

Vermont's Underpaid Judicial Workers

The Docket Clerks

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Introduction

Vermont state workers, including those belonging to the Judicial unit of the Vermont State Employees Association, are poorly paid both absolutely and compared with other Vermont workers. They have salaries that are over 20% below pay at the same or comparable occupations in Vermont. In 74% of occupations, Judiciary/VSEA members are paid less than are workers in other occupations for a total shortfall of over \$2.6 million in those occupations, an average of over \$16000 for the 166 workers who are underpaid. Were all Judiciary members paid the same wages as other Vermont workers in their occupation, they would earn an average of a quarter more. Because of low wages, many judicial employees are eligible for public assistance programs where the state and federal government supplement their low pay with Supplemental Nutrition (Food Stamps), energy assistance, discounted school lunches, the Earned Income Tax Credit, childcare subsidies, and discounted property taxes. Were the state to pay its workers fairly, it would avoid many of these extra social insurance expenses.

Among the underpaid, one group of judicial workers stands out as particularly underpaid: the docket clerks. Despite the skill and training needed for their work, and a median job tenure of over 5.5 years, they have an average pay of only \$17.50 an hour. At that pay level, a majority of docket clerks would be eligible for public assistance if they were the sole-support of a three-person family. Furthermore, their pay is so low that much of any pay increase that they have received in recent years has gone exclusively to paying rising premiums on their health insurance. It is unsurprising, therefore, that a growing number have been leaving state service, at a considerable and growing expense to the Vermont Judiciary.

Far from reflecting an inability to pay its workers a decent wage, low pay for Judiciary employees comes despite steady growth in state income and tax revenue. This means that the state has the capacity to remedy the problem of underpaying its workers.

The Judiciary pays its workers less than they would earn in private-sector employments

It has been possible to match the occupations for Judiciary members with Vermont occupations in the Bureau of Labor Statistics, Occupational Employment Statistics. This allows a direct comparison of average wages by occupation for the state of Vermont with wages paid for all Vermont workers.¹ Unlike comparisons for all occupations which compare workers performing different work and with different levels of education and training, this is an apples-to-apples comparison of workers in the same occupation with roughly the same training and education and performing roughly similar work.²

¹ This includes overtime and other remuneration beyond base pay. Except where noted, this analysis does not include benefits.

² Data from the VSEA on wages are compared with occupational wage data for Vermont from the Bureau of Labor Statistics, "Occupational Employment Statistics Home Page."

Without taking account of occupation, Judicial members earn less than do all Vermont workers, an average of \$42,421 compared with \$44,540.³ The lower pay of Judicial members reflects the concentration in clerical occupations frequently staffed by women; over half of all members are in the single occupation of "Docket Clerk B". To take account of the occupational structure of the state workforce, 23 distinct occupations have been identified where average wage for Judicial members can be compared with the state average for the same occupation. In 17 of these (74%), Judicial members are paid less than other Vermont workers in the same occupation; these occupations include 87% of Judicial members in the occupations studied.

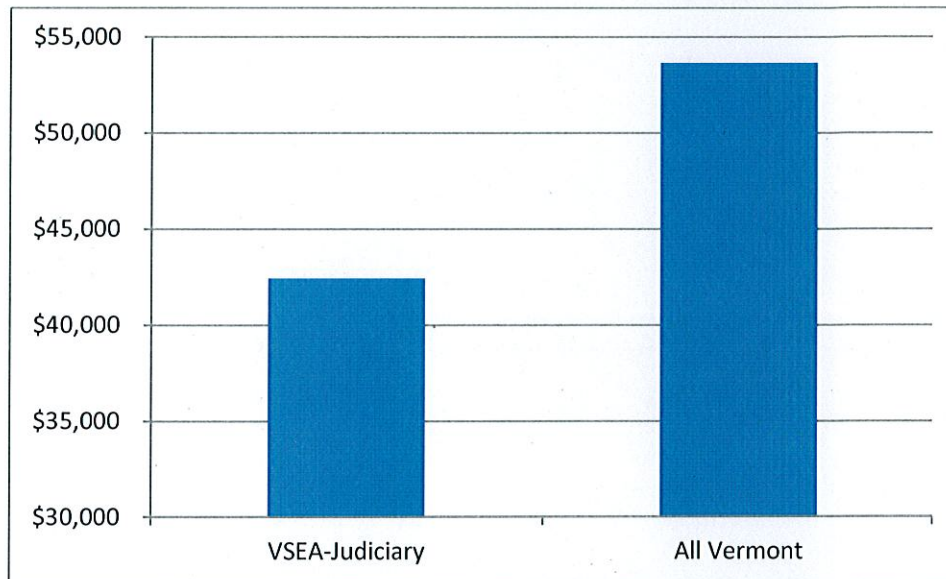


Figure 1. Average pay, VSEA-Judiciary versus Vermont private-sector in the same occupations.

