

Before MICHAEL C. RYAN, FACTFINDER

In the matter of the fact-
finding between

SCHOOL DISTRICT OF
BURLINGTON, VERMONT

-and-

BURLINGTON EDUCATION
ASSOCIATION/VERMONT NEA

FACTFINDER'S REPORT

For the School District

Joseph E. McNeil, Esq.
Colin K. McNeil, Esq.

For the Association

David R. Boulanger, Vermont NEA

I. BACKGROUND

This is a fact-finding pursuant to 16 V.S.A. §2007, the teachers "fact-finding committee." It concerns a successor to the parties' collective bargaining agreement ("CBA") that will expire on August 31, 2017.

After nine bargaining sessions, during which they made little headway, the parties jointly selected me to mediate the contractual dispute. There were two days of mediation, on April 11 and May 31, 2017, which did not succeed in

settling the CBA. The parties then jointly agreed to submit the matter to me for factfinding pursuant to §2007. On June 7, 2017, the parties submitted written statements of their proposals and positions, accompanied by affidavits and substantial comprehensive documentation.

II. RELEVANT STATUTE

16 V.S.A. § 2007. Fact-finding committee

(a) If mediation fails to resolve outstanding differences or is not requested and a continuing disagreement persists, either party may, after negotiation on all matters properly before them, request that any or all unresolved issues be submitted to a fact-finding committee by notifying the other party of their intention and setting forth in writing the issues to be submitted to fact-finding.

(b) The fact-finding committee, which shall be activated as soon as practicable upon request, shall be composed of one member selected by the school board negotiations council, one member selected by the negotiations council for the teachers' or administrators' organization, and one member who shall serve as chair, to be chosen by the other two members. In the event that agreement cannot be reached on a third member for the fact-finding committee, the American Arbitration Association shall be asked to appoint the third member.

(c) The fact-finding committee shall convene as soon as practicable after its appointment, hold informal hearings as necessary, and provide adequate opportunity to all parties to testify fully on, and present evidence regarding, their respective positions. All parties to the dispute shall furnish the fact-finding committee upon its request all records, papers, and information in their possession pertaining to any matter properly in issue before the fact-finding committee. The fact-finding committee shall make a written report and shall deliver it to

both parties recommending a reasonable basis for the settlement of the disagreement within 30 days after the appointment of all members of the committee.

(d) The report of the fact-finding committee shall be advisory only and shall not be binding on either party. The report shall be made public by the fact-finding committee if the issues in dispute have not been resolved within ten days of the delivery of the report.

(e) All expenses of fact-finding and mediation shall be borne jointly by the parties to the dispute.

The Burlington School District ("District") has six elementary schools, two middle schools, one high school, and an education center. The Burlington Education Association ("Association") represents 412 teachers in these schools. The District and Association have negotiated CBAs for 50 years. The District also negotiates with five other bargaining units: administrators, paraprofessionals, property service/bus, food services, and IT personnel.

Although the educational assessment results for Burlington students are slightly above the statewide average, they fall short of "adequate yearly progress" targets. Slightly more than half of all students demonstrated proficiency on Vermont's 11th-grade ELA assessment; and just over a third of students demonstrate

proficiency on the math assessment. The Vermont Agency of Education has designated all schools in Burlington as "in need of improvement."

The District hired a new superintendent, Yaw Obeng, in 2015. Superintendent Obeng has eleven years of prior experience as a school superintendent and senior administrator in Toronto, Ontario. He is committed to improving student outcomes while remaining fiscally prudent.

Burlington is the largest city in Vermont and the most diverse (although, like the rest of the state, it is homogenous by comparison to other cities in New England). The District's FY18 budget is about \$85.5 million, roughly 2.2% higher than the FY18 budget.

About 85% of the budget is in the General Fund, which is unrestricted. (Other funds are restricted.) The primary source of the General Fund is the state Education Fund, which derives primarily from property taxes.

This includes \$1.76 million in new programmatic investments and an increase of \$1.53 million for rising costs and other nondiscretionary expenses. The District allocated \$750,000 to CBA settlements, salaries and benefits, and \$335,000 to a contingency fund.

The full and extended positions of the parties were quite lengthy and the complex. I have distilled the most essential arguments below, but not necessarily included each in every respect, while I have tried to capture the essence of the more important arguments regarding most of the disputed issues. I do concur that this process should be as expeditious as possible and I applaud the cooperation of the parties of moving this matter expeditiously and respectfully.

What follows is my report indicating my "reasonable basis for settlement," which should be viewed in total, although I have broken out each disputed issue separately for a focused rationale.

III. REPORT ON THE ISSUES

ISSUE 1 - WAGES

DISTRICT'S PROPOSAL:

If the factfinder does not recommend the District's operational proposal and health insurance proposal:

2017-18: 1.23% new money

2018-19: 1.23% new money

[This would allow only step movement.]

If the factfinder recommends the District's operational **and** health insurance proposals:

2017-18: 1.75% new money

2018-19: 2.00% new money

The amount above step movement is to be applied toward the maximum end of the salary schedule.

ASSOCIATION'S PROPOSAL

2017-18

4.31% new money, distribution as follows:

Amount added to each step	\$1000	\$1000	\$2,000	\$2000	\$2100	\$2100	\$2800	\$2800
FTE teachers at each step	6.7	23.2	20	17.04	5.0	28.8	17.6	93.45

District's Position: The District's offer reflects all that is available in the voter-approved FY18 budget. After an arduous budget development process, the voters accepted the overall 5.8% budget increase. This enabled the District to reinstate certain programs and positions that had previously been eliminated.

The only feasible sources of additional revenue are the savings realized from the District's health insurance proposal and from the potential savings from the District's proposed operational changes. Cuts in other budgetary categories would cause harm to other legitimate needs. Moreover, the recently enacted H.542 will greatly reduce the savings from Vermont's new health insurance offerings, which will take effect on January 1, 2018.

