VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION AND STATE OF VERMONT (RE: NON-MANAGEMENT UNIT, SUERVISORY UNIT AND CORRECTIONS UNIT NEGOTIATIONS)	)))))	DOCKET NO. 17-44

MEMORANDUM AND DECISION[1]

At issue is selection by the Vermont Labor Relations Board between the last best offers of the Vermont State Employees' Association ("VSEA") and the State of Vermont ("State") with respect to successor collective bargaining agreements between the parties covering the Non-Management Unit, the Supervisory Unit and the Corrections Unit.

The parties have proceeded through the statutory impasse resolution procedures of mediation and fact-finding. Fact Finder Richard Boulanger issued his Report and Recommendations on February 7, 2018. The parties filed last best offers with the Labor Relations Board on February 28, 2018. The last best offers indicate that the parties disagree on the following five issues: 1) wages, 2), health plan revisions, 3) timelines for completion of disciplinary investigations, 4) special team allowance, and 5) release time. The parties also indicated agreement on contract provisions previously in dispute when they submitted their last best offers. These are provisions relating to: 1) establishment of a joint labor-management committee to study a new pay plan for employees in Group C of the Retirement System, 2) Personal Leave article revision for the Corrections Unit by providing a cash option or personal

[1] The Labor Relations Board issued an Oder on August 9, 2018, amending this March 30, 2018, last best offer decision to reflect and incorporate the terms of a stipulation of agreement, including exhibits, entered into by the parties on August 7, 2018. *See* the case file in Docket No. 17-44 for the terms of the parties' stipulation and agreement, including exhibits.

leave accrual, 3) exchange of information, 4) observance of holidays, 5) sick leave, and 6) grievance procedure.

The parties filed various materials with the Board subsequent to the submission of last best offers and prior to the March 20, 2018, hearing before the Board. They were: 1) the fact-finding hearing transcript; 2) the memoranda submitted by the parties to the fact finder subsequent to the fact-finding hearing; 3) the Report and Recommendations of the Fact Finder; 4) calculations agreed to by the parties on the costs of each party's respective last best offers and the cost of various provisions already agreed upon by the parties; 5) affidavits and reply affidavits filed by both parties on salary and wages, health insurance and economic data; 6) the admitted exhibits filed by each party at fact finding related to the issues in dispute in the last best offer process; and 7) briefs filed by the parties prior to the March 20 presentation before the Board in support of their positions on the last best offers. We have considered all these materials in reaching a decision.

Presentations by the parties, and questions by the Labor Relations Board members, on the last best offers occurred on March 20, 2018, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Chairperson; Edward Clark, Jr., and Karen O'Neill. VSEA General Counsel Timothy Belcher and VSEA Chief Negotiator Gary Hoadley presented on behalf of VSEA. Attorney Joseph McNeil and State Director of Labor Relations John Berard presented on behalf of the State. The parties had other persons present at the proceeding to provide information in response to inquiries of Labor Relations Board members.

Pursuant to the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.* ("SELRA"), the Board is to select between the last best offers of the parties, considered in their

entirety without amendment. 3 V.S.A. §925(i). We first will set forth the differences between the parties on the issues presented in their last best offers.

Wages

The existing collective bargaining agreements between the parties, effective July 1, 2016 – June 30, 2018, provide for 2% across the board increases at the start of the first full pay period for the fiscal year beginning July 1,2016; and a 2.25% increase at the start of the first full pay period for the fiscal year beginning July 1, 2017. The agreements also provide for a Step Pay Plan, which provides as follows for all employees except for State Police Lieutenants (who have their own pay plan):

> . . .
> 4. The required time on each step in the Step Pay Plan shall be as follows:
> Step 1 (probation) – normally, six months
> Step 2 (EOP) – one year
> Step 3 – one year
> Step 4 - one year
> Step 5 – one year
> Step 6 – two years
> Step 7 – two years
> Step 8 – two years
> Step 9 – two years
> Step 10 – two years
> Step 11 – two years
> Step 12 – two years
> Step 13 – three years
> Step 14 – three years
> Step 15 – final step
> . . .
> 6. . . . (M)ovement to a higher step hereunder is predicated on satisfactory performance, based on the annual performance evaluation. . .

For the first year of the 2016-2018 contracts, the approximate cost of step pay plan advancement was 1% (except for State Police Lieutenants) due to the reduced number of state employees on the payroll. 1.9% is the approximate cost in the second year of the 2016-2018 contracts for the continuing step advancement system (except for State Police Lieutenants).

