IN THE MATTER OF THE STATUTORY INTEREST ARBITRATION

between:

STATE EMPLOYEES BARGAINING
AGENT COALITION

- and -

STATE OF CONNECTICUT

Susan R. Meredith, Arbitrator

Pandemic Pay

APPEARANCES:

For the Coalition: Daniel Livingston, Esq.
Alexina DelVecchio, Esq.
Logan Place, Co-Coordinator, SEBAC

For the State: David Krayeski, Esq.
State Office of Labor Relations

Date of Award: March 9, 2023

I INTRODUCTION

This proceeding arises under the interest arbitration proceedings of the Connecticut State employee collective bargaining statute, C.G.S. 5-276a.

I have reviewed all of the exhibits, the transcripts and my notes on the testimony presented by the parties at each hearing. I do not repeat or summarize much of the testimony or exhibits here, but the following discussion is based on the evidence presented at the hearings and the arguments made both at the hearings and in the briefs.

II **The Employees Affected**

The parties reached agreement on the extent of coverage of this decision. "Covered Employees" are "bargaining unit state employees who performed work in person during the period of March 20, 2020 through March 27, 2021. The parties also agreed that there are two categories of Covered Employees: (1) "Higher Risk" employees are those "who were first responders, worked in a congregate setting, or in a health care facility" during the Covered Period, and (2) "Lower Risk" employees who are all other Covered Employees.

The pandemic pay stipend any employee will receive depends on their risk category and hours worked. A covered employee must have worked in person 180 regular hours or more during the covered period. For overtime hours, a covered employee must have worked in person 200 or more hours to receive a stipend.

The parties also agreed that Covered Employees who were active on the payroll as of September 15, 2022 or who retired are eligible.

The parties reached agreement that "Each covered employee shall receive an amount for reaching each threshold, and a fixed additional amount for each 100 hours by which they exceed the threshold." The amounts under this framework for higher and lower risk employees are the only issues in dispute.

III Statutory Criteria

Connecticut General Statutes, §5-276a sets forth the following factors to be considered by the arbitrator in arriving at a decision as to the more reasonable last best offer proposal of either of the parties on each disputed issue:

> 1. The history of negotiations between the parties including those leading to the instant proceeding;
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> 2. The existing conditions of employment of similar groups of employees;
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> 3. The wages, fringe benefits and working conditions prevailing in the labor market;
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> 4. The overall compensation paid to the employees involved in the arbitration proceedings, including direct wages compensation, overtime and premium pay, vacations, holidays and other leave, insurance, pensions, medical and hospitalization benefits, food and apparel furnished and all other benefits received by such employees;
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> 5. The ability of the employer to pay;
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> 6. Changes in the cost of living; and
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> 7. The interests and welfare of the employees.

III. Agreed Language and Last Best Offers of the Parties

Agreed Language

The parties recognize the unique circumstances related to the COVID-19 pandemic and its impact on state employees in the performance of their duties and responsibilities. This Agreement does not apply to employees who were able to perform their work exclusively remotely and/or through Telework and applies only to bargaining unit state employees who performed work in person during the period of March 20, 2020 through March 27, 2021 (hereinafter "the Covered Period" and "Covered Employees").

1. Agreement as to structure. The parties agree that the following structure shall apply to determine the payment due each Covered Employee.
    a. Covered Employees shall be divided into two categories. The "Higher Risk" category shall include all employees who were first responders, worked in a congregate setting, or in a health care facility during the Covered Period. The "Lower Risk" category shall include all other Covered Employees.
    b. Covered Employees shall be paid a pandemic pay stipend based upon their risk category and their hours worked in person during the covered period ("Covered Hours").
        i. With respect to regular hours worked, employees will not receive a stipend unless their regular Covered Hours were 180 hours or more during the covered period (the "Regular Hours Threshold").
        ii. With respect to overtime hours worked, employees will not receive a stipend unless their regular Covered Hours were 200 hours or more during the covered period (the "The Overtime Hours Threshold").
        iii. Each covered employee shall receive an amount for reaching each threshold, and a fixed additional amount for each 100 hours or part thereof by which they exceed the threshold.
        iv. Covered employees, whose hours of onsite work were not tracked, shall be eligible for a lump sum payment in an amount as determined by the parties. The lump sum may be common for a given unit or relevant section thereof, and shall be the best reasonable approximation of what similarly situated employees, as agreed by the parties, would have received if the hours were tracked. If the hours were tracked for a majority of the covered period, but not the entire period, the tracked part will be used to make a reasonable estimate of the hours for the entire period.