Moderate salary growth should be the theme for the first year of the CBA. Even though the District's base offer of 1.23% is below the most recent inflation rate of

2.25%, it is more than fair, given that past increases have substantially exceeded inflation:

CBA Year	Increase %	Annual Inflation %
2013-14	3.10	1.5
2014-15	4.50	1.6
2015-16	4.40	0.1
2016-17	2.75	1.3
TOTAL	14.8	4.5

The District is in the midst of a multiyear correction plan for these previous excessive expenditures. It is making needed investments in such areas as preschool access, special education, replacement of a school bus, \$55,000,000 in deferred maintenance of buildings, and a contingency fund to ensure that the District does not revert to its prior pattern of deficit spending. The voters indicated their displeasure with that pattern by rejecting the District's budget in 2014.

Association's Position: The District is clearly able to pay for the Association's wage proposal. Its revenues increased by 28.08% from FY12 through FY18, of which 7.74% occurred from FY16 to FY18. This represents a dollar increase of \$6,144,991. That the voters approved these latter increases clearly indicates public support for teachers' wages and benefits.

There is a continuing upward trend in income in Vermont and Chittenden County. Burlington's average wage

is the highest in the county, 7.5% greater than the county average. Yet in recent years, the Burlington schools have struggled to maintain their competitive position regarding teachers among comparable school districts. While the pattern of comparability may be more difficult to discern than in the past because only twelve CBAs in the state have settled, the Association's proposal is well within the range of these settlements. They range from 7% on the base at Windsor Central (Woodstock) and 5.3% at Franklin Central (St. Albans) to lows of 2.5% at Blue Mountain and Washington Central. The settlement in Chittenden South (3%/3%, with an employer health insurance contribution of 84%) is a strong guide to future settlements in Chittenden County.

ISSUE 1 - WAGES - CONCLUSION

The parties' wage proposals must be evaluated in light of the District's operational proposals and the impending changes in health insurance. The District has made it very clear that it wants much more control over the teachers' workday. In particular, at the high school, it proposes to eliminate unassigned time and to reduce the teachers' prep periods by 50%. As for health insurance, teachers throughout the state will be changing to a new set of high-deductible health plans effective January 1, 2018.

As shall be seen, I have recommended some, but not all, of the District's proposals in connection with these two subjects. This will entail considerable disruption, and potentially some expense, to some or all of the teachers. While the District argues that it should not have to make any concession for the loss of unassigned time at the high school, I do not see it that way. The teachers have had this time for years. They have planned their work day in reliance upon it, and the evidence shows that they have used it to enhance their students' education. Under ordinary principles of collective bargaining, an employer who wishes to control more of its employees' time must be prepared to pay for it.

The District's allocation of its budget toward certain previously neglected priorities, such as building maintenance and a contingency fund, is prudent and laudable. However, its total financial picture, combined with the health insurance and operational concessions it has proposed, do not justify its low wage offer. The parties have never agreed to percentage new money increases as low as 1.75%/2.00%, which is the higher of the District's two offers. Over the past contract years, the parties have agreed to annual new money increments ranging from 2.60% to 4.40%:

07-08	08-09	09-10	10-11	11-13	12-13	3-14	14-15	15-16	16-17
4.40%	4.22%	3.97%	2.60%	2.70%	2.80%	3.10%	4.50%	4.40%	2.75%

Almost all of the lower increments (2.6%/2.7%/2.8%) occurred from FY10 through FY13, when public employers were dealing with the aftermath of the 2008-09 recession. The District is not facing any comparable financial crisis now.

The District's offer is also substantially lower than the most recently agreed-upon percentage increases in Chittenden County, in 2016-17. Burlington's salaries compare reasonably well with these districts - the District referred to its ranking as "the middle of the middle of Chittenden County school districts" - but not so favorably as to warrant the lowest increases in the county.

Comparison of Increases and Wages – 2016-17 Chittenden County School Districts				
Burlington	% Increase	BA Step 1	MA Step 10	MA+30 \$Step 15
	2.75%	\$43,565	\$67,734	\$84,750
FTE Teachers		6.7	17.04	93.45
Rank		3 rd	4 th	6 th
Mt. Mansfield	3.25%	\$41,426	\$61,957	\$82,355
Underhill ID	3.25%	\$41,426	\$61,957	\$82,355
Underhill Ctr	3.25%	\$41,426	\$61,957	\$82,355
Jericho	3.25%	\$41,426	\$61,957	\$82,355
Richmond	3.25%	\$41,426	\$61,957	\$82,355
CESD	3.15%	\$41,426	\$61,957	\$82,355
Bolton	3.25%	\$41,426	\$61,957	\$82,355
Huntington	3.25%	\$41,426	\$61,957	\$82,355
Essex Town	3.15%	\$44,017	\$69,547	\$88,034
Essex Junction	3.15%	\$45,157	\$67,185	\$85,541
Colchester	3.35%	\$42,635	\$69,282	\$86,366
Winooski	4.56%	\$39,922	\$63,237	\$79,844
Westford	3.15%	\$45,157	\$67,185	\$85,541
S Burlington	2.90%	\$43,157	\$69,469	\$89,788
CVUHS	3.25%	\$42,675	\$67,927	\$85,691
CSSD	3.25%	\$42,675	\$67,927	\$85,691
Charlotte	3.25%	\$42,675	\$67,927	\$85,691
Shelburne	3.25%	\$42,675	\$67,927	\$85,691

Willison	3.25%	\$42,675	\$67,927	\$85,691
Hinesburg	3.25%	\$42,675	\$67,927	\$85,691
Milton	3.30%	\$42,542	\$63,281	\$79,617

It must also be noted that it is not accurate to equate total new money percentage, which includes both experience increments and a general wage increase, to the inflation rate or cost of living. The merit increments, which do not apply to all teachers, are designed to compensate for a teacher's increased experience up to a certain number of years. A cost of living increase, in contrast, does compare directly to a general wage increase. Thus, the general wage increase aspect of the wage proposal must be broken out to compare in that aspect.

For all of these reasons, I recommend the following Increases:

- 2017-18 - 2.75% new money (steps + increment)
- 2018-19 - 3.50% new money (steps + increment)

Given the typical time and expense that a round of negotiations costs the parties, I have not recommended the Association's proposal for a one-year CBA. However, in accordance with the Association's proposal (which the District does not oppose), I do recommend that the increases be allocated more heavily toward the higher side of the salary grid. Almost a quarter of the teachers are at the maximum salary on the grid, and another 53% are at

the top step of their column. I will leave it to the parties to work out the exact details of the allocation.