The State Police Lieutenants are covered by the collective bargaining agreement covering the Supervisory Unit. The Step Pay Plan for State Police Lieutenants under the 2016-2018 agreement provides:

> (a) Effective July 1, 2012, the required time on each step in the VSP Step Pay Plan for State Police Lieutenants shall be as follows:
>
> Step 1 (probation) – normally, 6 months
> Step 2 (EOP) – one year
> Step 3 – one year
> Step 4 – one year
> Step 5 – one year
> Step 6 – one year
> Step 7 – one year
> Step 8 – one year
> Step 9 – one year
> Step 10 – one year
> Step 11 – one year
> Step 12 – one year
> Step 13 – one year
> Step 14 – one year
> Step 15 – final step

2.5% is the approximate average annual cost of the operation of the step increase system for State Police Lieutenants.

Both parties propose a two-year agreement covering the period July 1, 2018, to June 30, 2020. The fact-finder made the following wage recommendation:

> I recommend continuation of the current Step Pay Plan without alteration, except as to FY19 and FY20 Across-the-Board Wage Increases (ABIs) . . . I recommend the following ABIs:
>
> 1) The salary schedule in effect on June 30, 2018 shall be increased by a two percent (2%) across-the-board wage increase effective the first payroll period after July 1, 2018. The employees of the three . . bargaining units who are not receiving a Step Pay Plan increase in the period July 1, 2018 to June 30, 2019 shall receive a two percent (2%) across-the-board wage increase effective the first full pay period after July 1, 2018. Bargaining unit employees who receive a Step Pay Plan increase in the period July 1, 2018 to June 30, 2019 shall receive the two percent (2%) across-the-board wage increase in the first pay period after January 1, 2019. . .
> 2) The salary schedule in effect on June 30, 2019 shall be increased by a two percent (2%) across-the-board wage increase effective the first payroll period after July 1,

> 2019. The employees of the three . . bargaining units who are not receiving a Step Pay Plan increase in the period July 1, 2019 to June 30, 2020 shall receive a two percent (2%) across-the-board wage increase effective the first full pay period after July 1, 2019. Bargaining unit employees who receive a Step Pay Plan increase in the period July 1, 2019 to June 30, 2020 shall receive the two percent (2%) across-the-board wage increase in the first pay period after January 1, 2020. . .

The State proposes in the first year of the agreements a wage expenditure of step increases for covered employees of all bargaining units, plus an across the board increase of 1.35% effective January 1, 2019, for covered employees of all bargaining units except State Police Lieutenants. 1.9% represents the cost per year of the continuing step advancement system currently in place for covered employees. State Police Lieutenants, who have a different Step Plan, would receive step increases at an estimated new money expenditure of 2.5%, plus an additional .6% across the board increase in the first year of the agreement effective January 2019.

The State proposes in the second year of the agreements step increases for covered employees of all bargaining units (at a 1.9% cost), plus an across the board increase of 1.35% effective January 1, 2020, for covered employees of all bargaining units except State Police Lieutenants. State Police Lieutenants, who have a different Step Plan, would receive step increases at an estimated new money expenditure of 2.5%, plus an additional .6% across the board increase in the second year of the agreement effective January 2020. Also, for employees in all bargaining units, the State proposes increasing the minimum annualized salary from $25,958 to $29,120.

VSEA proposes for all three bargaining units a 2% across the board increase effective October 28, 2018, and a 2% across the board increase effective October 27, 2019. In addition, employees in all three units would receive step increments each year of the agreements in the

manner set forth in the Step Pay Plan provisions of the agreements. Also, for employees in the Non-Management Unit, but not for employees in other units, VSEA proposes increasing the minimum annualized salary from $25,958 to $29,120.

Health Plan

The State proposes two changes to the Prescription Drugs provisions of the agreements for the three units. First, it proposes that the initial deductible of $25 per patient for each year for the prescription drug benefit will increase to $50 commencing January 1, 2019. Second, the State proposes deleting the following provision from the agreements:

> The Pharmacy Benefit Manager shall, prior to implementing the list, and annually thereafter, provide a proposed list of the division of drugs into tiers prior to the implementation of each drug list. The parties will meet, review and discuss the drug list promptly. The parties must consider each other's positions in good faith. During any year, the Pharmacy Benefit Manager may bring forward revisions for discussion and review in accordance with this paragraph. If VSEA contends that the list or revision finally implemented by the State violates this agreement, the VSEA retains all rights to contest this action.

The State proposes to replace this deleted language with the following provision: "Effective January 1, 2019, the prescription drug formulary, formerly referred to as "the list" shall change to the standard, national formulary of the Pharmacy Benefits Manager and the State shall have the authority to authorize the Pharmacy Benefits Manager to apply reasonable quality and cost measures such as prior authorization and drug quantity management."

