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In the matter between \*

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**Vt. Employer Health Care Commissioners \***

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-and- \*

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**Vt. Employee Health Care Commissioners \***

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**Factfinding before Mark Grossman, JD.**

Appearances:

 For the Vt. Employee Health Care Commissioners:

 Suzanne Dirmaier, Vt. NEA

 Michael Campbell, Employee Commissioners Chair

 For the Vt. Employer Health Care Commissioners:

Joseph E. McNeil, Esq.

Colin K. McNeil, Esq.

McNeil Leddy& Sheahan P.C.,

**BACKGROUND**

 This fact finding proceeding is being conducted pursuant to Vermont Statutory Law 16 V.S.A. 2101 et seq. That chapter created the Commission on Public School Employees Health Benefits (the “Commission”) which is comprised of 10 members, five representing school employers and five representing school employees.

 The duties of the Commission include, among other things, a) determining the percentage of the premium for individual, two-person, parent-child, and family coverage under a health benefit plan that is to be paid by each school employer and each participating employee. (It is required that the premium percentage for each plan tier be the same for all participating employees) b) determining the amount of school employees” out-of-pocket (“O-O-P”) expenses for which school employer and school employees shall be responsible and determining whether school employees shall be required to establish a health reimbursement arrangement (“HRA”), a health savings account (“HSA”), both or neither for their participating employees.

The actual health plans that are available to the employees are determined by the Vermont Educational Health Initiative, Inc. (VEHI) and are accepted as a given in this hearing.

 All decisions of the Commission require the votes of a majority of the representatives of school employees and a majority of the representatives of school employers. Should the Commission be unable to reach decisions by preset deadlines a process is set forth which includes fact finding (with mediation) as well as binding arbitration in the event the Commission’s impasse is not resolved as a result of the fact finding decision.

The representatives of the school employees (hereinafter referred to as the “Employee Commissioners”) and the representatives of the school employer (hereinafter referred to as the “Employer Commissioners”) met and negotiated in an attempt to reach an agreement on the issues that the Commission has authority to resolve. In April 2019, the undersigned Fact Finder was informed by the Employee Commissioners and Employer Commissioners (the “parties” in this dispute) that he had been selected to serve as fact finder/mediator of their dispute. A mediation session was conducted on August 1, 2019 at which time a number of items were agreed to by the parties and a number of additional issues remained in dispute. A fact finding hearing was conducted on August 12, 2019 and a stenograph record was made of the proceedings. Briefs were filed by the parties by September 2, 2019. The decision set forth in this document constitutes the Fact Finder’s recommendations for resolving the parties’ impasse.

**GENERAL DISCUSSION**

 There are more than 8,600 licensed teachers and administrators in the Vermont public schools. Additionally, there over 7,200 other employees who work for the Vermont public schools. Taken together, these are the employees who will be covered by whatever agreement is ultimately agreed to by the Employer and Employee Commissioners (or imposed through arbitration). One way or another, it is intended that the result of the entire process will be the first Statewide Collective Bargaining Agreement (“CBA”), also referred to as the “Health Care CBA,” covering the health benefits set forth in 16 V.S.A. 2101 et seq.

 There are over 15,000 subscribers to the VEHI health insurance plans. There are just under 5,000 individuals covered by the single coverage plan; just under 6,500 employees covered by the 2-person plan; over 2,600 in the parent/child plan and over 20,000 employees covered by the family plan. The employees are generally able to choose between a number of plans made available to them. The Platinum Plan has about 5% of the subscribers; the Gold Plan has 3%; the Gold CDHP Plan has 90% of the subscribers and the Silver CDHP Plan has 2%.

 It is not surprising that the parties have a different view of the fiscal situation of the State and the School Boards. The Employer Commissioners presented evidence to show that on average, Vermont is losing 3 students per day from its public-school system. It is also losing 6 employees per day from its work force. Additionally, Vermont has to deal with the fact that one Vermont child is born into an opiate addicted family every day. Also, the State is facing underfunded pension obligations and other post-employment benefit obligations (OPEB) in the amount of $4.5 billion. On top of all this, the State has significant problems with a crumbling infrastructure requiring the infusion of millions of dollars annually. As a result of these problems, the State’s bond rating has recently been downgraded such that borrowing will be more expensive for State projects in the future.