ISSUE 2 - HEALTH INSURANCE

Background. Public school teachers in Vermont receive health insurance through the Vermont Educational Health Initiative (VEHI), which is (or was, until recently) jointly administered by the School Boards' Association and Vermont NEA. Although VEHI offers three plans, almost all teachers in Vermont participated in a VEHI offering called the Vermont Health Partnership (VHP). About 80% of the Burlington teachers are covered through their employment; of those, 99% subscribe to VHP. The District covers 83% of the premium.

As a result of the Affordable Care Act, on January 1, 2018, VEHI will eliminate VHP and offer four new health insurance options: Platinum, Gold, Gold "Consumer Driven Health Plan" ("CDHP"), and Silver CDHP. According to VEHI, the services covered will be almost identical to VHP. The most significant difference is a 30% decrease in premiums, and an increase in out-of-pocket maximums ("OOP"), mostly attributable to the imposition of higher deductibles. It will shock no one if I describe this as cost-shifting. For example, VEHI projects that across Vermont, Gold CDHP will realize premium savings of around \$75.5 million. However,

since it will also increase OOP by \$48.8 million, it is the subscribers who are subsidizing 65% of those "savings."¹

School districts may offer any or all of the four plans, but will fund them on the basis of a single chosen plan. For example, if a district offers all four plans but funds them on the basis of the costs of Silver CDHP, any plan above Silver CDHP will be more expensive for the teacher. As a collective bargaining matter, the most significant aspects of this new arrangement are: (1) which plan to choose as the basis of the employer's contribution; (2) the employer/employee premium contribution split, as always; and (3) whether the employer will contribute to the increased OOP, and if so, how much.

To make matters more complicated, on June 28, 2017, the governor signed into law H.542, which became effective immediately. This required some last-minute input from the parties in the midst of preparing this report. The

¹One of the premises of promoting high-deductible plans is that they provide subscribers with an incentive to shop around for the best deal on medical services. But as the Association points out, experts have questioned that premise. Studies have shown that subscribers to high-deductible plans do spend less for medical services, but it is not because they compare prices. Instead, they forego care, which may be costlier in the long run. Brot-Goldberg et al., *What does a deductible do? The impact of cost-sharing on health care prices, quantities, and spending dynamics*. National Bureau of Economic Research Paper No. 21632 (October 2015).

enactment created a mechanism to return part of the savings realized from the new plans to property taxpayers. In brief, the legislation directs the Agency of Education to determine the amount saved in each school district in FY18 and FY19, and prescribes a formula for making that calculation.² It then mandates the reduction of state aid to education under 16 V.S.A 133 by 65% in FY18 and 35% in FY19. For any CBA in impasse resolution proceedings on the effective date of the enactment (such as this one), there is a provision allowing either party to re-open negotiations. Neither party did so in this case, although they were arguably still open to possible negotiation.

Given the complexity of these issues, VEHI has foreseen that some school districts may not settle their CBAs by January 1, 2018, and has recommended that school districts budget on the basis of Gold CDHP as the "default plan."

DISTRICT'S PROPOSAL: Part 1

With the implementation of the new VEHI health insurance plans, the District will offer Gold CDHP.

[The OOP for Gold CDHP are
Single: \$2,500
2 adults: \$5,000
Parent & child: \$5,000
Family: \$5,000]

²The formula is based on the Gold CDHP plan, regardless of which plan the school district chooses.

In lieu of the current 83% contribution, the District proposes to contribute a fixed dollar amount, as follows:

Single:	\$402.93
2 adults:	\$756.72
Single parent & children:	\$622.95 ³
Family:	\$1,116.12

In addition, the District will fund a Health Reimbursement Arrangement ("HRA") for the purpose of reimbursing OOP, on the following basis⁴:

Employees pay the first dollars of OOP as follows:

Single:	\$400.
2 adults:	\$800
Parent & child:	\$800
Family:	\$1,600

Board pays 50% of any additional OOP to a max of:

Single:	\$840
2 adults:	\$1,680
Parent & child:	\$1,680
Family:	\$1,360

Employee pays balance.

Part 2. ARTICLE XXII - INSURANCES

22.5 A teacher, other than a teacher whose spouse is entitled to coverage under the Board's health insurance plan by virtue of such spouse's employment by the Board, who waives coverage under the Board's health insurance plan shall on or before July 1 of each year be paid \$2,000. ~~twenty-five percent (25%) of the amounts not paid by the Board for health insurance for which such teacher was eligible under rules of the carrier and pursuant to this Agreement, due to the waiver of such coverage by the teacher.~~ The payment shall be for Board savings during the year of the teacher's employment prior to the payment. Such waiver request must be received by the

³ This is a new category of plan. It was not clear whether it applies only to single parents with one child, or to multiple children as well.

⁴ An HRA is an IRS-approved benefit that allows the employer to fund or partially fund a tax-free account for reimbursing OOP and health insurance premiums.

Superintendent's office no later than April 1 of the contract year in which coverage was waived.

ER: Teachers receive \$2,000 cash for opting out of health insurance if they have alternative coverage through a non-federal plan (e.g., private employer).

ASSOCIATION'S PROPOSAL

Status quo to January 1, 2018.
Retain 83%/17% premium contribution for VEHI plan selected by teacher.
95% District-paid HRA to cover OOP up to maximum.

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District's Position: Gold CDHP has the right combination of coverage and cost and is also the best overall value for both the teachers and the District.

A fixed-dollar contribution to premium offers the District more predictability than a percentage, which imposes a virtually unlimited obligation on the District. The proposed dollar amounts are equivalent to a 77%/23% split. With a fixed-dollar contribution, both parties will have to confront the real impact of premium increases. Similarly, if teachers do not assume responsibility for the first dollars of OOP, it will likely to contribute to higher premium costs in the future.