The State also proposes that the following provision be added to the Health Plans article of the agreements: "Commencing on January 1, 2019, the SelectCare Health Insurance Plan employee co-payments for non-specialist office visits that were twenty dollars ($20.00) will increase to twenty-five dollars ($25.00), and specialist office visit co-payments that were twenty dollars ($20.00) will increase to forty dollars ($40.00). SelectCare emergency room visit co-

payments that were fifty dollars ($50.00) will increase to one hundred dollars ($100.00). SelectCare magnetic resonance image (MRI) co-payments will be fifty dollars ($50).” Currently, there are no MRI co-payments.

VSEA proposes no changes to the Health Plan article of the agreements.

Disciplinary Action

Both parties agree to accept the fact-finder’s recommendations that the State provide notice to employees of personnel investigations within 30 days of the date management knew or should have known of the matter; and to extend the time for pre-disciplinary meetings to 10 days from 4, but provide that an employee will go off payroll if the meeting is delayed by the employee or VSEA. In addition, VSEA proposes that the following provision recommended by the fact-finder be added to the Non-Management Unit agreement:

> A personnel investigation shall be completed, and the employee shall be sent notice of the conclusion of the investigation, within 120 workdays from the date on which management knew or should have known of the complaint(s) or alleged misconduct. The parties may agree to extend the 120 working day time limit only in instances where felony charges are implicated or for other valid reasons. Assent to the extension of time shall not be unreasonably denied.

The State opposes this provision in its last best offer.

Special Team Allowance

VSEA proposes that the following provision be added to the Special Team Allowance article of the Supervisory Unit agreement: “The parties will continue negotiations on increasing compensation benefits under this article with a view towards resolution.” The State last best offer does not include this provision.

Release Time

The fact-finder recommended the elimination of paid release time for VSEA standing committees. VSEA incorporates this recommendation of the fact-finder into its last best offer. The State agrees with the recommendation of the fact-finder to eliminate paid release time for VSEA standing committees, but proposes that employees may participate in VSEA Standing Committees during the workday if they use accrued and available paid leave to do so.

MAJORITY DECISION

In selecting between the parties' last best offers "considered in their entirety without amendment", we determine which offer is more reasonable and in the public interest. VSEA and State of Vermont, 15 VLRB 107, 111-12 (1992). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB 89, 99 (1999). Vermont State Colleges Faculty Federation, UPV, AFT Local 3180, AFL-CIO and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 28 VLRB 28, 43 (2005). VSEA and State of Vermont, 33 VLRB 357, 364 (2016). The parties' offers differ with respect to: 1) wages, 2), health plan revisions, 3) timelines for completion of disciplinary investigations, 4) special team allowance, and 5) release time.

The most important of these issues is wages. Among the factors to be considered in evaluating wage proposals are the comparability of state employees' wages with those of other employees, as well as contractual wage increases received by state employees in recent years. VSEA and State, 15 VLRB at 113. VSEA and State of Vermont, 19 VLRB 114, 123 (1996).

VSEA and State of Vermont, 33 VLRB at 365. The Board has looked to how state employees are currently positioned relative to other employees and whether comparability will be significantly altered by a wage determination. VSEA and State, 15 VLRB at 113. VSEA and State of Vermont, 33 VLRB at 365. The wage terms negotiated in recent collective bargaining agreements in the public and private sector also are pertinent in evaluating wage proposals; cost of living is another relevant factor. VSEA and State of Vermont, 33 VLRB at 365.

In considering which offer to select in state government disputes, an additional factor of which we are mindful is the historical trend of state revenues. Although it is beyond our jurisdiction to project future funds which will be made available to support state government, or to determine the appropriate mix or allocation of funds, the recent record on state General Fund revenues informs our consideration of the sustainability of wage and other economic proposals.

There is one wage issue agreed upon by the parties: both parties propose that employees who are eligible for step advancement under the Step Pay Plan should receive their step advancement on the appropriate date for both years of the contracts.

The State and VSEA disagree on the percentage of across the board increases to be provided to covered employees for the two years of the contracts. The State proposes an across the board increase of 1.35% effective January 1, 2019, for covered employees of all bargaining units except State Police Lieutenants. State Police Lieutenants would receive a .6% across the board increase in the first year of the agreement under the State proposal. The State proposes in the second year of the agreements an across the board increase of 1.35% effective January 1, 2020, for covered employees of all bargaining units except State Police Lieutenants. State Police Lieutenants would receive a .6% across the board increase in the second year of the agreement.