 The Employee Commissioners, on the other hand, emphasized that the State’s economy is strong with a low consumer price index, tax revenues much higher than forecasted, and unemployment at historical lows.

**General Approach**

**The Employer Commissioners’ View**

The Employer Commissioners maintain the Statewide health care bargaining was established by the legislature and the Governor in an effort to contain health care costs in public education. Prior efforts were not successful in accomplishing that goal. In an effort to achieve the desired savings through more uniformity across the state, the Legislature then passed the Statewide education employee bargaining structure and a process that calls for mediation, fact finding and arbitration to resolve any impasse which may result in the event the parties are unable to agree upon the resolution of the statutory issue before the Commission.~~.~~

 Evidence at the fact findingproceedings established that the State has gone from a health care plan with high premiums and little by way of time of service/out-of-pocket obligations, to the current four high deductible plans which became available in 2018, two of which were intentionally designed to be compatible with Health Savings Accounts (“HSAs”). There was absolutely no doubt that the adoption of these plans was intended to better control plan cost escalation by requiring informed decision making on the part of its participants. Clearly, the motivation to move to high deductible plans was driven by large annual increases in the cost of the prior plans.

The Employer Commissioners see~~s~~ the goal of this round of bargaining as bringing greater uniformity to the health care system without burdening the system with significant additional costs.

**The Employee Commissioners’ View**

The Employee Commissioners seek a healthcare agreement which 1) provides access to employees which is affordable, 2) has fair cost sharing, 3) has simplicity in administration, and 4) provides effective and timely education to employees.

The Employee Commissioners see the purpose of the Statewide bargaining as quite different from the Employer Commissioners’ view. They maintain that the Employer Commissioners’ assertion that the Statewide bargaining was intended to save taxpayers money is simply unfounded. On the contrary, the Employee Commissioners assert that the major goal outlined in the legislative intent is a transition to equitable health care coverage in a manner that is fair and practicable for all parties involved. The cost shifting proposed by the Employer Commissioners in the fact finding proceedings would squarely put the burden on school employees in terms of premium share, increased eligibility standards and out-of-pocket responsibilities.

The Employee Commissioners responded to the Employer Commissioners’ assertion that the Governor’s wishes for premium splits and out-of-pocket obligations should control the ultimate agreement between the parties. The Employee Commissioners reply that there is no basis for this assertion in the legislative intent. The mere idea that the Governor is party to these negotiations is an embellishment of the facts. The bargaining is clearly between the Employer Commissioners representing the school boards as Commissioners and the Employee Commissioners representing the school employees. The Governor’s wishes are simply not pertinent to the Fact Finder’s decision.

The Employee Commissioners’ proposals take into consideration the prior and existing health care benefits for school employees. These proposals take into consideration the overall costs to both the employees and the taxpayers in a robust economic environment. The Employee Commissioners’ positions accomplish the goals of the Act and should be recommended.

**Duration**

 I turn attention to the topic of duration first because I believe this will have an effect on the other issues. The Employee Commissioners want a standard contribution rate for teachers/administrators and another for support staff. They also desire a four-year contract term resulting in no further increases in contribution during that four-year period. The Employer Commissioners propose a two-year contract.

The parties’ suggestions as to the duration of the agreement demonstrate their different approaches in this round of bargaining. Both parties agree that an effective date of January 1, 2021 of their currently unresolved contract is most beneficial. However, the Vermont legislature has designated July 1, 2020 as the implementation date of this agreement. The parties have agreed to make a joint request of the legislature to delay the implementation of the agreement until January 1, 2021. This Fact Finder must make his recommendations, however, under the current law.