The message of H.542 is that the state does not want the savings achieved by the new health insurance offerings to be spent on excessive wage increases to teachers. The

District's proposal will save \$1,010,521 in premium contributions for the eight months of the 2017-18 contract year, \$194,378 of which would increase its wage offer from 1.23% to 1.75%. Another \$200,000 would fund the District's proposed HRA, and the balance would go to other District needs.⁵

Association's Position: The District must contribute a percentage, not a dollar amount, to both premiums and OOP. That has been the format in the parties' previous CBAs, and is the trend in recent settlements in Vermont. Considering the significant savings that will accrue to the District from the new plans, there is no need to increase the current 17% employee contribution to premiums, which is already at the high end in Chittenden County. Furthermore, employees are entitled to meaningful relief from the substantial increase in OOP. The District's proposal would shift the lion's share of this cost to employees.

While H.542 has created a great deal of confusion, its actual effect on this proceeding is negligible.

⁵ The District made these estimates before H.542 was enacted. How much money the District will have to return to the state (in the form of reduced state aid) is uncertain at this point. On June 21, 2017, the state issued an estimate for a "hypothetical supervisory union" of \$149,500 for FY18 and \$80,500 for FY19. The accuracy of those figures will only be revealed in the fullness of time.

Essentially, there will be a reduction of roughly \$149,500 in state aid in 2017-18, out of a District budget of over \$85.5 million. By comparison, the Association's proposal would save the District \$568,397 over the cost of health insurance in the first year.⁶

ISSUE 2 - HEALTH INSURANCE CONCLUSION

Plan. I recommend the District's proposal to offer a single plan, Gold CDHP, rather than a choice of four. The District correctly observes that Gold CDHP offers the best combination of premium cost and OOP (although given the many variables involved, that may not be true for every individual). Of the twelve Vermont school districts that have settled CBAs since June 6, 2017, nine have agreed to Gold CDHP as the sole plan. As a practical matter, the teachers have been covered by a single plan for many years, so they are not losing a menu of choices.

Premium split. I recommend no change in the current 83%/17% premium split. Whether Gold CDHP will be a good bargain for a given covered individual depends entirely on the amount of OOP incurred, and that is at least partly a matter of luck. Given that uncertainty, this is not the

⁶The Association arrives at this figure as follows:

District's cost of health insurance, FY17:	\$5,237,927.00
BEA's proposal, FY18, (including estimated cost of HRA)	<u>4,669,530.61</u>
Difference	(\$568,396.39)

time to increase the employees' premium share, particularly by changing to a fixed-dollar contribution by the District. That would add another level of uncertainty by transferring all the risk of premium increases to the employees. While a fixed dollar amount would provide predictability to the District, it would shift all the unpredictability onto the teachers. More importantly, it would shift all the risk onto the individual teachers. For example, were the District to have a fixed dollar amount instead of 83%, if the premium cost were to increase by 25%, the entire increase in premium would be borne by the teacher. That is, the teacher's premium contribution would jump from 17% to 31%, approaching a doubling. This kind of extreme burden shifting to individual employees is not recommended.

HRA. The District's proposal would result in a maximum exposure for the District of 33.6% of OOP:

	Max. OOP	Max. District Contribution	Max. Employee Contribution	Max. District Share of OOP
Single	\$2,500	\$840	\$1,660	33.6%
2 Adults	\$5,000	\$1,680	\$3,320	33.6%
Single parent & child	\$5,000	\$1,680	\$3,320	33.6%
Family	\$5,000	\$1,360	\$3,640	27.2%

For some individuals, the District would contribute nothing to OOP, because the "first dollars" are allocated entirely to the individual.⁷

As noted, few Vermont districts have settled CBAs, and only one is in the most comparable area of Chittenden County. The ones that have settled are strikingly more generous in their coverage of OOP than the District's proposal:

SETTLEMENTS AS OF 6/6/17 - CONTRIBUTIONS TO OOP	
Orleans Southwest SU	Employee pays first 10%, District pays remaining 90%
Windham Southeast SU	Employee pays first 20%, District pays remaining 80%
Bennington/Rutland SU	Family: \$19,555 toward premium, excess to an HSA + \$500 in year 1
Springfield SD	Employee pays first \$900, District pays next \$2,050
Windsor Central SU	For Gold CDHP, District pays 100% of OOP
Essex-Caledonia	Employee pays first \$300 of OOP, District pays balance
Washington Central SU	Employee pays first 10%, District pays balance
Blue Mountain	District pays first 90%, employee pays balance
Franklin Northeast	District contributes \$2,250/\$4500
Lamoille South	District contributes \$4,000/\$3,500/\$1,700
Franklin Central	District pays 100%
Rivendell	District pays 96%

Notably, however, when the other parties negotiated these CBAs, the districts were not yet certain that they would be relinquishing some of the savings realized under the new plans to the state.

Given the comparables, I recommend that the individual pay the first \$400 in OOP for all plans, and that the

⁷ It is difficult to estimate the proportion of individuals for whom this will be true. Under VHI, In the 2016 "claims year," out of 1,688 covered "lives," 78.9% incurred \$0-499 of OOP. However, it is not clear what the OOP maximum was under VHI, so it is hard to extrapolate that statistic to the new plan.

District pay 60% of the balance up to maximum, through the HRA. This means that the District will contribute a maximum of 55.2% of OOP, which is still on the low side of the comparables:

	Total OOP Max.	Max. District Contribution	Max. Employee Contribution	Max. District Share of OOP
Single	2500	60% x 2100 = \$1260	1240	50.4
2 Adults	5000	60% x 4600 = 2760	2240	55.2
Single parent & children	5000	60% x 4600 = 2760	2240	55.2
Family	5000	60% x 4600 = 2760	2240	55.2

Buyout. I discern no need for any modification of section 22.5, the health insurance buyout provision, and I do not recommend it.

ISSUE 3 - WORK DAY

DISTRICT PROPOSALS

ARTICLE VI - TEACHING DUTIES

~~6.6 Classroom teachers will, in addition to their lunch period, have daily preparation time during which they will not be assigned to any other duties as follows:~~

- ~~a) Elementary School - not less than forty five (45) continuous minutes. Additionally, the Board shall employ best good faith efforts to ensure that such 45 continuous minutes occur within the student day. ...~~
- ~~b) Middle School - not less than forty five (45) continuous minutes.~~
- ~~c) High School - not less than one (1) block per day.~~

Classroom teachers will, in addition to their lunch period, have daily preparation time of not less than

40 minutes or longer than 50 minutes during which they will not be assigned to any other duties.