VSEA proposes wage increases similar to those which are recommended by the fact-finder. This would result in a 2% across the board increase effective October 28, 2018, and a 2% across the board increase effective October 27, 2019, for employees in all three bargaining units.

The parties at fact-finding and before the Board presented evidence on the comparability of the wages of state employees relative to those of comparable positions in the private sector. Although the information submitted by the parties on comparability at fact finding and before the Board is limited, the data which we do have indicates that wages of employees of the State compare favorably with those in the private sector. Moreover, this data is absent consideration of employer-provided benefits and, as we discuss later, state employees benefit from a robust health plan. It also is noteworthy that overall turnover rates in state government are not high and state employees generally have long tenure, which information supports a conclusion that wages in state government are at least in line with wages in the private sector.

Additional pertinent information before the fact finder and the Board is what has occurred in recent years with respect to wage growth in the private and public sectors, and the wage terms negotiated in recent collective bargaining agreements in the public and private sectors. During fiscal year 2009 through fiscal year 2017, private sector wages in Vermont experienced average annual increases of 2.3%. State government wages also increased at the rate of 2.3% per year on average during this time. Municipal wages increased an average of 2.1% a year.

As indicated in the Board's 2016 last best offer decision during the last round of State-VSEA negotiations, state employee wage increases lagged slightly behind those in the private sector during the fiscal year 2009 through fiscal year 2015 period. VSEA and State of Vermont, 33 VLRB at 367, 374-375. The total wage increases received by state employees resulting from

the 2016 last best offer decision of approximately 3 percent in the first year of the contracts, and approximately 4 percent in the second year, resulted in state employees experiencing average wage increases over the last eight years equal to those of private sector employees.

The information before us on wage terms negotiated in collective bargaining agreements in the public and private sectors is notably slim. No evidence was presented specifically on private sector collective bargaining agreements. Limited information presented by the parties on recent collective bargaining settlements under the State Employees Act or otherwise in the Vermont public sector were not particularly helpful for comparability purposes. Wage settlements did not produce any notable trend as percentage increases varied substantially, allowing both parties to highlight instances helpful to their positions. Also, the information presented was devoid of details on total compensation costs of settlements.

The rate of inflation needs to be examined along with the wage increase data in considering the merits of the parties' respective wage proposals. As indicated in the Board's 2016 last best offer decision during the last round of State-VSEA negotiations, the average annual rate of inflation was 1.6% from 2009 through 2015. The experience in the most recent two years continues this trend of low inflation, as the Consumer Price Index increased 1.3% in 2016 and 2.1% in 2017. This data indicates that state employees have experienced average wage increases that have significantly outpaced inflation.

In addition, it is evident that state employees receive significantly more in benefits compensation than other Vermont workers and that the costs of the benefits compensation have exceeded inflation by a substantial amount. Evidence was introduced at fact-finding charting from FY 2009 through FY 2018 the actual total compensation costs per state employee, including the sum of the State's costs for both wages and benefits, versus what the costs would have been if they

equaled the growth of the Consumer Price Index. The average total compensation cost per employee at the beginning of FY 2009 was $66,081. If it had increased at the rate of growth in the CPI, it would now be at $76,237. Instead, it has grown to $92,769 or 22% ($16,532) above the inflation-adjusted amount.

We evaluate the wage proposals of the parties in light of all of the information above. The proposal by both parties is that employees who are eligible for step advancement under the Step Pay Plan should receive their step advancement on the appropriate date for both years of the contracts. This.is an apparent recognition by the parties of the value of maintaining a pay plan containing step increases based on experience, which has long been included in the parties' collective bargaining agreements. VSEA and State of Vermont, 15 VLRB at 112. This is despite the fact that its costs constrain opportunities for other increases in wages across the board and additional elements of total compensation.

In evaluating the merits of wage increases, we do not draw a distinction between step increases and across the board increases. A step increase is a wage increase by another name, and there is no less fiscal impact to such step pay increases as opposed to other types of increases. VSEA and State of Vermont, 19 VLRB at 123. The step increases average an estimated cost of 1.9 % for all covered employees in each year of the contracts except for state police lieutenants. The estimated average annual cost of state police lieutenant step increases is 2.5%.

The parties' proposals differ substantially with respect to across the board increases. The State proposes total wage increases, including step increases and general across the board increases, resulting in a 2.5% average cost for wages in the first year of the contracts, and a 3.2% average cost for wages in the second year of the contracts on top of the first-year increase. VSEA proposes total wage increases resulting in an average cost for wages of 3.2% in the first year of

the contracts, and a 3.9% average cost for wages in the second year of the contracts on top of the first year increase. We note that the average cost per year is affected in both sets of proposals by the timing of the effective dates of the across the board increases.