**The Employee Commissioners**

 The Employee Commissioners seek a four-year agreement so that there be some time before further negotiations are required. The Employee Commissioners maintain that the duration of the statewide health care agreement will have a very significant impact on every school board and local union in Vermont. Because of the significant change in the health care program, bargaining of school boards and unions have shifted from longer duration CBAs (durations of three or more years) to shorter duration contracts (one and two-years). This has led to almost non-stop bargaining over public school contracts causing financial strain on school boards and unions for legal services, mediations and fact-finding expenses, as well as excessive demands on the human resources of unions, school boards, superintendents, business managers, and other central office staff. Short-term duration CBAs make it difficult for school boards to do long-range economic budgeting. Non-stop bargaining and associated bargaining fatigue also tend to degrade labor relations among the parties involved.

The Employee Commissioners propose a four-year agreement term to alleviate the above problems and to provide some meaningful time for experience under the first statewide health care agreement prior to negotiations commencing for the second statewide health care agreement. A longer agreement also provides VEHI time to research and develop future health insurance plans based on experience under the first statewide plan. Given how difficult and incomplete the data collection from school district business offices was for this round of health insurance bargaining, a longer duration will provide all parties with adequate time to gather necessary data and analyze it so it can be more useful and accurate for the next round of bargaining. The Employee Commissioners note that the Employer Commissioners seek a two-year agreement. If such an agreement were reached, then more than one hundred local teacher and support staff contracts throughout Vermont, for which negotiations are about to begin this fall and will have an effective date of July 1, 2020, will all expire on June 30, 2022, as no school board or association is going to risk bargaining a local contract which extends past the duration of the first statewide health insurance agreement. This would once again result in two-year short duration local school contracts. The only way to break this cycle and to give local school boards and unions some relief from the associated problems with short-term local contracts is for the Fact Finder to recommend a duration of four years as proposed by the Union.

**The Employer Commissioners**

The Employer Commissionersurge a two-year agreement given the uncertainties of the new statewide approach to health care bargaining. They seek to limit the cost of setting up a new statewide bargaining procedure and, apparently, they seek to be able to introduce additional cost saving techniques in the subsequent health care collective bargaining agreements. As previously stated, the Employer Commissioners see the goal of this round of bargaining as bringing greater uniformity to the health care system without burdening the system with significant additional costs.

**The Fact Finder’s Recommendation**

 The Employee Commissioners are definitely correct when they state that a four-year agreement will provide a respite for immediate additional bargaining and afford the school district bargaining some additional guidance over an extended period of time that will be most helpful for them. Nevertheless, I believe the contract term of this first agreement should be two years. As of the time I am writing this recommendation, the two-year period would begin on July 1, 2020 and terminate on June 30, 2022. (I understand the parties may be successful at obtaining legislation to delay the beginning of the contract to January 1, 2021. In that event all recommendations contained herein should be appropriately modified to comply with the new statutory structure.)

The duration recommendation is based on the understanding that the first Health Care CBA should be focused on standardizing the benefits throughout the state. This alone will require some disruption to the current status of health care benefits. This is not the right time to also impose on the school boards and their employees a more permanent decision with regard to health care benefits. Thus, the goal of all the recommendations set forth in this decision is to accomplish as much standardization as reasonably possible within the first CBA.

**Premium Cost Sharing (Contributions)**

It is understood that all premiums and O-O-P costs are based on the Gold CDHP and then made applicable to the other plans. This is how most of the school districts have been applying the contributions in the past and nothing is intended to change the prior practice.

 The discussion in this section will be split into a discussion that relates to teachers and administrators and a separate discussion as it relates to support staff and others. The majority of teachers and administrators are already paying 20% of the health care premium and the Employee Commissioners have indicated no objection to that being made a uniform requirement for all teachers and administrators of employees. Therefore, all involved agree that the teachers and administrators will have an 80/20 split in health care premium starting the first day of the Health Care CBA.

**The Employer Commissioners**

For teachers/administrators, the Employer Commissioners believe it makes abundant sense to increase the contribution percentage to 22% at the beginning of the second year of this agreement. They argue for this in light of the double-digit premium increases that have continued for the past two years and is proposed for the upcoming year. Since the Vermont Legislature articulated that a 20% contribution should be the standard during 2017, the Employer Commissioners assert that is reasonable to move directly to a 22% employee contribution rate in the second year of the two-year contract.