2. The Higher-Risk Regular Threshold Amounts shall be $X and shall increase by $Y for each 100 such hours by which they exceed such threshold. The Higher-Risk Overtime Threshold Amounts shall be $A and shall increase by $B for each 100 such hours by which they exceed

such threshold.

3. The Lower-Risk Regular Threshold Amounts shall be $U and shall increase by $V for each 100 such hours by which they exceed such threshold. The Lower-Risk Overtime Threshold Amounts shall be $C and shall increase by $D for each 100 such hours by which they exceed such threshold.

   The parties agree that no employee should receive significantly lower amounts of pandemic pay as a result of hours lost, in excess of three (3) consecutive calendar weeks of medically-documented illness as contained in the employee's personnel file, from being out of work due to contracting COVID, including employees who died from COVID. The parties will cooperate to resolve any situation where such has occurred.

4. Pandemic pay shall be paid for Covered Employees who were active employees on the payroll as of September 15, 2022, and those Covered employees who retired prior to that date. The parties agree to the following implementation timeframe for any awarded pandemic pay:

   Retirees: Check issued as soon as can be reasonably accommodated, but in no event later than 12/29/23

   Active Employees: check issued no later than, first pay period following 90 days from the date of the interest arbitration award.

5. The parties agree that the language contained in the instant agreement, regarding retroactive wages to employees who have retired from state service, shall not be used to support either party's arguments in any future SEBAC negotiations, individual contract negotiations and/or resulting arbitrations. This agreement shall not serve as precedent in any pending or future disputes between the parties in any forum regarding the specific issue of resigned or retired employees' eligibility for retroactive wages or benefits and shall not be admissible as evidence on the specific issue of resigned or retired employees' eligibility for retroactive wages or benefits in any proceeding involving either of the parties, or entities bound by, this agreement, except to enforce its terms.

Last Best Offer of the State

2. The Higher-Risk Regular Threshold Amounts shall be $303.75 and shall increase by $112.50 for each 100 such hours by which they exceed such threshold. The Higher-Risk Overtime Threshold Amounts shall be $337.50 and shall increase by $112.50 for each 100 such hours by which they exceed such threshold.

3. The Lower-Risk Regular Threshold Amounts shall be $135.00 and shall increase by $50.00

for each 100 such hours by which they exceed such threshold. The Lower-Risk Overtime Threshold Amounts shall be $150.00 and shall increase by $50.00 for each 100 such hours by which they exceed such threshold.

Last Best Offer of the Union

2. The Higher-Risk Regular Threshold Amounts shall be $250.00 and shall increase by $136 for each 100 such hours by which they exceed such threshold. The Higher-Risk Overtime Threshold Amounts shall be $270 and shall increase by $136 for each 100 such hours by which they exceed such threshold.

3. The Lower-Risk Regular Threshold Amounts shall be $125 and shall increase by $68 for each 100 such hours by which they exceed such threshold. The Lower-Risk Overtime Threshold Amounts shall be $135 and shall increase by $68 for each 100 such hours by which they exceed such threshold.

IV. Summary of Factual Background

In March of 2020, Governor Lamont declared an emergency and urged people in Connecticut to "stay safe and stay home." Many Connecticut residents did just that, learning to work remotely in a wide variety of occupations and to "social distance" in their work and personal lives. Those State employees who were sent home developed new ways of delivering services to the residents of Connecticut and kept the State government functioning through the emergency.