Over all, Vermont judicial employees are paid slightly under 80% as much as all Vermont workers. Because of this pay differential, it is estimated that NMU members earn \$2,132,898 less than they would earn if they were paid as much as other Vermont workers in the same occupations; a differential that comes to \$11,226 per worker per year.

Gendered wages in the Vermont Judiciary

Women workers are doubly victimized by the wage policies of the judiciary. Over 87% of members of the Judicial bargaining unit are women; low judicial wages disproportionately damages them. Injury is compounded by low pay for women workers. Overall, women judicial employees earn only 87% as much as men. This disparity is due to the concentration of women workers in the particularly low paid Docket Clerk B position, where the average pay of \$36,399 is only 73% of the average in other occupations with more men. Low pay for judicial workers may be seen as a gender disparity. Because almost all (98%) Docket Clerks are women, low pay for them compounds the gender bias of the judicial pay scale, a bias that calls for remedy.

³ This overstates the differential because the VSEA data are for full-time workers while the BLS includes all workers. Including everyone who worked at all during the year, the average is \$43,853. Because this includes many workers employed for only a short-time, they are generally omitted from the analysis.



Figure 2. Average Wage Male and Female Judicial Employees.

These estimates understate the pay inequity facing Vermont's state workers. The average (median) job tenure for judicial employees is 6.8 years, substantially above the 4.1 years for the average private sector worker.⁴ Because of their greater job experience, if they were employed elsewhere, Vermont's state workers would earn *more* than other workers in the same occupation. For Vermont private sector workers, going from job duration of 4 years to duration of nearly 7 years would be associated with an increase in average earnings of over 20%.⁵ Adjusting for job tenure, as well as other personal characteristics like education, would magnify the pay disparity facing Vermont judicial workers.⁶

⁴ Bureau of Labor Statistics, "Employee Tenure in 2014," USDL-14-1714, News Release (Washington, D. C.: Bureau of Labor Statistics, September 18, 2014), <http://www.bls.gov/news.release/pdf/tenure.pdf>; Bureau of Labor Statistics, "Table 5. Median Years of Tenure with Current Employer for Employed Wage and Salary Workers by Industry, Selected Years, 2004-14," September 18, 2014, <http://www.bls.gov/news.release/tenure.t05.htm>.

⁵ PayScale, "Vermont Salaries - Average Salary in Vermont - PayScale," accessed April 23, 2016, http://www.payscale.com/research/US/State=Vermont/Salary#by_Years_Experience.

⁶ Andrew Biggs and Jason Richwine, "Overpaid or Underpaid? A State-by-State Ranking of Public-Employee Compensation," Working Paper, AEI Economic Policy (Washington, D. C.: American Enterprise Institute, April 24, 2014), https://www.aei.org/wp-content/uploads/2014/04/-biggs-overpaid-or-underpaid-a-statebystate-ranking-of-public-employee-compensation_112536583046.pdf finds that Vermont state workers are paid approximately the market compensation (wages and benefits) after adjusting for the average working conditions including an adjustment for the lower rate of unemployment for public-sector workers. Their study, however, is global, over all occupations, and thus lacks the fine detail we use here. Critical assessments of the Biggs and Richwine study include Jeffrey Keefe, "Debunking the Myth of the Overcompensated Public Employee: The Evidence" (Economic Policy Institute, September 15, 2010), http://epi.3cdn.net/8808ae41b085032c0b_8um6bh5ty.pdf; J. Keefe, "Are Public Employees Overpaid?," *Labor Studies Journal* 37, no. 1 (March 1, 2012): 104-26, doi:10.1177/0160449X11429263; Also see American Federation of Teachers, "2010 Compensation Survey: A Survey of Professional, Scientific, and Related Jobs in State Government Prepared by AFT Public Employees," 2010, <http://www.aft.org/pdfs/pubemps/pecompsurvey0910.pdf>.

