the large amounts they are proposing. The Legislature's Joint Fiscal Office reports that the Education Fund for fiscal year 2021 was \$31 million or 5% above its target and is projected to have annual increases through fiscal year 2026. Second, school districts have received approximately

\$400 million in Federal funds as a direct result of the Covid-19 stimulus funds legislation. Although Jeffrey Carr and Ethan Latour have cautioned that these increases are a one-time infusion of money that is unlikely to continue, projections through 2025 suggest that school districts will be able to at least continue funding current OOP obligations.

However, I am also not convinced that the increase in the districts' contribution toward OOP costs in the amount proposed by the Employee Commissioners is justified. The current allocation of OOP expenses is the direct result of an arbitration award in which the arbitrator adopted the Employee Commissioners last best offer, and the Employee Commissioners have not demonstrated that these levels have been problematic for any employees except some unlicensed support staff at the very low end of the wage scale who could be overburdened by high OOP costs.

In sum, I am convinced that, as a result of the arbitration award from the parties' last round of negotiations, public school employees in Vermont have benefitted from the low premium, high deductible consumer driven health insurance plans offered by VEHI. Because premiums have continued to rise, however, the parties must be willing to explore options for slowing those premium

increases. I am convinced that a modest increase in the employee's share of the OOP expenses would be a step in the direction of reducing the amount of premiums being paid by both employees and school districts.

As with premium contributions, however, I believe it is important to distinguish between licenses and unlicensed public school employees. Because I have recommended gradual increases in premium contribution rates for support staff, it might well create an undue financial hardship on those lower-wage employees to also ask them to assume a greater share of OOP costs. Accordingly, I do not recommend any change in the current OOP liability for unlicensed employees. However, because licensed public school personnel will not see any change in their premium contribution rates through 2025 under my recommendation, it is not unreasonable for them to increase their total OOP obligation to \$600 for single tier coverage and \$1000 for all other tiers. Therefore, **I recommend the parties adopt the following OOP cost sharing in their successor agreement:**

Licensed Employees - Employers will make a first dollar contribution in the amount of \$1900 annually for single tier of coverage and \$4000 for all other tiers of coverage.

Unlicensed/Support Staff - Employers will make a first dollar contribution of \$2200 annually for single tier coverage and \$4400 for all other tiers of coverage

ISSUE NO. 3

Eligibility

Current Language

- 5.1 Beginning on January 2, 2021, all public school employees who work on average a minimum of 17.5 hours per week during the school year or calendar year shall have the right to enroll in a health benefit plan with an employer subsidy to pay for premium and out-of-pocket costs.
- 5.2 Full-time status for determining the amount of employer-subsidized coverage for premium cost will be based on full time or full time equivalent (FTE) definitions as locally negotiated or determined.

Employer Commissioners Proposal

The Employer Commissioners propose to raise the eligibility threshold for receiving health insurance benefits from 17.5 to 18.75 hours per week on a regular and continuous basis. In addition, they propose that full-time employment be defined as thirty-seven and one-half (37.5) hours per week on a regular and continuing basis.

In support of its position, the Employee Commissioners contend that 17.5 hours per week is an insufficient connection between an employee and a school district to justify being entitled to a prorated premium and a full HRA HSA contribution to OOP costs. However, raising the threshold to 18.75 hours, although still not optimal, would

create a greater connection between the hours worked and health care benefits. The Employee Commissioners also emphasize that Vermont hospitals generally require employees to work a minimum of 20 hours a week to be eligible for health insurance to prevent employees from taking part-time jobs solely to obtain generous health care benefits.

Similarly, the Employer Commissioners are proposing to create a standard statewide definition of full-time employment based on a 37.5-hour work week, which is still far less than the traditional 40-hour work week. According to the Employer Commissioners, this would prevent employees with only an attenuated relationship with a school district from receiving a costly benefit intended for employees who truly work full time.