* * *

6.8(a) ^[8] Current practices will remain in effect with regard to the duty day at the district's elementary schools, and the parties will continue a labor-management committee which has been addressing such practices/standards.

Teachers in grades 9 through 12 inclusive in the areas of math, English, social studies, business education, special education, art, foreign languages, and non-laboratory science shall not be involuntarily assigned more than five (5) teaching blocks per two-day period. (A teaching block may be up to 90 minutes as of the 2011/2012 school year.)

Teachers in science, where laboratories are an integral part of the class, shall be assigned no more than an average of six (6) teaching periods per two-day period to a maximum of twenty-eight (28) 45 minute classes per week.

Teachers in the area of technical and industrial education, driver education, home economics, music, and physical education shall be assigned no more than six (6) teaching blocks per two-day period.

High School teachers assigned five (5) teaching blocks per two-day period or less may be assigned to one (1) supervisory assignment consisting of no more than one (1) block.

Any teaching area not expressly covered by this Article, shall be assigned no more than five (5) teaching blocks per two-day [sic].

Non-teaching duties may be assigned to teachers that have no sixth teaching assignment. Said duty assignments will occur within fifty (50) continuous minutes if completed daily, and ninety (90) continuous minutes or one teaching block (whichever is shorter) if completed on alternate days.

⁸In the CBA, this subsection is a single paragraph. I have broken it up to facilitate analysis.

Middle school teachers may not involuntarily be assigned more than two hundred ninety (290) minutes of student contact time per day and may not be assigned to more than a total of six (6) classes and/or duties per day. Non-teaching duties may be assigned to teachers that have no sixth teaching assignment. Said duty assignments will occur within fifty (50) continuous minutes if completed daily.

Notwithstanding the foregoing, any and all time within the seven and three-quarter hour work day which is not utilized by direct instruction, supervisory duties, duty free lunch or duty-free preparation shall be subject to administrative assignment for coordinated planning and for individual student support.

ARTICLE VIII - WORKING CONDITIONS

8.7 All teachers may be assigned appropriate starting and dismissal times, provided that their total work day will be no longer than seven hours, forty-five minutes of consecutive time, including the duty-free lunch guaranteed to them under section 8.1 ["not less than one module (22-25 minutes) ... between the hours of 11:00 A.M. and 1:30 P.M."]. ~~Teachers are accorded the right to leave after their last class of the day but in no event earlier than 2:00 P.M. on Fridays and the day preceding vacation periods irrespective of the seven hour, forty-five minute restriction.~~

District's Position. The allocation of assigned work time in these provisions is operationally inefficient, inequitable, and inflexible. The CBA allocates teacher workload unevenly, depending on whether the teacher is at the elementary, middle or high-school level, which is an arbitrary consideration.

6.6 - Prep Time. It is inherently inequitable for teachers at the high school to have twice as much prep time

as other teachers, so the District advocates a 40-50 minute prep period for all teachers.

6.8(a) - Unassigned Time at the High School and Middle Schools. High school teachers are compensated for more than 8 hours per week that are neither instructional time, nor lunch, nor prep time ("stranded" or "ad hoc" time). Middle school teachers are compensated for more than 6 hours per week that are neither instructional time, nor lunch, nor prep time. It is likely that most teachers use this time to fulfill their professional obligations, yet the District cannot access and arrange the time in a manner that will yield the best result for students.

It would not be appropriate to require concessions from the District in order to make this "mid-course correction." The teachers will not be relinquishing a defined benefit (except for the early Friday departure), but an unintended consequence of the workload language.

8.7 - Early Dismissal on Fridays. This is inequitable, limits opportunity for professional collaboration and student contact at the middle and high schools, and creates friction within the bargaining unit. Example: if one team member leaves early, the team either cannot meet productively or perhaps cannot meet at all.

Association's Position. The Association opposes any change to these long term contractual provisions.

ISSUE 3 - WORK DAY - CONCLUSION

Unassigned Time. The instructional day at the high school consists of four consecutive, 90-minute blocks. The work day begins 20 minutes before classes (7:45-8:05AM) and ends 20 minutes after classes (3:05-3:15PM). Lunch is scheduled during block 3. All high-school teachers are entitled to a 90-minute prep period, which is twice as long as the prep periods at the elementary and middle schools.

Under the workload provisions of section 6.8(a), both high-school and middle-school teachers end up with a certain amount of unassigned time. Because of the complexities of scheduling, I cannot say how often this occurs during the school week, or in what pattern, if any. The District expressed it in terms of hours per week. According to the District, high-school teachers (other than laboratory science teachers) have 9.2 hours of unassigned time each week, independent of their daily prep period and duty-free lunch. If a teacher has a supervisory assignment, that is reduced to 4.5 hours per week. Laboratory science teachers have 7.75 hours per week of unassigned time. At the middle schools, teachers may be

assigned a maximum of 290 minutes of instructional time per 465 minutes in the 7.75-hour work day.

The Association submitted two daily logs for each of ten high-school teachers, in history, math, English, science, reading, and ELL. The logs show that on some days, the teachers had an open 90-minute block in addition to their class time and prep period. Their only other open time was the fifteen-minute periods before and after classes. All ten teachers used the open blocks (as well as the fifteen-minute periods) for educational purposes. A science teacher prepared lab equipment and chemicals for a chemistry experiment and disposed of chemicals from other experiments. A history teacher graded student essays, updated a website ("to include links to Trump's executive action"), had a phone conference with a parent, and updated classroom materials. Other teachers met with students; checked email; and conferred with teachers, administrators, and student teachers. One math teacher voluntarily taught and advised at the District's alternative high school. Half of the teachers arrived at school early.

Superintendent Obeng readily confirmed that teachers used their unassigned time to attend to professional matters. But in his view, that did not necessarily further the District's educational goals and policies. Self-

directed student advising or professional collaboration does not effectuate the District's unified plans for improving student outcomes and, indeed, may be contrary to those plans. Superintendent Obeng estimated the total value of the "lost" time as \$1.4 million (150 hours of professional time per day, at an average teacher salary of \$71,000/year).