We conclude that the State's proposal maintains the comparability of state employee wages with those of other employees, and is more reasonable and sustainable than that of VSEA. In reaching this conclusion, we consider that VSEA's proposed increases are significantly higher than the average increases for state employees, municipal employees and private sector employees over the last eight years, and that state employees are currently positioned well relative to other employees with respect to benefits. The State's proposal is also more appropriate in a time of low inflation.

Further, the recent record on state General Fund revenues indicates the wage increases proposed by the State are more sustainable than those of VSEA. General Fund revenues have increased an average of slightly more than 3% during the last four fiscal years. VSEA's proposed increases are more than this revenue growth rate, whereas the State's wage proposals can be more readily accommodated within this rate of growth. Although past revenue performance is only one of many relevant factors in considering respective last best offers, it should not be ignored in evaluating reasonableness.

The State's wage proposal is weakened by presenting little information regarding its separate treatment of State Police Lieutenants. This leaves us without the knowledge to fully understand the impact on affected employees. We still conclude the State proposals on wages on balance is more reasonable and more in the public interest than that advanced by VSEA, but the State's failings detract from the merits of its overall proposals.

Our conclusion that the State has presented more reasonable wage proposals does not end our inquiry. We need to consider other components of the parties' last best offers before accepting an offer in its entirety without amendment. The next most significant issue in dispute concerns the State's proposed modifications to the health plan. The changes increase the prescription drug deductible; adopt the standard, national prescription drug formulary; eliminate VSEA input on the formulary; and increase various co-payments. In addition, the State proposes changes in prior approval and quantity limits to manage the overuse of drugs, including opiates.

Such a non-negotiated change is problematic. The Board has indicated a reluctance to disturb status quo language on significant issues; reasoning that such a change is better achieved through negotiations agreement by the parties, not by fiat of the Board. VSEA and State, 15 VLRB at 112. VSCFF and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB at 97. Modification of the health plan is a significant matter which is better resolved through agreement of the parties than through a last best offer decision.

Also, the existing contracts contain a provision in the health plan article stating: "The parties shall utilize the Benefits Advisory Committee, with equal membership by the State and the VSEA, for the purpose of reviewing all issues relating to health care and prescription drugs, and recommending changes to the bargaining committees." While both parties recognize that they have not interpreted this provision to bar negotiation of any health care proposal that has not been submitted to the BAC prior to negotiation, the parties missed an opportunity to follow this process designed to manage health care changes collaboratively.

These problems with the State's health plan proposal from a process perspective make it an unwelcome revision to the collective bargaining contracts. Nonetheless, there are countervailing factors which we need to weigh to determine whether the problems the health

plan proposal present tip the balance in favor of rejecting the State's last best offers in entirety and instead selecting VSEA's offers.

VSEA's own actions with respect to this proposal contribute to our determination that the State's failings in this regard are not fatal to its last best offer selection. VSEA failed to agree to any modifications in the health plan article proposed by the State even though changes potentially could have saved money, reduced premiums, and resulted in better health outcomes.

We note that state employees currently benefit from a health care plan that is valued at Platinum Plus, the highest value existing health plan. The State-proposed changes would reduce the plan value slightly to Platinum, still a high value plan relative to plans existing elsewhere. In sum, there was mutual fault in not earnestly negotiating on an issue which could have resulted in mutual benefit. This lessens our reluctance to disturb status quo language on this significant issue.

Also, our inclination to not place more weight on the deficiencies of the State health plan proposal results from the facts that deductible and co-pay increases are relatively modest, that there will be health care premium reductions realized by employees and the State, and that the State modified this proposal after fact-finding to reduce the rates of the deductible and co-pay increases. In addition, the State has used the anticipated savings from the health care plan changes to improve its proposal regarding across the board wage increases. We want to emphasize that we are extremely reluctant to approve modifications to the State health plan in the last best offer context, and we do so in this case only because of the above-described countervailing factors and our judgement that the State's wage proposal is more reasonable and sustainable.

Another issue in dispute concerns the VSEA proposal that disciplinary investigations generally should be completed within 120 days with the qualification that the parties may agree to extend the time limits in certain instances. We agree with VSEA based on our own case experience that there are significant problems with the effectiveness of the current provisions of the contract in enforcing reasonable timeframes for completion of investigations. Grievance of Lepore, 33 VLRB 290 (2016); *Reversed*, 2016 VT 129. However, it appears that the specific language proposed by VSEA may promote litigation on requested extensions of time limits, thus replacing one serious problem with another. The defects of VSEA's proposal does not diminish the merits of VSEA's concerns about open-ended time limits on investigations. We encourage the parties to resolve this issue in future negotiations.