Employee Commissioners Response

The Employee Commissioners oppose the proposal on the ground that it is contrary to the intent of the statute because it would leave additional public school employees without access to health care benefits. Further, they assert the proposal is not a permissible subject of negotiation for the Commission. Rather, 16 V.S.A., Section

2103 lists the subjects over which the Commission is authorized to negotiate and minimum hour for eligibility and what constitutes full-time status are not among them.

Recommendation

I do not recommend the parties adopt the Employer Commissioners proposals to increase the minimum number of hours required to be eligible for health care insurance benefits or its proposal to establish a standard definition of full-time employment of 37.5 hours a week.

First, it is not readily apparent how many public school employees in Vermont would lose their access to health insurance or the benefit of full health insurance if the Employer Commissioners proposals are adopted. Because the proposed change in the eligibility requirement would most likely affect those lower wage employees who work a part-time schedule, it could leave the most vulnerable employees without access to health insurance. Similarly, it is not readily apparent how much the districts would save or whether those savings would outweigh the impact on employees. Finally, because local school districts have negotiated the definition of full-time employment, the proposal might well create an anomaly of public school employees being treated as full-time for purposes of some negotiated benefits, but not health insurance.

ISSUE No. 4

Current Language

There is currently no statewide cap on the dollar amount school districts can offer their employees as cash-in-lieu-of payments when their employees opt not to receive health benefits because they can receive health insurance benefits from another source.

Employer Commissioners Proposal

The Employer Commissioners have proposed that cash-in-lieu of payments paid by local district to employees who opt out of a district's insurance plan because they can obtain insurance from another source be capped at \$2000. In the Employer Commissioners view, this proposal falls within the spirit of the recent amendment to 16 V.S.A., Section 2103(f) that prohibits double dipping by public school employees who are simultaneously receiving health care benefits from the same or another school employer. Further, they argue that public school employees currently receive approximately \$6 million in cash-in-lieu-of payments, money that could be better used to offset their share of the cost of health insurance.

Employee Commissioners Response

The Employee Commissioners oppose the proposal on the ground that it is not a permissible subject of bargaining for the Commission.

Recommendation

Although the Employer Commissioners have made a creative argument that the spirit of 16 V.S.A, Section 2103(f) covers cash-in-lieu of payments to ensure health care payments are applied appropriately, the statute simply does not identify cash-in-lieu of payments as one of the subjects the Commission is charged with bargaining. Even if the statute could be read that broadly, however, local districts have historically negotiated cash-in-lieu of payments as an incentive for their employees not to participate in a district's health insurance plans, and these payments have generally reduced the district's overall health insurance costs. Further, these payments are often part of the overall compensation package negotiated between school districts and their employees, and a cap on them might well impact local bargaining about other financial incentives they might bargain. For these reasons, **I do not recommend the parties adopt the Employer**

Commissioners proposal to cap cash-in-lieu of payments.

ISSUE NO. 5

Grievance Procedure

Current Language

There is currently no language or grievance procedure for resolving disputes concerning statewide public school employee health insurance benefits.

Employer Commissioners Proposal

The Employer Commissioners propose to include the following language in a new agreement between the parties:

GRIEVANCE PROCEDURE: Either a majority of the employer representing commissioners or the employee representing commissioners may file a grievance with the commission not later than thirty (30) days after which it is known or reasonably should be known that a violation or misinterpretation of this agreement or arbitrator's award has occurred. The matter shall be first addressed by the commission as a whole. If a majority of the employer and employee decide to resolve the matter, the decision shall be final and binding on all concerned. If the employer and employee commissioners are divided on the matter, either party may appeal the matter to final and binding arbitration under the labor and employment rules of the American Arbitration Association within thirty (30) calendar days of the inability of the commission to agree upon a decision. The decision of the arbitrator shall be final and binding on all concerned.

