December 27, 2021

Arbitration Award

State of Connecticut (State)

&

State Employees Bargaining Agent Coalition (SEBAC)

Telework Policy

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1.Introduction

The State of Connecticut and SEBAC have been negotiating a Telework Agreement and the Parties have reached an impasse. As is prescribed by the State Employees Relation Act (SERA), section 5-276a of the Connecticut General Statutes, the parties have appointed Arbitrator Michael R. Ricci to hear and rule, on the one unresolved issue. The Parties mutually agreed to the "STRUCTURE FOR REACHING A FINAL TELEWORK AGREEMENT" (Jt 3), which specified and prescribed the form of the negotiations, the arbitration process (if needed) and the criteria for the arbitration award.

Hearings were held on November 1 and 2 in 2021. The Parties electronically provided the Arbitrator with Opening Statements and Joint Exhibits prior to hearing; also, they entered exhibits for their respective sides throughout the hearing process. It was mutually agreed to hold the hearing virtually through the Zoom format as set up by the Arbitrator.

Per mutual agreement, the Parties electronically submitted Last Best Offers (LBOs) and briefs on November 24, 2021 and Reply Briefs on December 6, 2021.

The Arbitrator makes the Award as dictated by the criteria set in the applicable statute and the applicable agreements signed by the parties. The evidence, testimony and arguments duly presented were studied and deliberated through the lens of the statutory criteria set forth. The Arbitrator has considered all the evidence and arguments made by the parties; however, the Award may not have repeated every item of documentary evidence or testimony: nor re-stated each argument of the parties.

2. Statutory Factors, Structure for Reaching a Final Telework Agreement and the Cross Unit Agreement (Relevant Sections)

(5) The factors to be considered by the arbitrator in arriving at a decision are: The history of negotiations between the parties including those leading to the instant proceeding; the existing conditions of employment of similar groups of employees; the wages, fringe benefits and working conditions prevailing in the labor market; 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 ability of the employer to pay; changes in the cost of living; and the interests and welfare of the employees.

Conn. Gen. Stat. §5-276a(5)

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STRUCTURE FOR REACHING A FINAL TELEWORK AGREEMENT

I. Good Faith Negotiations

Promptly, following full execution of this Agreement, the State and the SEBAC shall commence good faith negotiations for a final Telework Agreement. To thatend, the parties commit to meeting on regular intervals, but not less than biweekly at mutually agreed-upon times/format/location.

II. Arbitrator's Authority

The Arbitrator's authority is limited to that set forth in Section 5-276(a) C.G.S. except as otherwise modified herein.

III. Pre-Hearing Procedures

No later than five (5) calendar days prior to the hearing date, each party will submitthe following three items to the Arbitrator (with a complete copy to the other party):

Opening Statements: A concise written statement (no longer than five (5) double-spaced pages) setting forth the basis for their case. This statement will clearly identify the issue(s) to be decided at the hearing. With respect toeach issue, the statement will set forth the pertinent facts in the case.

The Issue(s): The parties shall agree on a statement of the issue(s) under review such as those set forth above.

Exhibits: A copy of all documents that each party plans to introduce as an exhibit at the hearing. These documents must be numbered and clearly identified as State, SEBAC or Joint exhibits. It is up to each party to number and identify all exhibits submitted to the Arbitrator.

Witnesses/Affidavits: A list of witnesses, including those who will testify bysworn affidavit, shall be provided to the Arbitrator and the other party. Affidavits must accompany the witness list. Because the hearing is designedto be completed expeditiously, care and consideration must be given in deciding witnesses, and the relevance their testimony has to the issue. Affidavits should ordinarily contain the witnesses' statement of the facts andtransactions that led to the instant matter. All claims and any supporting facts that are alleged must be clearly and succinctly stated, including mitigating factors. By making said claims in this forum, Grievants should be advised that it may preclude the ability to seek redress in multiple venues.

No later than 3 business days prior to the hearing, each party may submit objections to the Arbitrator pertaining to the admissibility of evidence, or the relevance of witnesses. These objections must be submitted in writing, with a copy to the other party. The Arbitrator will rule on the objections at the start of the hearing, unless he or she determines that further information is required before ruling. Either party may request a conference call prior to the hearing to resolve evidentiary issues.