Docket Clerks

Among the underpaid judicial workers, Docket Clerks are notable because there is a particularly sharp contrast between the level of their work, its significance, and their low pay. A Superior court Judge describes the work performed by docket clerks as “of great importance to the court system. They are our front lines, affecting every other piece of the judicial process.”⁷ This makes their work fundamental for the functioning not only of the Vermont Judiciary but of civil government in Vermont which rests on the Rule of Law and the right of every citizen to due process and access to justice. The work of Docket Clerks is especially important in Vermont because of the limited staffing available to the Vermont courts. In other venues, judges might have law clerks, legal assistants, and other staff to help with their work. In Vermont, however, docket clerks take on all of the work of managing the court system, dealing with the public, including lawyers, plaintiffs, defendants, family members, and the press, as well as providing necessary legal counsel to the judges. Docket Clerks in Vermont do much more than filing and answering the phone. They are office managers, scheduling officers, bookkeepers, and law clerks responsible for providing advice and counsel, including historical context, to attorneys and to judges. For this they are required to be “well versed” in the law, in Rules of Civil Procedure, and in the various policies set by the Vermont Supreme Court. Much of their work takes them beyond administrative staff into the world of professionals. Except for their pay.

In the words of Superior Court Judge Helen Toor, Docket Clerks:

Their jobs entail interacting with the lawyers and the public, making sure filings are handled in a timely way, checking due dates to make sure files go to the judge on time, understanding the subtleties of what is and is not an emergency requiring special treatment, dealing with jurors, scheduling trials, understanding the laws that apply to certain specialized areas of our caseload, handling a very user-unfriendly computer docketing system, and so on.⁸

Docket Clerks need to do all this in an often stressful and emotional environment. They must deal with what the head of the Addison County Bar Association calls “emergency after emergency involving many different parties and schedules;” the state agrees in calling this a “fast-paced, high pressure and challenging environment” where Docket Clerks must deal with “upset or difficult customers with tact and professionalism.”⁹ For all this vital and often very challenging work, Vermont’s judiciary needs “excellent and dedicated staff, and we need to be able to retain them after the substantial investment of time that is required to train them.”¹⁰ Instead of paying for the high quality of work it needs, Vermont pays its Docket Clerks \$14.46 to start, rising to \$22.32 for the most senior Docket Clerks; a *maximum* rate of pay that is less than the *average* rate for “Executive Secretaries and Executive

⁷ Helen Toor, “Re: Court Staff Salaries,” May 2, 2016.

⁸ Ibid.

⁹ Sarah Star, “Re: Support for Docket Clerks in the Vermont Superior Court,” April 26, 2016; Vermont Court System, “Recruitment Notice: Permanent Docket Clerk B -- Windsor Unit” n.d.

¹⁰ Toor, “Re: Court Staff Salaries.”

Administrative Assistants” in Vermont. As attorney Star writes: “It is unbelievable to me that they are not being appropriately compensated for this very difficult and important work.”¹¹

Both attorney Star and Justice Toor suggest that low pay is self-defeating for Vermont because it leads to excessive turnover, the loss of dedicated docket clerks to higher paying jobs at local law firms and elsewhere.¹² When unemployment rates are very high, there may have been relatively little risk of Docket Clerks leaving because there are few alternative jobs. But it appears that economic recovery since 2011 allows a growing share of Docket Clerks to quit for more lucrative and, perhaps, less stressful work in the private sector. From a low point in FY11 when only 7% of Docket Clerks left their judicial employment, the share leaving has risen steadily to over 15% in FY15, and it appears that over 23% will leave in FY16. This is creating a significant added expense to the Vermont judiciary.