The remaining differences in the parties' last best offers do not have a significant impact on our decision to select the State's last best offers. It is reasonable for the State to propose bringing an end to negotiations at this time on increased special team allowance compensation for Supervisory Unit employees since the parties were unable to reach agreement on this issue during this round of negotiations. The final issue is employee release time for participation in VSEA standing committees. The State proposal in this regard is a modest improvement for employees and the VSEA from what was recommended by the fact-finder. As such, it has negligible effect on our decision.

The Board, in considering last best offers, gives some weight, although not controlling, to the fact-finder's recommendations and whether one of the parties has submitted a last best offer consistent with such recommendations. VSCFF and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB at 98. VSEA and State of Vermont, 33 VLRB at 368. We recognize that the State's last best offers differ from the fact-finder's recommendations on the

most significant issues of wages and the health care plan, and that VSEA's proposals track the fact-finder closely on these issues. We appreciate the significance of fact-finding as an important step in the negotiation process designed to promote the narrowing of differences. Nonetheless, it is not evident from our examination of the fact-finder's recommendations here that he gave sufficient consideration to comparability of state employee wage and total compensation increases to those in the private sector, the low rate of inflation, and the historical record of revenue growth in state government. Accordingly, we give his recommendation less weight than we would otherwise.

In sum, we select the last best offers submitted by the State as more reasonable and in the public interest. SELRA provides that, in selecting between the last best offers, "the decision of the Board shall be final, and the terms of the chosen agreement shall be binding on each party, subject to appropriations in accordance with subsection 982(d) of this title." 3 V.S.A. §925(k). In addition to the State's last best offers, the collective bargaining agreements covering the Non-Management Unit, the Supervisory Unit and the Corrections Unit incorporate all tentative agreements reached by the parties on issues which were not part of the last best offer process. Further, the agreements include the contract provisions which previously were in dispute agreed to by the parties when they submitted their last best offers.

3 V.S.A. §982(d) provides that the Board "shall determine the cost of the agreement selected and request the General Assembly to appropriate the amount determined to be necessary to implement the selected agreement." Attachment A to this decision contains the estimated costs agreed upon by the parties of the State and VSEA last best offers. The Board hereby requests that the estimated costs of the State last best offers be appropriated to implement these agreements.

Dated this 30th day of March, 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Karen K. O'Neill

Karen K. O'Neill

DISSENTING OPINION

I respectfully dissent from my colleagues. I find no compelling reason not to accept the VSEA last best offers. At a time when the Vermont economy is in overdrive (2.9% unemployment), and when the State faces no serious economic crisis, the State has proposed a contract that seems designed to lower the living standards of its employees, and to ration (by price) the health care it provides to its employees.

In evaluating information presented by the parties in light of promoting the statutory scheme reflected in SELRA's dispute resolution procedures, I conclude that VSEA has submitted the more reasonable wage proposal. Both parties, in line with the fact-finder's recommendations, propose that employees who are eligible for step advancement under the Step Pay Plan should receive their step advancement on the appropriate date for both years of the contracts. However, the parties differ substantially with respect to proposed across the board increases.

The fact-finder found it "noteworthy that 40% of bargaining unit employees do not receive salary step payments in any given year". He recommended a 2% across the board increase for them, supported by the current rate of inflation reflected in the Consumer Price

Index, effective at the beginning of each contract year in which they were not to receive a step increase. The fact-finder accompanied this recommendation with another which delayed the 2% across the board increases to the middle of each year for employees who received step increases that year. This effectively took into account the new money cost of step increases each year.

In submitting its last best offers, VSEA effectively accounted for the new money cost of step increases by presenting a proposal for 2% across the board increases each year which, while adjusting effective dates of the increases to treat covered employees equally, had a similar new money cost as the fact-finder's recommendations in delaying the effective dates of the across the board increases. The State, on the other hand, submitted wage proposals significantly less than the fact-finder's recommendation in providing for across the board increases of 1.35% each year of the contract which would not go into effect until halfway through each year.

I conclude that the wage increases advocated by VSEA are more reasonable than those proposed by the State. The State's proposals unreasonably leave 40% of employees limited to a wage increase granted six months after the beginning of each year of the contracts at a rate well below the rate of inflation. The VSEA proposals reasonably recognize the new money cost of step increases while providing all covered employees with wage increases which at least approximate the rate of inflation.