If one party fails to submit its three items by the deadline, it may request permission to submit such items out of time, and the opposing party shall then havethe option of rescheduling the hearing, with the cost of rescheduling to be borne by the party which failed to submit the items on time.

If upon the Arbitrator's request, a party refuses to produce documents or witnessesunder the party's custody or control, the Arbitrator may draw such inferences as he or she deems appropriate. However, the Arbitrator has no power to subpoena either documents or witnesses.

I. Representation Rights

Each party is entitled to representation of their choosing at the hearing. The Arbitrator has no authority to impose costs or award attorney's or representative'sfees to either party.

II. Hearing Procedures

Except by the mutual written agreement of the parties, the hearing shall be closedto all persons other than the principal parties and their invited members.

At the commencement of the hearing, the Arbitrator shall state the issue(s) underreview. The Arbitrator shall identify for the record all exhibits submitted by the parties, and shall rule, as appropriate, on any objections to the exhibits.

This Agreement, and the procedures outlined herein, are designed to allow both sides to present their cases fully and completely in not more than three (3) days. Atthe request of both of the parties, and in extraordinary circumstances only, the Arbitrator is authorized to allow additional hearing time.

Opening statements are discouraged. The written statement submitted to the Arbitrator (see section IV above) should be considered in lieu of an openingstatement. If an opening statement is made, it shall not exceed ten minutes, and shall be consistent with the written statement previously submitted.

responding to the briefs on the unresolved issues. Immediately upon receipt of both reply briefs or upon the expiration of the time for filing such briefs, whicheveris sooner, the arbitrator shall electronically distribute a copy of each such brief to the opposing party.

IV. Arbitrator's Award and Opinion

Within twenty (20) days after the last day for filing reply briefs, the arbitrator shallissue an award on each unresolved issue as well as the issues resolved by the parties during the arbitration proceedings. The arbitrator shall immediately and simultaneously electronically distribute a copy thereof to each party. In making such award, the arbitrator shall select the more reasonable last best offer proposalon each of the disputed issues based on the following factors:

- The history of negotiations between the parties including those leading to the instant proceeding;
- the existing conditions of employment of similar groups of employees; the wages, fringe benefits and working conditions prevailing in the labor market;
- 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 ability of the employer to pay; changes in the cost of living; and
- the interests and welfare of the employees.
- The interests and welfare of the State employer

The arbitrator (A) shall give a decision as to each disputed issue considered, (B) shallstate with particularity the basis for such decision as to each disputed issue and themanner in which the factors enumerated in subdivision (5) of this subsection wereconsidered in arriving at such decision, (C) shall confine the award to the issues submitted and shall not make observations or declarations of opinion which are not directly essential in reaching a determination, and (D) shall not affect the rightsaccorded to either party by law or by any collective bargaining agreement nor in any manner, either by drawing inferences or otherwise, modify, add to, subtract from or alter such provisions of law or agreement.

The agreement or award resulting from the negotiation and arbitration process herein shall be implemented immediately upon execution and or award (as

Burden of Proof/Order of Testimony. Upon the hearing, each party shall present such testimony and other evidence as it deems appropriate and as the arbitrator finds relevant to the issues presented. Evidence as to each disputed issue shall be presented first by the party presenting the demand underlying such issue. At any time prior to the issuance of the award by the arbitrator, the parties may jointly filewith the arbitrator stipulations setting forth such disputed issues the parties have agreed are to be withdrawn from arbitration.

Witnesses. The testimony of all witnesses shall be given in person (including by remote technology) or by affidavit under oath or affirmation; the oath or affirmation shall be administered by a notary public or other person charged with the ability to administer the same, including the Arbitrator.

Release Time for Witnesses. State employees shall be in a without-loss-of-straight-time pay status at the hearing as prescribed by their applicable Contract.

Evidence. The Arbitrator is encouraged to take an active role in the proceedings, to limit redundant and repetitive questions and testimony, and to question witnesses him or herself as appropriate. The arbitration hearing shall not follow the formal rules of evidence. The Arbitrator shall be the sole judge of the admissibility, relevance and materiality of all evidence and testimony offered. TheArbitrator may receive and consider any evidence offered, including hearsay, but shall give appropriate weight to any objections made.