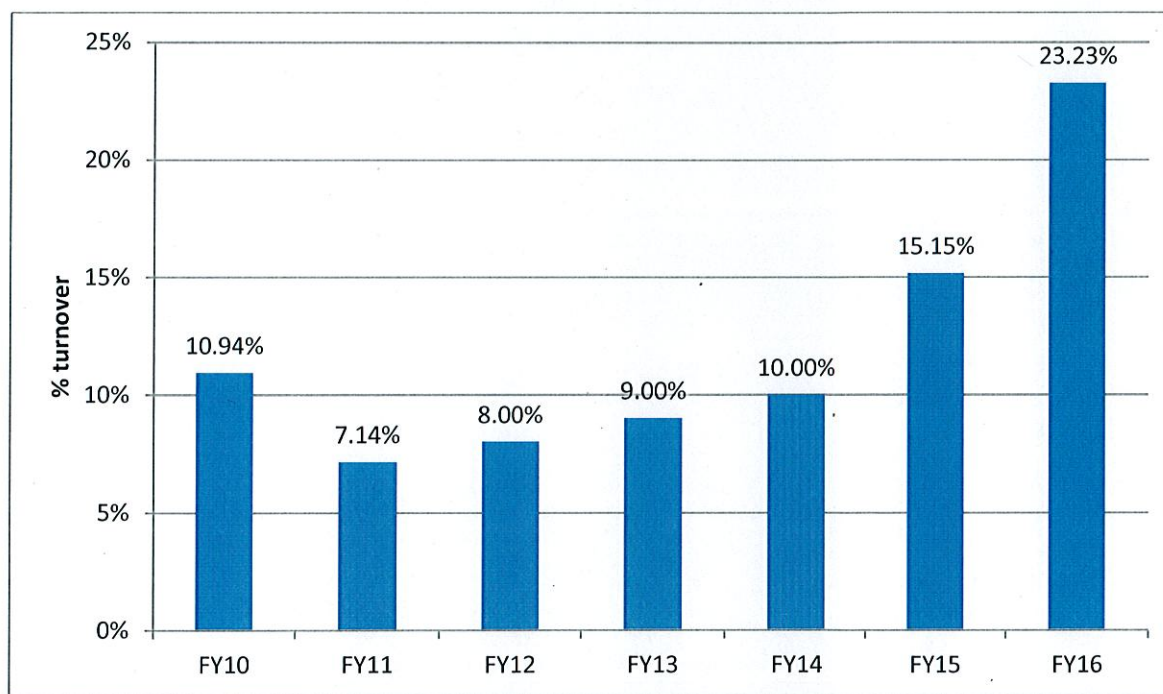


Figure 3. Turnover Among Docket Clerk B by Fiscal Year

¹¹ Star, “Re: Support for Docket Clerks in the Vermont Superior Court.”

¹² Toor reports that three docket clerks in her court in Burlington left in the last few months for positions in local law firms where they will receive “substantial increases in salary to do similar work”, Toor, “Re: Court Staff Salaries”. Star warns that low pay is leading to a “cycle of departures” undermining the work of the judicial system both by the loss of good personnel and the need to take time from work to train new clerks, Star, “Re: Support for Docket Clerks in the Vermont Superior Court.”

Taking account of benefits in total compensation

Some of the wage differential reflects more generous benefits received by Judicial workers belonging to VSEA, including health insurance and pensions that equal 38% of the value of their total pay.¹³ These benefits exceed those received by the average Vermonter; VSEA members receive employer-paid health insurance premiums equal to 22% of their pay and other benefits, compared to an average of 8% for other Vermonters, and pension and other coverage equal to 15%, compared with 10%.¹⁴ In sum, compared with private sector Vermonters, VSEA members receive 20% more in benefits compensation than do other Vermont workers.

This differential in benefits does not equalize the pay gap for VSEA because the differential does not reflect better benefits but it is largely due to the way family members are covered by different employer-based insurance plans, and is to the attempt by the state of Vermont to encourage greater job tenure for its skilled workers. The benefits differential disappears in a true apples-to-apples comparison. Because the actuarial value of the state health insurance plan is comparable to that of private sector plans, especially those offered by larger employers and employers with a skilled workforce, the greater cost of the state plan is largely due to greater participation rather than more generous benefits. Indeed, in contrast with the private-sector where only a minority of employees have health-insurance coverage and a majority of those who are covered do not cover family members, virtually all state employees take-up the offer of health insurance, and most cover family members. As a result, the average number of people covered per employee for Vermont state employees is more than double the average for private sector workers, 2.4 compared with 1.0.¹⁵ This differential alone, the coverage of children and spouses in the Vermont state employer health insurance plan, explains most of difference in the cost of health care for Vermont state employees compared with their private sector counterparts.

Health insurance comes at a price for Vermont state employees because they pay a share of the premium.¹⁶ Because rising health care spending in the United States has come with almost no increase in the quality or quantity of care, workers, and the State of Vermont, are paying more for the same health care.¹⁷ Premiums, therefore, are a growing burden on workers, as on the State; and a particularly heavy burden on low-wage state workers who pay the same premium as do higher paid workers but do so out of smaller paychecks. Judicial Docket Clerks B, for example, pay \$210/biweekly-pay-period, up

¹³ This figure is for full-time workers and does not include the cost of mandated social insurance contributions for Social Security, Medicare, Unemployment Insurance, and Workers Compensation.

¹⁴ This comes from a comparison of state data with the Bureau of Economic Analysis state personal income data for employee pay and compensation.

¹⁵ Vermont private sector coverage is from Agency for Healthcare Research and Quality, "Medical Expenditure Panel Survey," 2014, http://www.meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=18&year=-1. State coverage data are for VSEA members. .

¹⁶ State employees pay 16% plus, of course, deductibles and copays (subject to an out-of-pocket maximum).