I am sympathetic to the superintendent's concerns, which are eminently legitimate. But frankly, I do not see the need for this proposal at this time. The District already has the right to control at least some of this time. Section 6.8(a) clearly gives the administration the right to assign "non-teaching duties" to teachers at the high school and middle schools. It provides that at the high school,

[n]on-teaching duties may be assigned to teachers that have no sixth teaching assignment. Said duty assignments will occur within fifty (50) continuous minutes if completed daily, and ninety (90) continuous minutes or one teaching block (whichever is shorter) if completed on alternate days.

At the middle school,

[n]on-teaching duties may be assigned to teachers that have no sixth teaching assignment. Said duty assignments will occur within fifty (50) continuous minutes if completed daily.

Apparently, the administration has not been exercising these rights. However, the contract language is clear and

unambiguous. A past practice, even if it is longstanding and consistent, does not overcome clear contract language. The administration may not have made these assignments, but it has not relinquished the right to do so. It remains in the CBA. If the District exercises the contractual rights it already has, and finds them inadequate for its purposes, it may propose substitute language in the future.

Fridays. I recommend the District's proposal. The current language is inequitable compared to the work day of elementary-school teachers. The right to leave early on Fridays and the day preceding vacations is never available to them, because they must stay with their students until the end of the full student day. It is also wasteful. According to the high-school teachers' logs, several teachers had no assignment during block 4, making it possible for them to leave at around 1:30PM (although none of these teachers did). The District can ill afford this unusual luxury.

Prep Time at the High School. After careful thought, I do not recommend the District's proposal. The great disparity in prep time between high-school teachers and the rest of the bargaining unit is indeed a concern. Elementary and middle-school teachers need just as much prep time as high-school teachers. However, a 90-minute

prep period is not unheard-of in Chittenden Country high schools. Winooski High School and Mount Mansfield Union High School have 90-minute prep periods; South Burlington, Essex, and Colchester High Schools have 80 minutes. More pertinent to this proceeding, I have already made recommendations that will be unwelcome to at least some high-school teachers. Imposing too many changes at once is detrimental to harmonious labor relations.

ISSUE 4 - ELEMENTARY-SCHOOL DUTIES

ASSOCIATION PROPOSAL:

ARTICLE VI - TEACHING DUTIES

6.6 Classroom teachers will, in addition to their lunch period, have daily preparation time during which they will not be assigned to any other duties as follows:

- a) Elementary School - not less than forty-five (45) continuous minutes. ~~Additionally, the Board shall employ best good faith efforts to ensure that such 45 continuous minutes occur within the student day. However, this additional commitment to best good faith efforts shall not be read to require additional personnel resources for the purposes of meeting this preparation time requirement beyond those employed during the 2011-2012 school year. The Board will bear the burden of proof on the question of whether such best good faith efforts have been made [footnote omitted].~~

* * *

6.8 (a) ~~Current practices will remain in effect with regard to the duty day at the district's elementary schools, and the parties will continue a labor management committee which has been addressing such practices/standards. ...~~

[New language] (d) Elementary teachers will have no more than 1590 weekly student contact minutes. Early release day, teachers will have no more than 270 student contact minutes and no more than 330 student contact minutes on the remaining four (4) days.

Additionally, at the elementary level, best effort will be made to have a minimum of 5 minutes of passing time between UA classes built into the Elementary day schedule. There will be a maximum of 16 classrooms assigned to a 1.0 FTE UA teacher who teaches double classes each week.

When not required to attend regularly scheduled weekly meetings, all elementary teachers will have self-directed professional time before and after the student day to be used for, but not limited to: attending IEP or 405 meetings; parent communication; student behavior/safety issues with counselors; consultation with nurse or social workers; management of student records - report cards, progress monitoring, data assessment entry; district email communication; grading; planning (both team and individual); classroom set up; material management and student academic support.

Elementary teachers will be required to attend no more than two (2) school wide functions (open house, concerts, makers fair, etc.) lasting no more than two (2) hours each in duration, that may begin and end after the contracted teacher day. Teacher will choose two functions from a list of options prepared by building principals at the beginning of each school year.

ARTICLE VII - DUTIES

~~7.1 Duties including, but not limited to, the supervision of cafeterias and lunchrooms, supervision of playgrounds, hallways, busses, lavatories, and the collection of money or other items from students which were performed by teachers at the elementary level during the preceding Agreement may be assigned to elementary teachers.~~

Elementary teachers will not be assigned duties including, but not limited to, recess, lunch, and before and after students' day. In place of duties,

best effort will be made to allow grade-level team Common Planning Time (CPT) a minimum of 2 days per week.

ARTICLE VIII - WORKING CONDITIONS

8.1 All teachers shall be guaranteed a duty-free lunch period of not less than one module (22-25 minutes) and the Board shall use its best efforts to schedule so that two modules for lunch will be available for each teacher. ...

(a) [New language] Elementary teachers will be granted a duty-free lunch period of 30 minutes.

* * *

8.9 (a) Teachers may be required to remain after the end of the regular workday without additional compensation not more than one (1) day each week and not more than one (1) additional day per month to attend faculty or other professional meetings of not more than one (1) hour's duration. All such meetings will begin no later than fifteen (15) minutes after students' dismissal time.

Elementary teachers' meetings: After the end of student day, elementary teachers may be required to attend, without additional compensation, no more than two (a) administratively directed meeting blocks per week. One (1) meeting per week will begin no later than fifteen (15) minutes after student dismissal time, but no longer than one (1) hour in duration. These regularly scheduled monthly meetings are to be used for, but not limited to, faculty meetings, school-based committee meetings, and grade-level meetings. Regular administratively directed meetings will consistently take place on a specific day of the week (i.e., always on Tuesdays) throughout the school year. If administration must change the day of the meeting, staff shall be given 2 weeks notice of the change. In addition, elementary teachers may be required to attend (1) administratively directed PLC meeting block per week, held within the teacher work day (currently Wednesdays).

Parent-teacher conferences will not be included within the limits of this article and will be scheduled after consultation with the faculty in each school.

There will be no administrative meetings the week of parent/teacher conferences, or the week that report cards are due. The day directly before any vacation break of multiple days will negate any meetings after the school day.