I. Post Hearing Procedures.

Within three (3) days after the conclusion of the hearing, the parties will simultaneously exchange last best offers. Within ten (10) days after the conclusionof the hearing, the parties may file with the arbitrator copies of their briefsincluding their last best offer on each unresolved issue and, where possible, estimates of the costs of resolution of each disputed issue. Unless the Arbitrator requires otherwise, said filing of briefs shall be by electronic transmission.

Immediately upon receipt of both briefs or upon the expiration of the time for filingsuch briefs, whichever is sooner, the arbitrator shall electronically distribute a copyof each such brief to the opposing party.

Within seven (7) days after receipt of the opposing briefs on the disputed issues orwithin seven (7) days after the expiration of the time for filing such briefs, whichever is sooner, the parties may file with the arbitrator copies of a reply brief, (where applicable), except that the implementation of any provision requiring legislative approval shall not occur until such approval occurs.

IX. Waiver of Time Limits or Modifications.

The timing requirements established in this section that are imposed upon the parties may be waived by mutual agreement of the parties or by a ruling of the arbitrator following a timely request by any party. Any of the timing requirementsestablished in this section that are imposed upon the arbitrator may be waived by mutual agreement of the parties. Should the arbitrator seek an extension, the parties will jointly answer "yes" only by mutual agreement, and if not, will jointly answer "no" without any indication of whether the "no" is unanimous or which party, if any, may disagree. If the day for filing any document under this Agreementfalls on a day which is not a business day of the State, then the time for filing shall be extended to the next business day of the State.

V. Arbitrator Selection and Hearing Scheduling

Notwithstanding good faith efforts, in anticipation of the parties reaching impasse,the parties shall select a mutually agreed-upon Arbitrator not later than August 31,2021, to provide not less three (3) arbitration hearing dates during November 2021to resolve the outstanding issues, which may include the following issues and suchother issues as the parties mutually agree to include:

a. What, if any, cap shall be imposed on the number of days or percentage of the scheduled work hours, during the biweekly pay period, an eligible employee may telework?
b. Whether the State can restrict teleworking employees to use only state-issued equipment in order to ensure that certain security standards are maintained to guard the integrity of the state's Information Technology system.
c. Whether the State must seek an appropriation from the Legislature to fund the purchase of the required equipment to support employees' ability to telework.

Cross Unit Agreement

Ill. Alternative Work Schedules, Compressed Work Schedules, and Telecommuting-(General Offer)

Concept: Each agency will form a committee (like labor management) with each of its unions to discussthese issues. With the agreement of Union representatives, committees may operate cross bargaining units.

There shall also be a Statewide Telework Committee. The purpose of the Committee is to create policyand policy guidance to agencies regarding telework policies and implementation thereof. Areas of guidance include ensuring consistent standards, disability accommodations, performance measurements, agency closures, and management training. The Committee shall be comprised of an equal and mutually agreed upon number of members appointed by the SEBAC Leadership, and representatives of management, which shall include the Director of Statewide Human Resources and other such designee of the Commissioner of DAS, and members of OLR. The Committee shall be co- chaired by the Undersecretary of OLR or his/her designee and a representative of SEBAC. The Committee shall commence with meetings no later than 60 days following ratification of the Agreements.

Current practice will remain at each agency until parties meet and agree otherwise or changes occur through facilitation and or arbitration. Each committee shall begin its work no later than 30 days following the ratification of this agreement, and shall provide an initial report to the Statewide Committee regarding the meetings held and information relevant to the issue of telework, as defined and requested by the Statewide Committee.

Up to six members (equal on each side) on the committee. Union staff, and the Office of Labor Relations, shall serve as ex officio participants on the committee until a policy acceptable to both partieshas been created.

There shall be a Flexible Scheduling Facilitator, who shall be knowledgeable in flexible schedule issues. The Facilitator shall be available to resolve such matters as submitted by the parties. The Facilitator shall work with the committees to establish AWS, Compressed Scheduling, and Telecommuting Policies acceptable to both parties. If the parties are unable to agree to such policies within 90 days of the commencement of Statewide Committee meetings, either party may invoke interest arbitration on this issue. In such arbitration, it shall be agreed upon language that:

(1) Any policy shall consider the legitimate operational needs of the affected agencies as well as the interests of the affected employees.
(2) The determination of the employer to deny a request for AWS, Compressed Work Schedules, and Telecommuting shall be arbitrable, but shall first be submitted to the joint committee and the Facilitator for a recommended disposition.
(3) Current contract language on AWS and Flex scheduling shall be agreed upon language unless a bargaining unit agrees otherwise and/or proposes alternative language in the arbitration.