This arbitration addresses the very different experience of the 36,000 essential state employees who continued to report to their work places. These employees enforced law and order, cared for the sick, the disabled, responded to emergencies and maintained the equipment and infrastructure that allowed this work to continue. They worked in hospitals, prisons, group homes, police and fire facilities and many others.

At the time covered by this arbitration, there was no vaccine for Covid-19 and no effective treatment. There was no clear understanding of the way the disease was transmitted or how to limit transmission as much as possible. There was confusion about what personal protective equipment (PPE) was effective in limiting the spread, and there were great shortages of PPE. Meanwhile, the news was full of reports of the large number of people sick and dying all over the world, increasing the uncertainty and fear of people who had to be interacting in person with other people.

The consequences for these essential employees were myriad. The pandemic itself required employees to adapt to rapidly changing circumstances, building isolation areas in many congregate settings, covering for sick co-workers, fashioning new ways of working to increase safety. Many state employees worked many extra hours either because of the pandemic requirements or because of covering for missing co-workers or both.

The pandemic changed working conditions for many employees. Corrections employees, used to dealing with physical violence and confrontations, now had added to that stress the presence of a deadly disease. Many became ill, some died. Employees worried constantly about bringing a the danger of Covid home to their families and many did just that. Occupations which had been difficult but manageable became far more difficult and frightening.

The work itself was a source of stress and distress. In each of the congregate setting where these employees worked, the people for whom they cared were becoming sick and dying. In the hospitals, employees were overwhelmed and frustrated at their inability to help patients. In prisons, inmates were becoming sick and dying. Employees testified to talking with prisoner about their fears and expressing the fact that they shared those fears for themselves and their families. The isolation of the disease increased the suffering that these employees witnessed every day during the long months when no vaccinations or new treatments offered hope.

The State, with help and prompting from the federal government, provided help as it could. There were great efforts to obtain and provide PPE. A program provided hotel rooms for employees who needed to isolate from their families. Sick leave was extended, testing and health care coverage were provided, and vaccination was offered when available.

In spite of these measures, the impact on the employees was great. Many are still feeling the physical and psychological effects of working in this dangerous and stressful time. Accordingly, the State and the Coalition have come together to provide additional pay for these essential employees. While the additional pay cannot compensate for the months of stress and danger, both parties recognize that there is an obligation and a will to show some appreciation of the considerable sacrifices these employees endured for the people of Connecticut.

V. Discussion of the Issue

The statute provides a framework for evaluating the last best offers of the parties in its listing of factors for the arbitrator to consider. These factors are not a simple checklist. The arbitrator or arbitration panel is required to consider all the factors, weigh them appropriately for the specific case, and determine which last best offers best fulfill the intent of the statute.

In this case, the offers are presented in two parts for Higher-Risk and Lower-Risk employees. The offers for these two groups of employees are consistent for the parties and the offers and arguments have been presented together. Therefore, I am treating this matter as constituting one issue.

The Factors

1. The History of Negotiations

Early in the pandemic, the parties agreed to treat pandemic pay as a coalition issue pursuant to 5-278(f) of the General Statutes. They agreed that this issue was less urgent than their common efforts to maximize workplace safety and maintain services during the emergency. At the time, federal legislation was pending and enacted which provided resources to provide such pay. The federal rules for such purposes were implemented in April, 2021.

The State made a first offer on pandemic pay during discussions surrounding the overall SEBAC 2022 negotiations. That offer was that full-time employees who could not work remotely would receive $1,500 if they worked at least 1,280 hours during the relevant time period. Employees who worked onsite part-time or hybrid would receive $1,000. Employees who worked 200 hours of overtime would receive an additional $500.