* * *

Types of Meetings:

- PLC - A Professional Learning Community - Three main types
- PLC Horizontal - grade level colleagues-based meeting (see 8.9)
- PLC PD - directly linked to school needs based on student data stemming from PLC work and instructional needs
- PLC Vertical - school-based teams across grades w/unified arts, guidance, special ed., ELL
- CPT - Common Planning Time - Grade-level planning time
- Faculty Meetings - Administratively directed meeting, traditionally held on Tuesdays
- Professional Meeting - EST, 504, BST, IEP, or other legally mandated meetings. Other district meetings or trainings.

(b) Professional Learning Communities (PLC) or substantially equivalent collaborations may be established by the principals of the district schools. ... ~~The protocols for elementary PLC meetings as set forth in Memorandum of Agreement and Side Letter, referenced below, shall represent the status quo until otherwise negotiated by the parties.~~

Elementary teachers may be required to attend one horizontally directed PLC meeting block per week, held within the teacher work day. All work associated with the implementation of the PLC model including data, analysis, assessment development, PLC specific data entry, should take place during this PLC time. PLC time will be used for teams to actively engage in the learning-centered planning, results-oriented tasks as outlined in the (Plan, Do, Study, Act) Framework. Alternatively, the administration may decide to require attendance at just three (3) Horizontal PLC meetings and one (1) PLC-based professional development meeting each month.

ARTICLE XVI - DEFINITIONS

16.1

- (u) Workday - See section 8.7, no longer than seven (7) hours, forty-five (45) minutes of consecutive time. Elementary teacher work day is from 7:45AM to 3:30PM. (See section 8.7 for exceptions.)
Elementary full student day is from 8:10AM to 2:50PM.

- (v) Instructional time - A time when teachers are responsible for the health/safety and/or education of a class or group of students. Examples: math instruction, recess, snack time, assemblies, after-school concerts or reading groups.

- (w) Planning time - A time for teachers to design daily lessons for the week's curriculum. It is time to create or collect needed support materials. Examples: selected reading group books, reviewing math unit lessons, collecting science materials, meeting with grade-level teaching colleagues, and evaluating/reflecting on strategies for writing instruction.

- (x) Prep time - A time during the student day to prepare classroom support materials for the upcoming lesson. Examples: removing science materials and putting out math manipulatives, writing anchor charts or photocopying spelling word lists.

- (y) Personal time - A time for personal or family matters during the teacher work day. Examples: eat lunch, make personal phone calls, use bathroom, make a doctor/professional appointment or check with childcare provider or school.

- (z) Professional time - A time that teachers must carry out all other required professional duties or responsibilities. Examples: attending professional meetings, answering emails, contacting parents, grading and inputting assessment data into Power Teacher, maintain licensing requirements, attending parent/teacher conferences, consulting

student behavior/safety issues with counselors,
consultation with nurse or social workers.

DISTRICT COUNTERPROPOSAL:

To conduct a Pilot Project at the Flynn and Edmunds Elementary Schools, which the teachers identified as having the greatest need for relief. The teachers will be relieved from duties such as recess and lunch (without removing supervisory responsibility) for the 2017-18 school year. The details will be worked out by a District/Association committee.

In January, 2018, the parties will meet and confer to examine the operational success or failure of the Pilot Project and determine its cost thus far. If District regards it as feasible, it will implement the changes at all elementary schools in 2018-19. If the District determines this is not feasible, it agrees to re-open the CBA for negotiations **on this topic only** for 2018-19.

District's Position: The District acknowledges the disparities between elementary-school teachers and teachers at the middle and high schools. But for cost and operational reasons, the District cannot endorse the Association's proposal. The pilot project as a workable compromise, which will afford some relief to elementary school teachers and permanently eliminate supervisory duties.

Association's Position: The immediate importance of this issue cannot be overstated. Elementary teachers are burdened beyond the limit of their ability to meet their professional responsibilities. This is in part because of schedules laden with meetings and non-professional duties,

such as monitoring passing time, guarding exterior doors, and supervising recess. This is a waste of resources and a misuse of licensed professional teachers, many of whom have advanced degrees.

During the previous school administration, the Association and a committee of administrators developed a plan to address the elementary workday. It was put into effect as a "pilot project" during the term of the 2013-16 CBA, and the result is the Association's current proposal. There is no need for another pilot project; that work has been done.

ISSUE 4 - ELEMENTARY-SCHOOL DUTIES - CONCLUSION

As the Association points out, the parties have already been through a pilot project on this subject. At the same time the parties executed the 2013-16 CBA, they also executed a detailed, four-page Memorandum of Agreement (MOA). The MOA created a pilot project, coterminous with the CBA, covering prep time, student contact time, meetings, and non-teaching duties at the elementary schools. Throughout the three years, a committee of teachers and administrators met to discuss and evaluate the project. The Association's proposal was the outcome of that work.

I agree with the Association that another pilot project is not the answer here. It would be redundant and would lack any credibility. Nonetheless, I am not prepared to recommend the entirety of the Association's long and detailed proposal.

On balance, I recommend the Association's proposed modification of section 7.1, relieving them of certain duties, with the details to be worked out by an Association-administration committee. The District points out that it will incur the cost of hiring paraprofessionals to undertake these duties. However, it is also costly to use the time of a professional teacher for tasks that a paraprofessional could do just as well.

It must be understood that I am not recommending this as a pilot project limited to two elementary schools. It will apply to all elementary teachers at all elementary schools, and will be incorporated into the CBA.

I do not recommend the balance of the Association's proposal at this time.

ISSUE 5 - NOTIFICATION OF ASSIGNMENT

DISTRICT'S PROPOSAL:

Article VI - Teacher Duties

6.10 ~~The Board will specify the location of a District teacher's assignment for the next school year~~

~~by June 1 or the date the school budget for the next fiscal year is established, whichever is later. The Board will use its best efforts to specify the location of a District teacher's assignment for the next school year by the end of the school year.~~

**ISSUE 5 - NOTIFICATION OF ASSIGNMENT
CONCLUSION**

There is no obstacle to recommending this proposal, which will solve an administrative problem for the District.