If the inability to reach agreement involves more than one bargaining unit and/or more than one agency, prior to the arbitration(s) being scheduled, the parties shall confer to determine the best way to achieve their mutual interest in expeditiously establishing a fair and effective policy applicable to those units and/or agencies.

3. Issue in Dispute

What, if any, cap shall be imposed on the number of days or percentage of the scheduled work hours, during the biweekly pay period, an eligible employee may telework?

Coalition Language:

An employee may request telework schedules of any amount the individual employee believes to be consistent with job duties and operational needs. All such requests shall be reviewed and granted, denied, or modification suggested in accordance with the procedures and standards of this telework policy, except that the determination of an agency to refuse to grant telework above an amount that would provide one day per workweek at the worksite shall not be subject to arbitration under this policy.

State Language:

Employees may request telework schedules of any amount per pay period, consistent with job duties, work unit and operational need. If the employee is assigned to an Agency or work unit where the Agency has established a cap on the percentage of telework available in the Agency or unit, any application exceeding the cap shall be automatically modified to reflect the cap. The Agency shall review all requests which shall be granted, denied, or modified consistent with this Telework Policy. Disputes regarding the denial or modification may be resolved under section 4.7 of this policy.

Preface

Both sides have filed Briefs and Reply Briefs to argue that respective points. The Briefs, at times, argue issues, that are in essence, settled in the Agreed Upon Language (AUL), and thus, they have limited to no relevancy to the open issue. Therefore, the Discussion will highlight the issues/evidence that have impact on the Award.

Since, the evidentiary hearing started with SEBAC, the Award will start with their position.

4, SEBAC Position

SEBAC argues that the Coalition Last Best Offer (CLBO) is more reasonable than the State Last Best Offer (SLBO). They contend the CLBO is in the spirt of the Cross Unit Agreement (CUA) by balancing legitimate operational needs and the interests of the worker. Their movement from no cap in the CBO, to the "soft" cap in the CLBO, shows that, even though there was only limited anecdotal evidence to support the one in-person day, the Coalition compromised to achieve a policy to serve the needs of the parties. Conversely, the SLBO, proposes a cap to be developed and implemented by each individual agency/work unit, that will ultimately cause a "disjointed and chaotic process" (Brief pg 18). The SLBO "allows agencies to unilaterally impose an additional and variable hurdle". (Brief pg 18). Moreover, since there is no standard (in the AUL or in the SLBO) to judge the agencies individual caps, the issue will be mired in arbitration where the arbitrator will have to intuit a standard to rule by. The Coalition further argues that the operational needs of the agencies are accommodated in sections 4.2 and 5.1.2 and therefore, this added layer will only make the process inefficient and potentially more litigation without benefiting the operational needs of the agencies.

The Coalition argues that telework is not just a common good, but also, a bargained-for benefit. They cite SEBAC 2017, which as a quid-pro-quo for the concessions the Coalition made (savings of $1.568b fiscal year, nearly $5b over five years and $24b over the next 20 years); the CUA (Jt 2) was reached an appendix. In the CUA, the State agreed to create a new statewide telework policy to be developed through negotiations and if need be, interest arbitration. The CUA prescribed two factors to reach an agreement: (1) Any policy shall consider the legitimate operational needs of

the affected agencies as well as the interests of the affected employees; and (2) The determination of the employer to deny a request for telecommuting shall be arbitrable. (Jt2 Section III). The Coalition contends that the CLBO aligns with the spirit of the ACU (the ability to bargain telework) and that the AUL combined with their LBO specifically addresses the enumerated factors in the agreement.