After that offer had been made, the State and the Coalition agreed to a general wage packet which excluded the issue of pandemic pay. The General Assembly allocated a total of $35 million in ARPA funds for pandemic pay.

The next offer from the State was made in August, 2022, when the parties were negotiating the issue of pandemic pay alone. That offer was for $1,000 for higher risk employees and $500 for lower risk employees. Pay for overtime was limited to employees who worked 200 hours of overtime between March 20, 2020 and July 15, 2020.

The Union characterizes this offer as regressive bargaining. The State argues that the offer was not regressive because it addressed a much larger number of employees who had been identified in the period between the offers. This is evidently true. It is also true that the General Assembly had increased the pool available for pandemic pay, so it is not clear that the reduction in the offer was necessary.

During the negotiations that led up to this arbitration both parties acted in good faith and reached major agreement on the scope and method of allocating pandemic pay. These agreements tend to overcome any effects of the State's arguably regressive offer.

The statutory factor of negotiations history does not significantly favor either of the parties.

2. The Existing Condition of Employment of Similar Groups of Employees

3. The Wages, Fringe Benefits and Working Conditions Prevailing in the Labor Market

These two factors overlap in terms of the evidence supporting each party's position here, so they are considered together.

Other States There is some evidence of other states' responses to pandemic pay, but they are not very useful. New York and Rhode Island did not provide premium pay to State employees. Vermont only provided premium pay to corrections officers for a limited period of time. New Hampshire's premium pay varied by the employee's job and seems to range from $2,400 to $6,300. This is, at the top, a higher rate than Connecticut proposes to pay but lower risk employees received pay in only a few classifications, including liquor store employees. Massachusetts provided lump payments of $2,000 for full time in person work and $1,500 for those who worked part-time or hybrid. This is more than what most low risk employees would receive under either last best offer and near the offers for higher risk employees. Some Massachusetts employees received additional hourly pay in 2020 through part of 2022. Maine paid an hourly increase which resulted in higher payments than are offered here.

There was some additional evidence of payments in other states but it was limited to what was paid from ARPA funds in one coded section of ARPA so is not possible to compare to the last best offers here.

Private Sector The State provided funds for eligible employees in the private sector. The original intent was to provide a $1,000 stipend for essential workers in the private sector who were unable to work from home and made less than $150,000 a year. The demand far exceeded the budgeted amount. The General Assembly allocated additional funds to a total of $105 million and revised the eligibility rules so that people received a sliding scale from $1,000 for the lowest paid workers down to $100 for those earning over $100,000 a year. The $105 million was allocated in the state budget, not from ARPA funds.

The amounts proposed for state employees in either last best offer is higher than these amounts. However, the stipend provided by the State for private sector employees were designed to supplement premium pay provided by the private sector employers. The Governor in his State of the State address in 2022, proposing the large increase in funds for private sector essential workers, emphasized that the State expected private sector employers would also provide premium pay for these workers: "I hope employees in the private sector follow our lead in providing hazard pay bonuses to our amazing frontline workers." The amounts of the state stipends were not adjusted for any pay provided by employers. Thus, it was clear that the State did not intend or expect that the funds provided by the State would be the only pandemic pay these workers received.

There is little evidence in the record about what private sector employers did to provide pandemic premium pay. The coalition did provide some evidence of enhanced hourly wages in grocery store chains. This evidence indicated that many employees in these jobs would receive more in pandemic pay than many state employees under either last best offer.

The comparison with private sector employees favors the last best offer of the Coalition.

Comparison with State employees who could work remotely. The State points out that State employees who were essential workers received a general wage increase of 3.5% on July 1, 2020 along with annual increments. They received another 2.5% increase on July 1, 2021. Most also received a lump sum payment. They were also protected by their SEBAC negotiations from layoff (not a real risk while the State was struggling to fill these essential positions) and also received benefits for child care, illness, quarantine time. The State contrasts this with other employees in the State who suffered layoffs.