¹⁷ Gerard F. Anderson et al., "It's The Prices, Stupid: Why The United States Is So Different From Other Countries," *Health Affairs* 22, no. 3 (May 1, 2003): 89–105, doi:10.1377/hlthaff.22.3.89; International Federation of Health Plans, "2013 Comparative Price Report: Variation in Medical and Hospital Prices by Country" (International Federation of Health Plans, 2014), <http://static.squarespace.com/static/518a3cfee4b0a77d03a62c98/t/534fc9ebe4b05a88e5fbab70/1397737963288/2013%20iFHP%20FINAL%204%2014%2014.pdf>.

from \$170 in 2014. This \$40 increase swallows over 50% of the average pay increase for Docket Workers. For the Governor, for well-paid agency heads, or for Professors of Economics, health insurance premiums are still a relatively small share of pay; for the average Docket Clerk, however, it is an increase in the share of pay going to pay health insurance from 12.7% to 14.8%.

The greater coverage in the Vermont state health insurance plan has a paradoxical result. Private-sector employer-provided health insurance is less expensive per employee *because it does not cover as many people*. It is less expensive because it is not as effective at achieving the social goal of providing health insurance for Vermonters. The Vermont state health insurance plan is more expensive *because it performs this social function more effectively*. Family members of private-sector workers have to seek coverage through social insurance programs, or from another employer. Indeed, because VSEA members are more likely to take-up their employers' offer and more likely to cover their family members than are their private sector counterparts, the state is providing health insurance to many private sector employees and to their children. Through its health insurance plan, the state is subsidizing private sector employers.

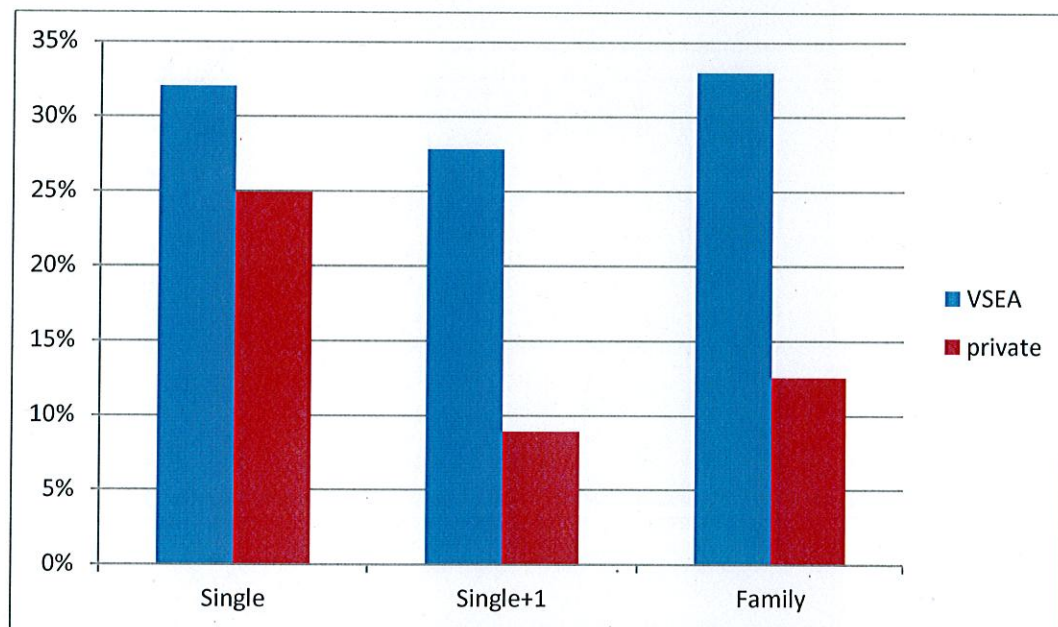


Figure 4. How the state of Vermont subsidizes private sector workers: proportion covered by health insurance, Vermont private sector vs. VSEA.

After taking account of the greater number of Vermonters covered by the Vermont state employee health insurance plan, most of the remaining difference in the cost of benefits to Vermont state employees is in the state pension plan. As a share of wages and salaries, there is a difference of about 5 percentage points in the cost of pension coverage received by VSEA members compared with private sector workers in the state. Much of this, however, disappears when VSEA members are compared with comparable private sector workers, including skilled workers and those employed by large employers. In the private sector, as for the state of Vermont, workers like those belonging to the VSEA are much more likely to have employer-provided pensions, including college graduates, and workers in larger

establishments.¹⁸ In the private sector, as for the state of Vermont, employers use pensions to attract and to retain skilled workers important for the operation of large enterprises. Pension coverage is associated with reduced labor turnover, the attraction of skilled workers, and higher worker morale: all factors associated with higher productivity and especially important for larger establishments.¹⁹ Private sector employers are aware of the importance of pensions in maintaining productivity, which is why they remain common in larger establishments that compete with the state of Vermont for labor. Compared with those workplaces, in an apples-to-apples comparison, there is little difference in pension benefits between Vermont state employees and their private-sector counterparts.²⁰