Next, SEBAC's Brief utilizes the Statewide Telework Reports (St 6), the Affidavits from the managers (St 7) and the testimonies from their witnesses to convey the overall success of telework, especially when a majority of the staff was forced to 100% virtual. According to evidence provided by the State, some agencies (DRS, DPH, DECD, and OHS) requested more flexibility in the telework policy to allow 100% telework. They argue that the requests from the agencies to maximize telework is a testament to the success of "*uncapped"* telework. Furthermore, they cite the testimony of many witnesses who spoke to the increased productivity, personal well-being and the fact that the flexibility allowed them to be more responsive and efficient on work projects. Also, the overwhelming evidence from both employees and managers showed that any tasks that necessitated an in-office presence was accomplished. The Coalition argues that the unequivocal success of maximum telework shows that an artificial cap would only diminish the potential benefits to both the State and the employees.

The Coalition then reasons that the relevant statutory factors favor the CLBO. They note that factors 2, 3 and 5 were not litigated, with 3 and 5 having no relevancy to the open issue, and that comparables sought in factor 2 do not exist in a form that will be useful.

SEBAC argues that factor 1, the history of negotiations leading to the instant issue, overwhelmingly favors the CLBO. They contend that this, is the most important factor, because it is the most relevant factor. As stated above, the Coalition dedicates a section of their Brief to the SEBAC 2017 agreement and the CUA in its appendix. (To be redundant, they maintain that their proposal satisfies the standards set in the CUA by the parties to reach a telework policy) They explain how this started the process in earnest and how the experience of telework in pre and during the pandemic helped forge the AUL, specifically sections 4.2 and 5.1.2. The point being, that the long negotiations and the experiences learned have served as a foundation for the parties to develop language to serve the operational needs of the agencies and the preference of the workers. The parties have carefully crafted language through the negotiations process to accommodate the "legitimate operational need" (CUA) of the agencies and therefore, any cap would be unnecessary and counter to effectuate

efficiency. Lastly, the Coalition raises the issue of the State moving backwards on their position, since, any agency/work unit could impose a cap of less telework then the State's CBO of 50%. In sum, SEBAC, argues that three components of negotiation history favor their proposal: 1. That SEBAC 2017 provided them the right to bargain telework with certain parameters, that the AUL combined with the CLBO satisfy; 2. That the long negotiations, that were influenced by the real-world experiences have created AUL that accommodates "legitimate operational issues" and therefore a cap is unnecessary; 3. That the SLBO is flawed because it moves backwards from their CBO.

The Coalition reasons that the factors of the *ability to pay* and the *overall interest of the employer* favor their proposal. Most of this section sings the praises of telework through various evidence, with the bottom line being that it is in the State's best interest to have telework at maximum capacity (which best comports with the CLBO). As stated numerous times throughout the Award, the parties agree to the positive impact that telework can have (i.e. the environment, traffic/congestion, less office space), the question is to what extent the amount of telework serves the operational needs of the affected agencies? Conversely, the SLBO would have negative affects on the affected agencies. They argue that: "the State's LBO would only make the telework policy less rational and ineffective-thereby wholly undermining any positive steps in furtherance of [those] stated public policy issues." (Brief pg 23). They maintain that a cap would only add a layer of administration and potential litigation to where it is not needed. Again, they reason that the AUL accommodates the legitimate operational needs of the affected agencies and therefore, caps would cause nothing more than confusion, chaos and unnecessary litigation. Furthermore, since there are no standards, in either the AUL or SLBO to adjudicate the caps by, with the potential of 100s of caps to litigate, then the sheer length of the myriad arbitrations will: 1. Potentially render the policy ineffective through the varied and possibly conflicting arbitrable interpretations; and, 2. with the possibility of caps being changed every six months, telework will be in a realm of perpetual litigation, therefore, no telework will actually take place. Finally, the Coalition notes that their modified proposal of a *soft cap* is to enhance the benefit for the employer. As stated above, SEBAC contends there is only sparse anecdotal evidence of the need to be in-person to build workplace culture, however, as a compromise, they are offering the ability to require one in-person day per workweek without being arbitrable.

5.State's Position

The State argues that the SLBO is most reasonable and therefore, it should be awarded. In general, they lay out the inherent strengths of their LBO, the strength of SLBO vis-à-vis CLBO and the flaws of the CLBO.

The State's overall argument is that the evidence shows managers have embraced telework (as is proven by overall granting of telework) and the SLBO provides each agency or work unit the flexibility to use telework for effective and efficient operational needs while guarding the workers' rights. Moreover, their proposed language (unlike SEBAC's proposed language) is clear and unambiguous.