ISSUE 6 - PAY FOR WORK PERFORMED

DISTRICT'S PROPOSAL:

ARTICLE XIX - FINANCIAL PAYMENTS

19.8 (a) Teachers will be paid bi-weekly, ~~with the first payment made on the Wednesday of the first duty week for work already performed.~~ A teacher who leaves District employment shall reimburse the District for any advance payment for time not yet worked. Provided, that the summer pay procedures currently in effect during the 1983-84 school year shall remain in effect throughout the duration of this Agreement. ~~During the school year, when a payday falls on or during a school holiday or vacation, teachers shall be paid or shall have their paychecks deposited pursuant to subsection (b) on the last previous working day.~~

**ISSUE 6 - PAY FOR WORK PERFORMED
CONCLUSION**

There is no immediate practical problem that warrants recommending this proposal.

ISSUE 7 - SICK LEAVE IN HALF-DAY INCREMENTS

ARTICLE XXIII - LEAVES OF ABSENCE

23.2 (a) Each full-time teacher will begin the contract year with a credit of one hundred fifty-five (155) school hours sick leave pay...for time lost due to sickness or accident other than in connection with his/her employment. ... Up to seventy-seven and one-half (77.5) hours per year of such full-time teacher's sick leave credit will be granted to a teacher for serious illness of a member of a teacher's family living in or outside the teacher's household, including spouse, domestic partner or civil Association partner, children, legal wards, and parents. ... The sick leave time for teachers with contracts that are less than full-time...will be pro-rated equivalent to the teacher's FTE. Leave time afforded by this section may be used in blocks of not less than ~~one-half hours beginning and ending at the nearest quarter hour~~ one-half (1/2) day. Half-time blocks shall be divided into morning or afternoon. Morning shall be considered to be 7:45 a.m. to 11:30 a.m. and afternoon shall be considered to be 11:30 a.m. to 3:00 p.m.

District: As a practical matter, it is impossible to find a substitute for one or two hours, so the District must engage them for at least a half-day.

**ISSUE 7 - SICK LEAVE IN HALF-DAY INCREMENTS
CONCLUSION**

The District makes a persuasive case for this proposal, and I recommend it, provided that there is an exception for emergencies -- for example, a teacher or family member who suddenly becomes ill near the end of the school day. I recommend the following language:

Leave time afforded by this section may be used in blocks of not less than ~~one-half hours beginning and ending at the nearest quarter hour~~ one-half (1/2) day, except in cases of emergency, when shorter blocks may be used. [Balance of proposal unchanged.]

ISSUE 8 - CO-CURRICULAR SALARIES

ASSOCIATION'S PROPOSAL:

Category	1	2	3	4	5
	Increases				
Step 1	12.65%	11.12%	6.51%	0.77%	0.92%
Step 9 (Top)	9.10%	16.27%	3.67%	8.99%	4.29%

CONCLUSION

These increases are not warranted at this time.

ISSUE 9 - EXPIRATION OF CBA

DISTRICT PROPOSAL:

Article VIII - Salary

8.3 Excluding school year 2016-17 for which no step movement shall occur unless otherwise specifically referenced, at the beginning of each school year during the term of this Agreement or any extension hereof, all teachers employed by the Board during the previous school year will be placed on the next higher step in the appropriate schedule upon recommendation of the principal and Superintendent and concurrence by the Board. Increments are not automatic but will not be withheld arbitrarily or capriciously.

In the event the parties fail to reach agreement on a successor Contract by the end date of the current Contract, all terms and conditions of the current Contract shall remain in effect and unchanged until a successor contract is ratified by the parties, including all fringe benefits (if still available from existing providers) at the current contribution levels. Salaries shall remain unchanged until a successor contract is ratified by the parties, irrespective of past practice or any language in the current Contract regarding salary schedule step placement or advancement, or horizontal/column movement.

DECISION

I disfavor proposals of this kind, because they create asymmetrical incentives. If negotiations extend beyond the

expiration of the CBA, which is common, the language exerts pressure on the union by freezing the membership's salaries. There is no similar pressure on the employer. Indeed, one could say that the employer obtains a short-term, interest-free loan, in the form of the delayed step increases.

I therefore do not recommend this proposal. Negotiations take time, sometimes for reasons beyond the parties' control. Any incentives to speed them up should be equal for both parties.

SUMMARY OF RECOMMENDATIONS

ISSUE 1 - WAGES

2017-18 - 2.75% new money (steps + increment)

2018-19 - 3.50% new money (steps + increment)

ISSUE 2 - HEALTH INSURANCE

Plan: Gold CDHP

Premium Split: Maintain at 83% District/17% employee.

HRA: Employee to pay the first \$400 in OOP. District pays 60% of the balance up to maximum, through an HRA.

Section 22.5 Insurance Buyout: No change.

ISSUE 3 - WORK DAY

Unassigned Time. No change. Section 6.8(a) already clearly gives the administration the right to assign "non-teaching duties" to teachers at the high school and middle schools. Although the administration has not been exercising these rights, the contract language is clear and unambiguous, and a past practice does not overcome clear contract language. If the District exercises the contractual rights it already has, and finds them inadequate for its purposes, it may propose substitute language in the future.

Early Departure on Fridays. The District's proposal to eliminate this is recommended.

Prep Time at the High School: No change.

ISSUE 4 - ELEMENTARY-SCHOOL DUTIES

Recommend the Association's proposed modification of section 7.1, relieving elementary-school teachers of duties, with details to be worked out by an Association-administration committee. The modification will apply to all elementary teachers at all elementary schools, and will be incorporated into the CBA.

Balance of the Association's proposal is not recommended at this time.

ISSUE 5 - NOTIFICATION OF ASSIGNMENT

District's proposal is recommended.

ISSUE 6 - PAY FOR WORK PERFORMED

No change.

ISSUE 7 - SICK LEAVE IN HALF-DAY INCREMENTS

District's proposal is recommended, with an exception for emergencies.

ISSUE 8 - CO-CURRICULAR SALARIES

Not recommended.

ISSUE 9 - EXPIRATION OF CBA

Not recommended.

A handwritten signature in cursive script that reads "Michael C. Ryan".

Michael C. Ryan
Arbitrator
July 17, 2017