The result is average wage increases which are somewhat less than those provided for in the existing collective bargaining agreements. The average increases exceed the rate of inflation but are consistent with the state wage and salary system which recognizes the value of developing knowledge and skills through experience in compensating employees. Further, it is significant that the VSEA wage proposals closely track the fact-finder's recommendations and the State's proposals substantially diverge.

Also, the State's proposal providing for separate and lower across the board increases for State Police Lieutenants weakens its last best offer. The State justifies this separate treatment on the grounds that State Police Lieutenants, unlike other employees, are entitled to receive step increases every year which result in a higher average value of step increases for them than other employees. Nonetheless, by not specifying this separate treatment of State Police Lieutenants until near the end of the fact-finding hearing and then including it in its last best offer, the State did not serve to narrow differences and promote the statutory scheme. It also results in lack of information as to the impact on affected employees.

The next most significant issue in dispute concerns the State's proposed modifications to the health plan. The changes increase the prescription drug deductible, change the prescription drug formulary, eliminate VSEA input on the formulary, and increases various co-payments.

Such a non-negotiated change is problematic. The State has not demonstrated that there is a significant problem which needs to be solved. The actual percentage increase in costs for the state employee health care plan for 2018 is 1.78%. This is an impressive accomplishment by the parties given that the increase is below the rate of inflation. The State proposal chips away at the health care plan with no apparent justification.

Also, the existing contracts contain a provision in the health plan article stating: "The parties shall utilize the Benefits Advisory Committee, with equal membership by the State and the VSEA, for the purpose of reviewing all issues relating to health care and prescription drugs, and recommending changes to the bargaining committees." The State failed to follow this process designed to manage health care changes collaboratively. Further, the State proposal unnecessarily and unreasonably eliminates VSEA's existing role in implementation of the prescription drug list.

These significant problems with the State's health plan proposal make it an undesirable revision to the collective bargaining contracts. Its inclusion in the State's last best offers makes it untenable to accept in a last best offer decision.

Another issue in dispute concerns the VSEA proposal that disciplinary investigations generally should be completed within 120 days with the qualification that the parties may agree to extend the time limits in certain instances. I agree with VSEA, based on our own case experience, that there are significant problems with the effectiveness of the current provisions of the contract in enforcing reasonable timeframes for completion of investigations. The VSEA proposal rectifies a serious due process defect in the disciplinary investigation process.

The remaining differences in the parties' last best offers do not have an appreciable impact on the relative merits of the parties' last best offers. It is reasonable to continue negotiations on the relatively simple issue of increased special team allowance compensation for Supervisory Unit employees as recommended by the fact-finder and proposed by VSEA. The final issue of employee release time for participation in VSEA standing committees is more significant in that VSEA has accepted the fact-finder's recommendation to its own detriment on this issue rather than the State proposal in this regard to make a minor change in the fact-finder's recommendation.

All the dispute resolution procedures set forth in the State Employees Labor Relations Act – i.e., mediation, fact-finding, last best offer – are designed to encourage the parties to progressively narrow their differences and reach agreement. A process which results in the Board having to select between parties' last best offers indicates that negotiations have been a failure, resulting in the least desirable decision the Board ever has to issue.

The fact-finder is a neutral mutually selected by the parties and appointed by the Board under our statutory powers. The Board has indicated in past last best offer decisions that the Board gives weight to the fact-finder's recommendations and that one of the parties' last best offer was consistent with such recommendations. The Board expects the parties to take the fact-finder's recommendations seriously. VSEA did that by modifying proposals made at fact-finding to largely accept the fact-finder's recommendations on wages and other issues. This served to narrow the parties' differences and promote the statutory scheme. The State did not take the fact-finder's recommendations seriously. The effect of the State's wage proposals is to downplay the significance of fact-finding as an important step in the negotiation process designed to promote the narrowing of differences.

Dated this 30th day of March, 2018, at Montpelier, Vermont.

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.

ATTACHMENT A

ESTIMATED COSTS AGREED UPON BY PARTIES OF STATE AND VSEA LAST BEST OFFERS

STATE'S LAST BEST OFFER

Non-Management Unit	**FY 19**	**FY20**
Across the Board Increase	$2,517,542	$5,213,217
Steps	$6,954.284	$7,086,415
Contract Minimum Wage	$ 46,689	$ 46,689
Union Paid Leave Time	$ -119,350	$ -119,350
Benefits Cost	$3,385,039	$3,424,450
Benefits Cost Offset	$-1,102.397	$-2,359,129
TOTAL	**$11,681,807**	**$13,292,292**

The above costs are in addition to $132,988 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total Cost of $11,814,796 in FY 19 and $13,425,281 in FY 20.** 1% has a value of $3,729,692 in FY19 and $3,800,556 in FY20.