The problem with this analysis is that all State employees were covered by the same contracts and received the same wage increases and benefits. Much of the increased time off, testing and other provisions the State offered were mandated and reimbursed by the federal government.

The reason these employees have been designated for pandemic pay is that they, unlike many of their State colleagues, could not work remotely and were constantly exposed to Covid-19 at work. They were required to risk their health and their lives and those of their families while other State employees who were able to provide their services to the State and the public from safety received the same. The parties have agreed that this difference in the expectations and experience between these essential employees and those who were able to stay safe and complete their work remotely deserves gratitude and financial recognition of their sacrifices and contributions.

The comparisons across states are inconclusive. There is also doubt about the pay received by private sector essential workers. However, the comparison between these employees and those in the same bargaining units who were not required to continue on-site work when it became dangerous favors the last best offer of the Coalition. All State employees received the benefits of collective bargaining but these essential employees were required to take enormous risks to perform their work. Therefore, these factors favor the last best offer of the coalition.

4. The Overall Compensation Paid to the Employees Involved in the Arbitration Proceedings, Including Direct Wages Compensation Overtime and Premium Pay, Vacations, Holidays and Other Leave, Insurance, Pensions, Medical and Hospitalization Benefits, Food and Apparel Furnished and All Other Benefits Received by Such Employees

The State points out that these employees have, over the past years, received considerable benefits from being State employees. During the pandemic, their union contracts protected them from layoff, while in the State there were many layoffs and unemployment payments soared. They received wage increases in 2020, 2021, and 2022.

The State paid out $65 million for Covid Leave, for the Temporary Emergency Lodging Program which allowed employees to stay at hotels to avoid the risk of brining the virus home to their families and others, and for Covid-related medical care for active state employees that was not subject to federal reimbursement.

The Coalition argues that the factor of overall compensation is not relevant in this matter because of the parties' agreement as to the structure of payments. Under the parties' agreement, the amount of pandemic pay is unrelated to how much the employee earns.

The State discusses recent SEBAC agreements, benefits the State provided as discussed above. These agreements were the result of collective bargaining, and it is reasonable to assume that they provided benefits and costs to the State and to the employees which were acceptable to the parties at the time. The State has also combined costs which were covered by State funds and those that were required by and reimbursed by the federal government.

After considering the arguments and evidence of both parties, I conclude that this factor does not favor either last best offer. The pandemic pay does not affect the overall compensation of these employees except as a one-time payment which reflects the hardship and risks these employees took on during the pandemic emergency.

The Ability of the Employer to Pay

There are some unknowns in the cost of the proposals of the parties. The estimates provided by the parties included some employees who are not members of the bargaining unit and so not covered by this award. In addition, the parties' agreement requires negotiation and adjustment for some employees for whom hourly records are not available. However, approximate costs have been calculated.

The overall cost of the State's last best offer is $40,031,370. The cost of the Coalitions last best offer is $45,417,970. Therefore, the discussion of the State's ability to pay has to focus on whether the addition of $5,287,768 will have an impact on the State's finances.

In the usual interest arbitration, the parties are discussing wages and benefits for a number of years. In that case, it is necessary to try to predict what State income and expenses will look like in the future, a process filled with unknowns and estimates.

This arbitration will result in a one-time payment which can be evaluated on the basis on what is known about the current fiscal situation of the State. This includes the current budget information and federal funds which have been and are available to the State.

The State presented the testimony of Tom Fiore, Assistant Executive Budget Officer. Mr. Fiore said that his primary function is budget forecasting. He described the strictures on budgeting in Connecticut including a spending cap and a volatility cap. He described some of the effects of the 2008 recession which linger in the State.

Then Mr. Fiore turned to the current finances of the State. In December, 2022, his office forecast a budget surplus for this year of over a billion dollars. He then predicted that the out years will present challenges, primarily because the Federal Reserve is deliberately trying to slow economic growth to contain inflation. Their rate increases will affect the State tax revenue, much of which is tied to the financial markets.