Because of low pay, many judicial workers are eligible for public assistance, especially among Docket Clerks

Low pay has the paradoxical effect that many Judicial workers are eligible for means-tested benefits subsidizing their earnings, including some paid by the same state government responsible for their low pay. If all lived in a three-person household with one wage-earner, a majority of Judicial workers would be eligible for some form of state assistance (see Figure 3). Over a third would be eligible for supplemental nutrition (SNAP), more would have children eligible for reduced-price school lunches, half would qualify for a state childcare subsidy. Perhaps it is most ironic that over a third would be eligible for the state's Earned Income Tax Credit; so the state pays in the EITC some of what it denies its workers in decent wages.²¹

¹⁸ Craig Copeland, "Pension Income of the Elderly and Characteristics of Their Former Employers," Notes (Employee Benefit Research Institute, March 2007), http://www.ebri.org/pdf/notespdf/EBRI_Notes_03-20071.pdf; Craig Copeland, "Retirees with Pension Income and Characteristics of Their Former Job," Notes (Employee Benefit Research Institute, February 2003), <http://www.ebri.org/pdf/notespdf/0203notes.pdf>; William Wiatrowski, "The Last Private Industry Pension Plans: A Visual Essay" (Bureau of Labor Statistics, December 2012), <http://www.bls.gov/opub/mlr/2012/12/art1full.pdf>.

¹⁹ William E. Even and David A. MacPherson, "Employer Size and Labor Turnover: The Role of Pensions," *ILR Review* 49, no. 4 (1996): 707–28; Keith Hall, "How CBO Will Implement Dynamic Scoring: Presentation at the Heritage Foundation" (Heritage Foundation: Congressional Budget Office, June 17, 2015), <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/presentation/50317-heritageslides.pdf>; Stuart Dorsey, "Pension Portability and Labor Market Efficiency: A Survey of the Literature," *Industrial and Labor Relations Review* 48, no. 2 (1995): 276–92; Beth Almeida and Christian Weller, "The Employer Case for Defined Benefit Pensions," in *Meeting California's Retirement Security Challenge* (Berkeley, Calif.: University of California Press, 2011), 57–76.

²⁰ See especially the data on private sector coverage in National Institute on Retirement Security, "Why Do Pensions Matter?" (National Institute on Retirement Security, January 2010), https://www.iaff.org/pensions/documents/why_do_pensions_matter.pdf.

²¹ Eligibility computed from http://dcf.vermont.gov/esd/3SquaresVT/income_guidelines
<http://education.vermont.gov/documents/edu-nutrition-free-reduced-meals-income-eligibility.pdf>
http://dcf.vermont.gov/sites/dcf/files/pdf/esd/EAP/eap_income-guidelines.pdf
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<http://vermontfoodhelp.com/do-i-qualify#working>

Because of low pay, workers throughout the judicial system are eligible for public assistance. Among Docket Clerks, the share eligible is particularly high. Assuming that workers are the sole earner in three-person families, 11% of Docket Clerks would be eligible for fuel assistance, a majority would be eligible for SNAP and the EITC, two-thirds would have children eligible for reduced-price school lunches, and over three-fourths would be eligible for Childcare Assistance. As one worker reports in an affidavit: "While receiving the low pay of a Docket Clerk B, my family found it necessary to seek State Assistance just to be able to feed our family. We received food benefits, which we relied on . . . heating fuel assistance, and other forms of assistance." He adds: "Without those benefits, I don't know how we would have survived. In fact, we even had to go beyond those benefits at a couple points and visit the local food shelf just so that our children would have enough to eat."²²

So low is the pay for Vermont Docket Clerks that a full-time worker not only needed public assistance to live but also had to go to a food bank to feed his children. Is it at all surprising that, at considerable expense to the State of Vermont and to the judicial process, workers are quitting these jobs for decent pay in the private sector? And might it be cost effective for the state to pay the Docket Clerks decent wages so that they can continue to do their vital work *while* feeding their children?