They start their argument with the history of telework as a subject of bargaining. The State explains the context of how telework went from a prohibited subject of bargaining (as designated in Public Act 96-168) to an appropriate subject of collective bargaining. Specifically, they point to the SEBAC 2017 agreement. A quid-pro-quo for the economic concessions that the Coalition agreed to in the agreement, was the ability to bargain telework. The State maintains that they fully understand the Coalition's ability to bargain telework, however they strenuously argue that there is not an absolute right to telework. The following lines from the State's Brief emphasizes this point: "SEBAC seems to fail to appreciate the fact that the 2017 Agreement gave them the ability to negotiate *a policy*. It never gave all the members an absolute right to telework as much and as often as they wanted." (Pg10). The State drives this point home throughout their Briefs, because they want to make it clear, that no matter how much the Coalition argues that telework is a *right* owed to them (due to their concessions), the SEBAC 2017, gives them the ability to negotiate the telework, not the *right* to have it in an absolute form.

The State then goes into the body of why the SLBO is more reasonable. They utilize the DCF Telework Survey Results May 2021 (St 2), 2019 Agency Interim Telework Reports (St 6) and the Affidavits (St 7) to convey that "…generally, Management embraces telework." (State Brief pg. 12). As the evidence shows management has granted telework when appropriate. They spend pages of the Brief basically singing the praises of telework, however while noting the need for flexibility and the discretion, so to best serve the operational needs of each particular agency or work unit. Thus, the State argues that SLBO is the most reasonable because: "[their] language captures the needs and desires of both management and the workers.

Employees can ask to telework any amount per pay period that is consistent with the employee's job duties, the unit in which they work, and the operational needs of the Agency. It gives the Agency the discretion to establish a limit on the amount of teleworking available by operational unit". They further argue, (in an effort to note their compromise from their original proposal of a 50% state-wide cap to their LBO of agency/ work unit determined caps) that: "The State's LBO does not impose a state-wide arbitrary cap, floor, or ceiling. It acknowledges that neither State agencies nor State employees are fungible. They are unique, discrete, and insular. What works in the Department of Banking may not work in the Department of Mental Health and Addiction Services. What works for Susie Creamcheese may not work for Sam Sausage. The determination as to what works best for each agency and the employees in that agency rests where it belongs—at the agency level." (Pg 15) Also, the Brief points to the fact that the Federal Government, which has a developed policy and more experience with telework, grants discretion to each agency, and therefore, so should the State of Connecticut.

The State Brief notes that the statutory factors favor the SLBO. As both parties note, some of the factors have limited (if any) relevance to the open issue, however the State discusses the most pertinent. Looking to the *history of negotiations between the parties including those leading to the instant proceedings* (the first factor), the State reasons that their proposal is based on significant compromise from their original position. Furthermore, that the compromise is to serve the needs of both parties, not just the interests of the State. Next, regarding the second factor, comparable policies of similar groups in the labor market, the State notes that the oft cited comparable is the private sector, which they believe is inappropriate, since the State has "no devotion to profit margins or the bottom line." (Brief pg 16). They further point out that the issue of the *ability to pay* (the fourth factor) was decided by the parties and is no longer a factor of consequence for the open issue. Finally, they reason that the last two factors are symbiotic and that the overall evidence shows that telework works for both sides, therefore, their offer of making a determination at the agency/work unit level instead of being made "from a 10,000 feet view" proves the SBLO is the more reasonable. This point is conveyed in their Brief: "If employees are happy, content, and satisfied, then the State would have a most productive workforce which is in its best interest." (pg17)

Another argument from the State, is the comparison of the parties' specific language. They argue that their language is clear and unambiguous, and that the SEBAC language is anything but clear. They note that the critical importance of any contract language is that it is understandable and easily implemented without issue, something

the SLBO achieves. Specifically, SLBO is clear that an agency/work unit may establish a cap, that any decision will be "granted, denied or modified consistent with this Telework Policy" (inclusive of the agency cap) and any dispute will be resolved under section 4.7 of the AUL. Conversely, the CLBO is so ambiguous that: "[i]n its brief, SEBAC painfully tries to explain its LBO". (St Reply Brief pg9). The specific CLBO language is: "except that the determination of an agency to refuse to grant telework above an amount that would provide one day per workweek at the worksite shall not be subject to arbitration under this policy." They argue that the "unartfully drafted LBO" (Reply Brief pg9) defies a simple reading to the point that the Coalition itself has different interpretations in their Brief. This centers on the ambiguity of management's unimpeded (no arbitrability) ability to mandate an employee in-person one day a week or is it less than one day; that is the State's point. They argue that any language that cannot be explained by the drafter of the language, cannot be the more reasonable.