According to the Employer Commissioners, there is a strong likelihood that disputes will arise concerning the interpretation and application of an agreement or arbitration award regarding statewide health care benefits for public school employees. Therefore, because the Legislature has authorized the Commission to negotiate a grievance procedure to resolve these issues, it follows that there should be a statewide grievance procedure with the Commission, as the entity responsible for negotiating those benefits, be charged with resolving those disputes.

Employee Commissioners Response

The Employee Commissioners are opposed to the Employer Commissioners proposal on several grounds. First, it is highly unusual for grievance procedures to allow an employer to file a grievance. Rather, grievance procedures are designed for employees to defend their rights under a collective bargaining agreement. If an employer seeks to adjust previously negotiated conditions of employment, the appropriate vehicle is the bargaining process. Similarly, it would be absurd if the unelected and unconnected members of the Commission could file grievances that might affect the health benefits of thousands of public school employees in the state. Finally, 16 V.S.A. does not authorize the

Commission to bind a school board's interpretation and application of statewide health insurance benefits. Therefore, because the Employer Commissioners proposal would give the Commission blanket authority to infringe on the local collective bargaining process, it should not be permitted.

Recommendation

In 2021, the Vermont Legislature amended 16 V.S.A., Section 2103 to authorize the Commission to "negotiate a statewide grievance procedure for disputes concerning public school employee health benefits. Because public school employee health benefits are now being negotiated by the Commission, rather than at the local level, it logically follows that local school districts and the unions representing their employees are not in the best position to resolve disputes concerning a working condition they had no direct role in bargaining. Therefore, it makes sense for there to be a centralized statewide grievance procedure to handle potential disputes at the local level about how the health care benefits negotiated by the Commission should be implemented.

The question is whether the grievance procedure proposed by the Employer Commissioners is the best way to

achieve that objective. As the Employee Commissioners contend, it is not common to see a grievance procedure that permits both the employer and the employee to file a grievance. However, mutual grievance procedures are certainly not unprecedented. Because collective bargaining agreements include mutual rights and obligations, parties will often negotiate grievance procedures that permit either side to raise an issue about the interpretation or application of a contract term.

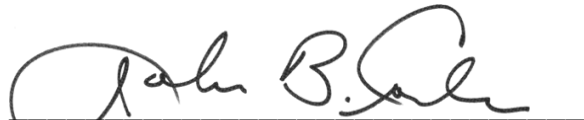
Perhaps more perplexing is who should be able to raise an issue about the interpretation or application of the statewide healthcare benefits agreement or arbitration award. The benefits negotiated by the Commission are not directly administered by that body, but by the local school districts. Therefore, I am not clear why either the Employer or Employee Commissioners should have the option to file a grievance. Rather, it seems that either a union representing school employees at the local level or a local school district would be the parties in the best position to raise an issue about the interpretation or application of a statewide health insurance benefit agreement or award. Although I believe it is reasonable for there to be a grievance procedure in the parties' agreement to resolve the rare issues that may occur at the local level, I

recommend a somewhat different procedure for raising those issues with the Commission. **Therefore, I recommend the parties adopt a statewide grievance procedure along the following lines:**

Either a local public school district or a union representing public school employees may file a grievance with the Commission concerning the interpretation or application of the statewide agreement concerning health care benefits for Vermont public school employees. The grievance must be filed with the Commission within thirty (30) days after the grievant knows or should have known of the events giving rise to the grievance. If a majority of the Commission is unable to resolve the issue within thirty (30) days, the matter shall be referred to final and binding arbitration. If the Commission is unable to agree on an arbitrator, the matter shall proceed to arbitration pursuant to the rules of the American Arbitration Association.

I believe this approach will create a forum for affected public school employees or school districts that believe they have been aggrieved by the application of a statewide health benefits agreement or award, with the entity that created those terms having an opportunity to address and resolve potential claims before proceeding to arbitration before an impartial, third-party decision maker.

Respectfully submitted,



John B. Cochran, Fact Finder

September 12 ,2021
Vinalhaven, ME