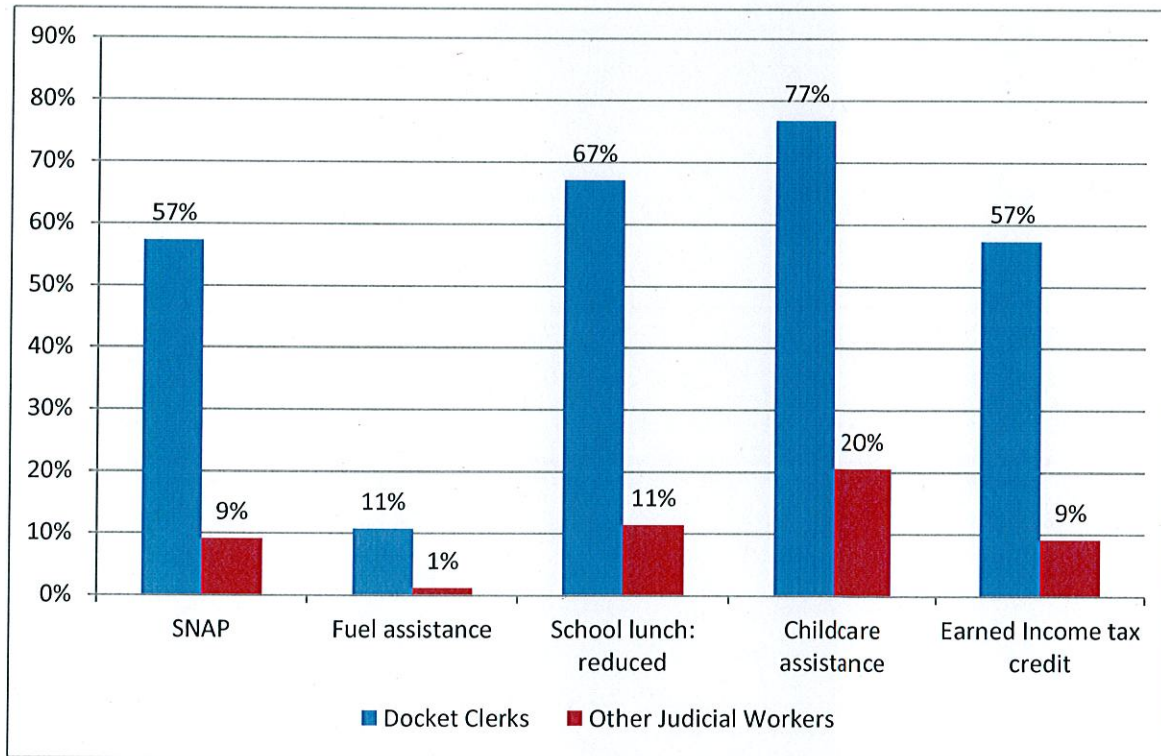


Figure 5. Share of Vermont Judicial Employees and Docket Clerks eligible for means-tested state assistance if sole-earner in 3-person families.

²² Brian Heselbach, "Affidavit of Brian Hesselbach" April 29, 2016.

No evidence that the state of Vermont is closing the pay gap

While the pay gap between all Vermont state employees and all Vermont workers may have narrowed somewhat between 2010 and 2012, it has since widened.²³ This may have been because private-sector pay is more sensitive to economic conditions and wages in the private sector fell with rising unemployment during the Great Recession. Perhaps because the improving economy has pushed up private sector wages, the shortfall in state employee pay has widened in recent years, from 11% to 14%, so that it is now lower than the levels of 2008-10 and the level of 2012 (see Figure 4).²⁴

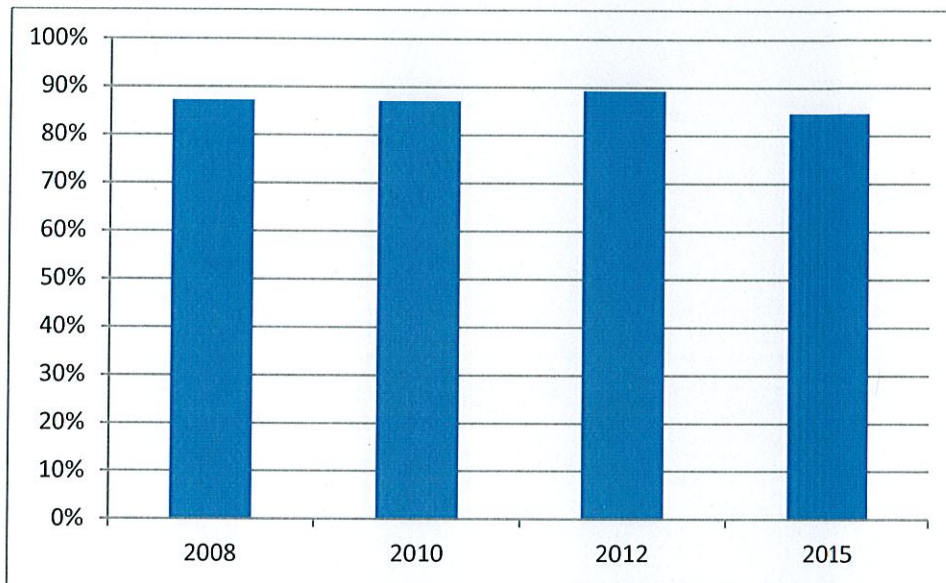


Figure 6. Pay ratio within occupations, Vermont state employees compared with all Vermont workers, 2008-14.