He also noted Connecticut's debt and tax load which are among the higher rates in the country. Our financial ratings have increased recently because the budget surpluses have allowed the State to refill the rainy day fund and apply significant funds to outstanding pension liabilities.

With that background, Mr. Fiore agreed that the State is projecting surpluses for a total of six years. He confirmed that the State has appropriated $35 million for pandemic pay and that additional costs of this payout would not change any of the predictions of surpluses. If the money all comes from ARPA funds, there would be no impact on the numbers he presented. If the additional funds, or some of them, come from the General Fund, then the amount of the surplus for the fiscal year would be reduced by that amount, but it would still show a surplus.

The State presented evidence about restrictions on the federal funds appropriated for pandemic relief. If the State provides pandemic pay to all employees without an income limit, there are some employees for whom the State will have to request a waiver from the Treasury Department. The number of these employees was not estimated, but it is not expected to be a large number, and the Treasury Department has committed to granting these waivers in most cases.

The State has already allocated $35 million in ARPA funds to pandemic pay. In addition, the General Assembly allocated $28.9 million in lapsed funds designated to "support accrued wage payouts and to increase funding available for state employee and National Guard premium pay."

The total cost of the last best offer of the State is $40,031,370, more than the amount allocated specifically from ARPA funds. The total cost of the last best offer of the coalition is $45,417,070. The difference between the two offers is $5,287,768.

As the evidence makes clear, the State has the ability to pay for pandemic pay. The difference between the two offers will not materially affect the short or long term financial position of Connecticut. This factor indicates that the last best offer of the coalition is reasonable and should be awarded.

Changes in the Cost of Living

In the typical interest arbitration, where the award will apply over several years, the impact of changes in the cost of living can be considerable. If prices are either rising or falling, the trend will affect the value of any wage increases over time and may require adjustments.

In this case, the payment will be a one-time stipend so changes in the future will not impact the value of the amount. However, these employees will receive payment in 2023 for work done in 2020 and 2021. Since that date, inflation has reduced the value of a dollar. Rising prices for gas and food have had an impact on personal budgets. Thus, the payment received in 2023 will be less in real income than it would have been had it been received in 2020. The coalition's offer reflects this change more accurately than the offer of the State.

The factor of changes in the cost of living favors the Coalition's offer.

The Interests and Welfare of the Employees

The primary focus of this arbitration has been the interests and welfare and the experience of the essential workers who worked through the pandemic at great risk to their physical and mental well-being. Additional pay cannot compensate these employees for the risks they took, the illness and death they experienced and watched. But there are benefits to recognizing their sacrifices at the higher level provided by the Coalition's last best offer.

Several employees testified to the non-monetary significance of receiving pandemic pay at this point in time. They said that the receipt of pay would signify that the State and its people appreciated the risks and sacrifices that these employees took to provide services to so many people in the State, that they would feel acknowledged and even honored by the recognition that they had done something extraordinary and historic.

The State took measures to increase to the extent it was able the safety of these employees, including access to PPE, the availability of lodging to protect their families, insurance and on-site testing. These measures were designed to ameliorate the worst effects of working during the pandemic. In spite of these measures, many employees suffered greatly both physically and mentally. Providing pandemic pay as generously as possible reflects the gratitude and recognition that will increase the welfare of these employees.

Therefore, the statutory factor of the interests and welfare of the employees supports the last best offer of the Coalition.

Conclusion

After reviewing all the evidence submitted by the parties and considering it in light of the statutory criteria, I conclude that the last best offers of the Coalition are supported by the statute.

AWARD

For Lower-Risk employees, the last best offer of the Coalition is more reasonable under the statutory criteria and is awarded.

For Higher-Risk employees, the last best offer of the Coalition is more reasonable under the statutory criteria and is awarded.

Susan R. Meredith

Susan R. Meredith, Arbitrator