Lastly, they answer the SEBAC argument that a cap will cause undue litigation without any set standard to litigate the dispute. They reason that the State must be able to defend an agency cap under the standards already set in the AUL. Since, Section 4.7 dictates that, if the cap is disputed, then the grievances will be arbitrated with "similar situated employees", thus, the potential grievances will not be increased any more than the CLBO *soft cap*. In short, the State finds SEBAC's argument that an agency/unit cap would cause undue litigation, because there is no set standard to be judged by, is misguided and incorrect.

6.Discussion

The Award is the last piece of a journey that has gone on for more than decade. The Telework Agreement is a watershed with tributaries of technology, societal change, efficient government, a pandemic and workers' rights; the finished product will serve as the policy for the future of telework in the State. The Parties have done the heavy lifting by negotiating and agreeing to a thorough and comprehensive policy: the Agreed Upon Language (AUL). The one open issue is a cap.

SEBAC proposes a *soft cap* which is gives management the option of requiring one in-person day per workweek that is not arbitrable.

The State proposes an agency/work unit determined cap that according to the AUL is arbitrable and open every six months.

The parties have come amazingly close to a full agreement. The open issue of an agency cap, is minor in comparison to the substantial issues the parties have negotiated and agreed to in the AUL. It is obvious that the evolutionary move to telework that was hastened by the pandemic, has served as a PhD in telework for the parties. (The parties have stipulated that the experiences learned during the lockdown may serve as informational in this process, but it does not constitute bargaining history) At times, the parties' briefs are love songs to telework. However, where the parties differ, is the degree of telework. In other words, the AUL is written proof that both parties agree to the mutual benefit of telework, but the open issue shows that they strongly disagree on the right amount or degree of telework. The State's offer, shows that it believes that it is best decided by the individual agencies/ work units what amount, or if any cap is necessary to serve their operational needs; this proposal reflects their belief that telework is beneficial, but up to the point that is best decided by the mangers who know their agency. The Coalition's proposal has what they consider a *soft* cap, where the agency can affirm 100% telework or require an in-office presence at least one day a workweek without being arbitrable; this offer shows that they believe that the maximum of teleworking, in relation to the legitimate operational needs of the agency, will serve both parties.

As stated throughout the award and eloquently explained in the briefs, there is a long history to where the parties are now. For the purposes of the Discussion, we will look from the SEBAC 2017 agreement and forward. SEBAC 2017 is important in this

context, because it changed telework from a prohibited subject of bargaining to an appropriate subject of bargaining. In other words, the ability for management to allow telework existed, but telework was not a right and there was no right to bargain the issue. Propagated in part by the new ability to bargain telework, the parties negotiated and agreed upon the CUA, which started the actual bargaining process. The CUA has language concerning interest arbitration on telework: "In such arbitration: (1) Any policy shall consider the legitimate operational needs of the affected agencies as well as the interests of the affected employees. (2) The determination of the employer to deny a request for…Telecommuting shall be arbitrable…" (Jt 2, Sec.III). Therefore, this Award must also take into consideration the clear and distinct criteria agreed to in the CUA.

There are numerous pages of the briefs and reply-briefs dedicated to SEBAC 2017 and the ultimate effect it should have on this award. This point of contention has been at the center of the parties' arguments since the negotiation process has started. The issue of the SEBAC 2017 *quid pro quo* was raised, argued, counter argued and then the process was repeated. The Coalition has made billions of dollars in concessions and one of the *gets* for the *gives* is the ability to bargain telework; they reason that the concessions should give weight to their proposal The State maintains, that they understand that the Coalition has the right to bargain, but they reason that the right to bargain is just that, and that is why the parties are on the bargaining process right now; put differently: a right to bargain is not a right to have in an absolute form. The Arbitrator fully acknowledges the concessions made by the Coalition; however, the State's point is well-taken. This arbitration, and thus the one open issue, stands on its own. The *quid pro quo* from SEBAC 2017 gets us to this point and now the open issue must be decided according to the statute, the criteria set in the CUA and the modifications from the *Structure*.