All Vermont workers continue to do badly as income shifts towards capital

All workers have been losing ground in Vermont over the past decades where wages have grown more slowly than total income (see Figure 5). Since 1997, wage increases for all Vermont workers have not kept up with the growth in the Vermont economy or with increases in Vermont personal income. Rather than going to wages, increases in income, due to productivity growth and the growth in the employment in the state, have gone to profits, dividends, capital gains, and rents.²⁵

²³ This result is preliminary because it is based on studies done using different samples of occupations and, in some cases, different data sources. In this calculation, the managerial workers are not included because they were generally not included in the earlier studies.

²⁴ This analysis draws on BLS data mentioned earlier compared with American Federation of Teachers, "2010 Compensation Survey: A Survey of Professional, Scientific, and Related Jobs in State Government Prepared by AFT Public Employees."

²⁵ This analysis uses data on wages and salaries and personal income from the BEA at <http://www.bea.gov/regional/>. Projections through 2017 have been made using projected personal income growth from the Joint Fiscal Office, and wage growth from the Congressional Budget Office, Long-term budget outlook.

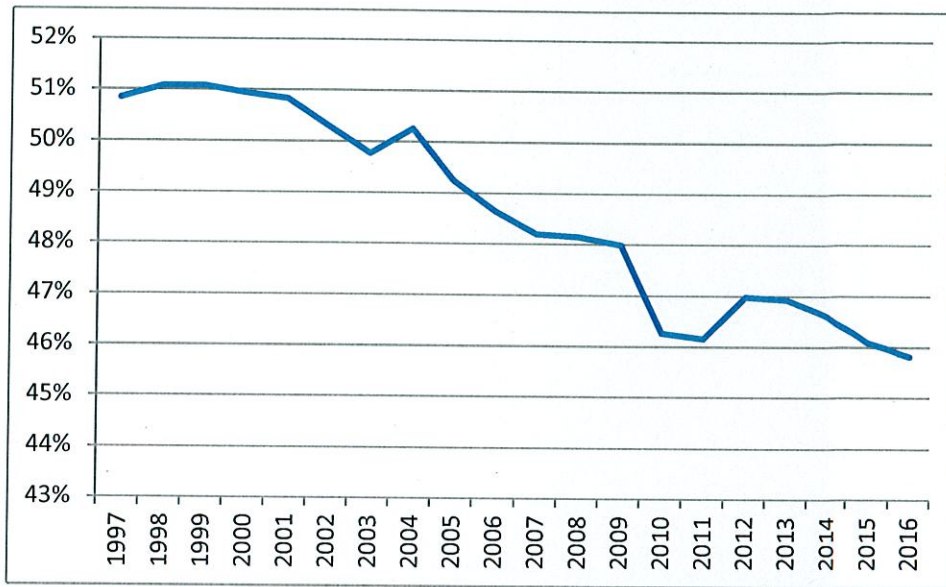


Figure 7. Wage share of personal income, Vermont 1997-2014 with projections to 2017

Vermont can afford to pay fair wages

Vermont state worker wages and salaries also have not kept up with income growth in the state. By allowing the state to maintain lower taxes, low pay means that Judicial employees are subsidizing the after-tax income of other Vermonters; it is a punitive tax imposed on Judicial workers, a tax that is particularly unfair because Judicial employees have incomes lower than other residents. There was a rise in the share of personal income going to state worker salaries from 1998-2004 with a significant increase in the size of the state workforce. Since then, however, state worker wages have fallen relative to rising state personal income, from nearly 4.5% of personal income down to a projection of 4.3% in 2017.²⁶ The VSEA proposal is significantly *less* than is needed to restore pay equity to workers in the VSEA-Judicial. It is designed, however, to limit the burden on the state government. While the state proposal would lower compensation dramatically, the VSEA offer would maintain compensation levels at a rate about equal to that of the decade before the union concessions at the onset of the Great Recession.

²⁶ This projection, the "base case" assumes state worker wages rise at the same rate as wages nationally. On the equity case, half the pay differential is paid to VSEA members in 2016 and the rest in the next year.

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