For support staff, the Employer Commissioners are in agreement with the Employee Commissioners that the status quo in effect in the separate districts should be initially maintained. The Employer Commissioners propose, however, that as of the last day of the two-year agreement, all support staff that are not at an 80/20 split should be moved to that differential. This will then establish the best platform for complete integration of standards for the second contract. A differential in premium contribution between the teachers/administrator and the support staff makes no compelling sense once a reasonable transition period is completed**.** 80/20 should be the system-wide base standard. It is both fair and easy to administer.

**The Employee Commissioners**

As previously noted, the Employee Commissioners agree that all teachers and administrators should have a uniform contribution rate of 20%. Having agreed to that, they strongly maintain that there should be no further increase in the contribution rate of the teachers and administrators during term of the first Health Care CBA (which it believes should have a four-year term).

For all support staff, the Employee Commissioners propose there be a uniform premium split set at 90/10 at the beginning of the contract. This would simplify the administration of the benefit for the district business offices. This proposal, the Employee Commissioners content, is fair and equitable. Current support staff premium splits are inequitable and not fair even within single school districts. School year and full year support staff in the same building may contribute differently to the same plan. The Employee Commissioners’ proposal would create a fair and equitable statewide while the Employer Commissioners’ position continues the disparity.

The Employee Commissioners’ proposal is affordable to all parties. The Employer Commissioners agreed that the Employee Commissioners’ estimate that the costs for all licensed employees moving to 80/20 immediately and all other employees sharing premium costs of 90/10 would be about a one percent increase in total costs. The amount of money that the licensed employees would contribute would increase overall by 3%, yielding an amount that would offset all other employees who on average move down in premium share by 5%.

The non-licensed school-based employees are typically lower wage earners than teachers and administrators and CBAs across the state currently give this group a break in health care premiums over higher paid employees.

**The Fact Finder’s Recommendation**

Teachers/Administrators

The parties have no dispute regarding the initial premium split for the teachers/administrators. They both agree that the School Board is to pay 80% and the employees will pay 20%. The Employer Commissioners urge that the employees’ percentage be raised to 22% at the beginning of the second year of the agreement. Its main argument is that premiums have been rising significantly over the last few years and are expected to have a double digit increase this year.

I will not recommend any further premium increase for teachers/administrators beyond the 80/20 split. Twenty percent represents a substantial contribution by the teachers/administrators. Implementing this split will result in an increase in premium to some teachers. The first CBA should be mainly to set up and standardize the health care benefits. Because of this and the fact that I am only recommending a two-year agreement, any issue of additional premium increase should be postponed until the next round of bargaining. I make no recommendation, and intend no inference one way or another, as to what should be the premium split during the term of the next collective bargaining agreement.

Support Staff

 The parties have a significant difference of opinion as to the appropriate premium share for support staff. The Employee Commissioners proposes there be a uniform premium split set of 90/10 at the beginning of the contract. The Employer Commissioners do not have a problem with maintaining the status quo during the initial term of the first Health Care CBA. However, they do propose that, as of the last day of the two-year agreement, all support staff that are not at an 80/20 split be moved to that differential.

 As to the premium split of support staff, I recommend that the Employer Commissioners’ position be adopted and put into the first Health Care CBA. While it will have an impact on a number of employees, the impact is delayed as long as possible under the agreement.

Everyone agrees that the health care premiums have been, and will continue to be, rising steadily. It is imperative that the employers not have to bear all or nearly all of this ever-increasing burden. At a minimum, employees should have to pay 1/5 of the increase while the employers pay 4/5. There will always be a dialogue about how to save money, change the design of the plan, and increase or decrease benefits. The employees need to have a financial stake in their medical program to assure that they participate in a responsible manner in those discussions when they take place.

**Eligibility for Health Benefit Coverage:**

**1. Minimum/Maximum/Proration for Contributions/Premiums**

 I don’t discern there to be any dispute in regard to the teachers/administrators. Neither party is requesting a change. Therefore, the following discussion will only apply to support staff.