Supervisory Unit	**FY19**	**FY20**
Across the Board Increase[1]	$ 666,131	$1,379,396
Steps[2]	$1,840,075	$1,875,036
Union Paid Leave Time	$ -31,974	$ -31,974
Benefits Cost	$ 786,765	$ 797,003
Benefits Cost Offset	$ -255,120	$ -545,958
TOTAL	**$3,005,876**	**$3,473,503**

The above costs are in addition to $36,453 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total cost of $3,042,330 in FY 19 and $3,509,957 in FY 20**. 1% has a value of $986,861 in FY 19 and $1,005,611 in FY 20.

Corrections Unit	**FY19**	**FY20**
Across the Board Increase	$ 416, 126	$ 861,696
Steps	$ 1,149,478	$1,171,318
Union Paid Leave Time	$ -28,676	$ -28,676
Benefits Cost	$ 552,110	$ 558,538
Benefits Cost Offset	$ -179,353	$ -383,815
TOTAL	**$1,909,686**	**$2,179,062**

The Total Cost **is $1,909,686 in FY 19 and $2,179,062 in FY 20**. 1% has a value of $616,483 in FY 19 and $628,197 in FY 20.

1. Costs include the .6ABI for State Police Lieutenants
2. Costs include the cost of yearly step progression for State Police Lieutenants

Total All 3 Units	**FY19**	**FY20**
Across the Board Increase	$3,599,800	$7,454,309
Steps	$9,943,837	$10,132,770
Contract Minimum Wage	$ 46,689	$ 46,689
Union Paid Leave Time	$ -180,000	$ -180,000
Benefits Cost	$4,723,913	$4,779,991
Benefits Cost Offset	$-1,536,870	$-3,288,901
TOTAL	**$16,597,369**	**$18,944,857**

The above costs are in addition to $169,442 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total Cost of $16,766,811 in FY 19 and $19,114,299 in FY 20.** 1% has a value of $5,333,037 in FY 19 and $5,434,364 in FY 20.

VSEA'S LAST BEST OFFER

Non-Management Unit	**FY19**	**FY20**
Across the Board Increase	$5,164,189	$7,804,478
Steps	$6,954,284	$7,086,415
Contract Minimum Wage	$ 46,689	$ 46,689
Union Paid Leave Time	$ -119,350	$ -119,350
Benefits Cost	$3,385,039	$3,424,450
TOTAL	**$15,430,851**	**$18,242,682**

The above costs are in addition to $132,988 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total Cost of $15,563,839 in FY 19 and $18,375,671 in FY 20**. 1% has a value of $3,729,692 in FY 19 and $3,800,556 in FY 20.

Supervisory Unit	**FY19**	**FY20**
Across the Board Increase	$1,366,423	$2,065,033
Steps	$1,840,075	$1,875,036
Union Paid Leave Time	$ -31,974	$ -31,974
Benefits Cost	$ 786,765	$ 797,003
TOTAL	**$3,961,288**	**$4,705,098**

The above costs are in addition to $36,453 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total Cost of $3,997,742 in FY 19 and $4,741,551 in FY 20**. 1% has a value of $986,861 in FY 19 and $1,005,611 in FY 20.

Corrections Unit	**FY19**	**FY20**
Across the Board Increase	$853,592	$1,290,008
Steps	$1,149,478	$1,171,318
Union Paid Leave Time	$-28,676	$-28,676
Benefits Cost	$552,110	$558,538
TOTAL	**$2,526,504**	**$2,991,188**

The Total Cost **is $2,526,504 in FY 19 and $2,991,188 in FY 20**. 1% has a value of $616,483 in FY 19 and $628,197 in FY 20.

Total All 3 Units	**FY19**	**FY20**
Across the Board Increase	$7,384,205	$11,159,519
Steps	$9,943,837	$10,132,770
Contract Minimum Wage	$ 46,689	$ 46,689
Union Paid Leave Time	$ -180,000	$ -180,000
Benefits Cost	$4,723,913	$ 4,779,991
TOTAL	**$21,918,644**	**$25,938,968**

The above costs are in addition to $169,442 per Fiscal Year in costs for various provisions already agreed upon by the Parties. For a **Total Cost of $22,088,085 in FY 19 and $26,108,410 in FY 20**. 1% has a value of $5,333,037 in FY 19 and $5,434,364 in FY 20.