 **The Employee Commissioners**

TheEmployee Commissioners seek to make employees eligible (minimum requirement) for health care as long as they work 17.5 hours per week. Their position is based on the fact that there has been a thirty-year standard of 17.5 hours found in school employee CBAs, VEHI (the insurance trust) documents for administering eligibility and in the Vermont Statute.

The Employee Commissioners maintain that the definition of full-time status should continue to be set in the local contracts and they believe there is no authority for the Commission to change that.

The Employee Commissioners oppose Management’s proposal to set a standard full-time equivalency in this CBA. While they can agree that a threshold for eligibility be set, the determination of full-time employment should be set at the local level. Management’s proposal that all employees be measured against a 37.5-hour work week flies in the face of what has been bargained at the local level separate from health insurance benefits for the last three decades. The Employee Commissioners’ exhibit #16 shows there are a variety of collectively bargained full-time definitions for school-based support staff, many of which consider 30 hours full-time. Management’s proposal would cause a massive penalty to paraeducators and other school year support staff. Any of these 30 hour a week employees would see an immediate 20% increase in premium split over what is negotiated for full-time or over $4,000 for a family plan. It disproportionally burdens lower wage-earning school year employees who work full-time. These employees are typically hired to work the student days. The Management proposal intrudes on local decisions regarding the operation of local schools, while at the same time creating chaos in local business offices within the calculation of pro-ration of health insurance benefits while other benefits including other insurances, leaves and pay would remain status quo. Management’s position should not be recommended.

**The Employer Commissioners**

 The Employer Commissioners believe that there should be a threshold eligibility requirement of 20 hours per week for employees working on a full year basis. This, they argue, is both typical and logical. They assert that their position is supported by the fact that entities such as the State of Vermont, the University of Vermont, the UVM Medical Center, Global Foundries, Inc., Champlain College and Middlebury College have a similar standard.

The Employer Commissioners also assert that the standard for full-time employment should be set at 37.5 hours per week instead of the 30 hour per week standard recommended by the Employee Commissioners. Thirty hours per week is 10 hours removed from what most of the world regards as full time employment. It is understood that, due to school hours and student hours, the length of the work day varies for employees in different positions. It makes no sense to continue to let full-time status continue to be determined at the local level.

**The Fact Finder’s Recommendation**

 While there is no authority to determine what is full-time service for other purposes, there appears to be authority to make a recommendation regarding how many hours an employee must work to qualify for purposes of receiving full health care benefits. Whether or not I have authority to define full-time service, I see no reason not to permit the local CBAs to continue to determine how many hours qualifies for full-time status purposes for the coverage of health care benefits.

Next, attention is turned to the minimum number of hours employees have to work in order to be entitled to any health care benefits. The Employee Commissioners assert that employees who work at least 17.5 hours per week should be eligible for health care benefits.

 For many employees in the public and private sector there is a requirement that an employee work at least half time to qualify for health care benefits. That seems like a reasonable approach. Therefore, I recommend that, for 40-hour positions, part-time employees would need to average 20 hours of work per week to qualify for health care benefits. For employees who work fewer hours in all other positions, they should be required to average one half of the hours required for full-time status, but in no event less than 17 ½ hours per week, in order to receive health care benefits.

As for employees who work sufficient hours to be eligible for the health care benefits, but not enough to qualify for the full coverage, it is understood that any missing premium portion will have to be made by the employee so that 100% of the premium is paid and he/she can receive the full health care benefits.

**2. Probationary Employees**

**The Employee Commissioners**

Some current CBAs make probationary employees ineligible for healthcare. These restrictions, which are found in a relatively small number of support staff agreements, are not consistent with the vast majority of CBAs. The Employee Commissioners would have the Fact Finder prohibit this restriction.

**The Employer Commissioners**

 In response to the Employee Commissioners’ request that probationary employees be covered by the health care benefit, the Employer Commissioners point out that currently the determination of whether probationary employees are eligible is made at the local level. In other areas, the Employee Commissioners have raised issues concerning the Commission’s authority to bargain about certain topics (such as a grievance procedure). The Employer Commissioners note their inconsistency here.

**The Fact Finder’s Recommendation**

 Currently, the local CBAs determine whether probationary employees are eligible for health care. Only a limited number of those CBAs prohibit probationary employees from receiving the health care benefits. There is no convincing argument to restrict health care from probationary employees. Additionally, the eligibility rule in this area should be uniform for all employees. Probationary employees, generally, receive the same salary and benefits as employees in the same titles who are non-probationary. The probationary status gives the employer an opportunity to observe a newly hired employee actually performing his/her duties for a brief period of time after their selection for employment. During, or at the end of, the probationary period, the employer is given the discretion to make a final decision concerning the probationary employee’s continued employment. The probationary employees should receive all the benefits of the position once they commence working and I see no reason to exclude them from health care.

**Preserving and Expanding Access to All Tiers of VEHI Benefit Plan Coverage**

 **Employee Commissioners**

The Employee Commissioners propose to provide access to all four tiers of coverage (Single, Two-Person, Parent/Child(ren) and Family) for all employees based upon their individual and or family needs. They assert that this is fair, equitable, creates consistency and is affordable.

For all licensed employees this proposal is status quo. For full year support staff, 96% of contracts provide eligibility for all tiers. The Union Proposal is only a minor improvement for the support staff; 77% of their contracts provide access to all tiers. The Union Proposal results in a minor cost to the Employer.

The Employer Commissioners presented testimony stating that the cost to fully implement all tiers would be about 18 million dollars. This assumes that all support staff currently without coverage would mirror the decisions of higher paid teachers. There is no basis for that assumption. The cost is only a guess and it is impossible to determine what migration patterns for this group of employees would look like.

**Employer Commissioners**

Immediate access to all tiers of coverage is also being recommended by the Employee Commissioners. The unrefuted testimony was that doing this would result in an extra $18.5 million of cost to the plan. The Employer Commissioners have a better idea, which is to maintain the existing district by district standards for tier eligibility for the duration of this first agreement. Doing this will cost no one a loss of any benefits they now enjoy. While it is true that the statute requires eligible employees to be able to access all tiers during the second negotiated agreement, delaying this change and these costs makes the greater sense, particularly when consideration is given to the 12.9% increase in cost the plan is already facing for the school year 2021.

**The Fact Finder’s Recommendation**

 Currently, most of the employees have access to all tiers. There is no good reason to deny any employee access to all tiers. Additionally, one of the purposes of the statewide bargaining was to standardize benefits. Therefore, I recommend that all employees have access to all tiers in the first CBA. There are employees who will have to make increased premium payments under the recommendations contained in this report. This item will cost some school boards more money, but there is no reason to deny a limited number of employees the same benefit that is enjoyed by the vast number of employees.

**Waiver of Coverage and Cash-in-lieu (CIL) of Benefits**

**Employer Commissioners**

The Employer Commissioners propose that a rule be imposed on the school districts that prohibits them from making payments to employees who decline health care benefits. The Employee Commissioners have asserted a lack of jurisdiction by the Commission over this subject. First, the question of jurisdiction aside, the Fact Finder should determine that the proposal has merit because, for example, a couple who work in separate districts should not be permitted to receive coverage under the plan from the first and a payment in lieu from the second. This type of manipulation will simply cause valuable education system dollars to be diverted from other legitimate educational needs to be squandered in an entirely unnecessarily way. This standard of basic fairness should be regarded as well within the Commission’s jurisdiction,

**Employee Commissioners**

The Employee Commissioners propose to maintain the status quo for CIL provisions which have been bargained locally. Management did not provide any language, testimony or evidence to support their position. The status quo should be recommended.

**The Fact Finder’s Recommendation**

 Since the goal is to standardize benefits throughout the statewide bargaining unit, there is no reason not to set a uniform policy covering CIL when an employee waives health care benefits. The analysis starts with an acknowledgement that there is no intellectual reason why an employee who does not need a health care benefit from his/her employer should be entitled to an alternative benefit. If an employee gets sick leave and is not sick, he/she is not automatically entitled to an alternative benefit. I conclude that the Employer Commissioners are correct that there should be no alternative benefit for an employee who opts not to sign up for health care.

 I do note that it is not unusual for an employer to conclude that it may be beneficial to provide an incentive for an employee who does not need health care to not sign up for that benefit. The employer often saves a lot of money when an employee does not sign up for health care so it is seen as a good practical arrangement to pay a little money as an incentive for an employee (who has an alternative source of health care) to encourage that employee to not sign up for health care. This approach should be the employer’s call. In this case, the Employer Commissioners state they don’t want to pay an employee who does not sign up for health care and I accept their position. I recommend that there be no such benefit in the parties’ Health Care CBA and that such benefit be prohibited.

**Grievance Procedure**

**The Employer Commissioners**

 The Employer Commissionersbelieve that a grievance procedure is a necessary component of the proposed agreement in order to have the type of cohesive approach to health care on a statewide basis as has been directed by the Vermont Legislature. The Employer Commissioners assert that the Vermont Legislature has mandated that the certain issues be negotiated and settled on a statewide basis. To have this statewide bargaining and then continue a system of localized interpretation of a statewide agreement (ultimately through district by district binding arbitration awards) is frankly nonsensical. It may inevitably produce conflicting and confusing results with respect to the proper interpretation of the negotiated or imposed agreement. There is simply no way that the Legislature should be regarded as having intended such an inconsistent and confusing system.

**The Employee Commissioners’ View**

The Employee Commissioners assert that Title 16, V.S.A. Ch. 61 established the Commission and mandates that it negotiate the provision of the health care benefits for educators within specified parameters. It does not authorize the Commission to create a new and separate grievance procedure, applicable to school employees throughout Vermont, to resolve disputes pertaining to health care benefits.

**Fact Finder’s Recommendation**

 The Employee Commissioners maintain that there is no authority to establish a grievance procedure in the new Health Care CBA. I disagree with that conclusion. When two parties are authorized to bargain over a subject and have the requirement/authority to place their ultimate agreement into a collective bargaining agreement, they inherently have the power to resolve disputes (via a grievance procedure) regarding what they agreed to.

 It has always been a principle of labor relations that bargaining for a grievance procedure is an extension of the bargaining over the topics included in the parties’ collective bargaining. It is an unfair labor practice for either party to refuse to negotiate over a grievance procedure and/or not participate in a negotiated grievance procedure. The unfair labor practice is referred to as refusal to bargain in good faith.

 The Employee Commissioners argue that any dispute over the meaning of the Health Care CBA should be resolved by the school boards and their local unions. From a practical point of view, it makes no sense to have parties, who have not participated in the bargaining, arguing about the meaning of the agreement. There may be times when a school board or a local union might have a different interest in obtaining a particular interpretation than the rest of the school boards or local unions. Nothing would prevent either the Employee or Employer Commissions from delegating a local union or particular school board to represent them in a particular case or cases. However, they must have the authority to decide to arbitrate or not and to present the claims for their side if they so desire.

 My recommendation is that there be a grievance procedure as part of the Health Care CBA that culminates in final and binding arbitration. The Employer and Employee Commissioners are very experienced and knowledgeable. Therefore, I leave the drafting of the particulars to them.

**Other Matters**

 There are other issues that have been raised and not yet discussed. These issues include HRAs and HSAs, O-O-P Costs including proration and pharmaceutical costs, transitioning to a Statewide TPA and TPA Services in the Interim, and Flexible Spending Accounts (FSAs). These items are all somewhat interrelated and very complicated (when viewed together). For example, the comparison between HRAs and HSAs is not simple because there are various types of HRAs and the differences between them are significant. I have decided to recommend that these additional issues remain as they currently exist during the initial term of the first Health Care CBA. I do not feel comfortable making specific recommendations on these subjects at this time. The information presented demonstrates that this is a very complex area and additional information, and possibly experiences, should be available before finalizing these items. The parties may attempt to resolve all the items covered in these recommendations rather than proceeding to arbitration.

Dated: September 16, 2019 

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 Mark M. Grossman, Fact Finder