As dictated by statute, the Arbitrator shall choose the *more reasonable* proposal based on the factors listed in §5-276a(5). The parties have agreed to the Structure for Reaching a Final Telework Agreement (Jt 3), which slightly modifies some of the procedural prescriptions of the statute, plus it adds another factor: *The Interests and Welfare of the State Employer*. Neither the statute nor the Structure give guidance to the meaning and/or interpretation of the term: *more reasonable*. Also, as is stated above, the CUA adds the criteria: the consideration of legitimate operational needs and the interests of the employee. (Both parties agree that a denial of telework is appealable, so CUA criteria 2 is moot)

Thus, using the criteria explained above: what LBO is *more reasonable*?

As will be explained below: the Coalition Last Best Offer is more reasonable,

The essence of the Coalitions argument is quite simple: there is already AUL that accomplishes what the States LBO is trying to do and therefore, it is unnecessary.

The essence of the State's argument, is that there is no one-size-fits-all in an entity with so many varied agencies, therefore, to accommodate the operational needs and the employee interests of each agency, the decisions on the amount of telework should be made at the agency level.

The intrinsic difference between the LBOs is rooted in the meaning and thus the effect of the AUL. Arbitrators give deference and respect to existing contract language, because it is the mutual will of the parties committed to the written word. In the instant case, there is no *existing language*, but there is the equivalent: Agreed Upon Language (AUL). Therefore, the Arbitrator will give deference and respect to the AUL especially in relation to the proposed new language.

There is substantial language on the telework application and review process. The parties have developed a comprehensive process to accommodate the operational needs of the respective agency in granting telework. For example, Section 4.2 states the reasons for denial of telework: i.e., *unable to perform the full range of duties and not being able to protect confidential information*. It further goes on to state that the telework can be denied if it "impairs the efficiency and productivity of the employee or the work group"; this provides for a two-step review on both, the effect of the individual's telework on their own work product and the effect of the individual's telework on the work product of the work unit. Therefore, the language is written to ensure that the operational needs of the respective agency are accommodated by the stated standards. That fact that the employee has to apply for telework (instead of just automatically having telework) shows that there is an expectation of the employee meeting a standard that is based on the operational needs of the agency. Moreover, Section 5, **Semi-annual Application Process** sets up a process where previously approved telework applications are reviewed every six months. (There is also language to address if approvals would cause an issue with onsite coverage). Obviously, this is another layer of review and assessment of telework applications. As the above conveys, the parties have taken the experiences learned from the lightning-like-strike move into telework to craft language that works for both sides. The fact that the parties reached this language through negotiations makes the language that much more pertinent to the Arbitrator. In other words, the Arbitrator has faith in the parties and the negotiation process to reach language that best suits the balance between operational needs and the interests of the employee.

The State makes various arguments why their proposal is the more reasonable. The

Arbitrator understands their points; however, he does not find their arguments convincing enough to add another hurdle to the already agreed upon application process. Their main argument, is that the balance between operational needs and the interests of the employees are best served by making (or the ability to make) the decisions at the agency/work unit level. In their Brief they state that the decision should not be made at the "10,000 feet" level and they cite the times the managers (in the Surveys and the Affidavits) comment that they advocate for telework as long at the agency has the *discretion* to determine the right amount in relation to operational needs. (for some reason, the reply briefs still argue about evidence concerning the value of telework, but we are past the point, because according to Surveys and Affidavits the agencies already embrace telework, albeit at the right amount). In theory, the Arbitrator agrees with the State that the decision is best made at the local level, however, according to the evidence the AUL accomplishes this. As shown above, there is clear language on the application and review process, plus there is a semi-annual application process; the State's proposal (as it understood) adds another layer to the process which is already thorough. Moreover, there is no convincing argument that the AUL would deny, or even hinder, the ability of the agencies to review applications in light of their operational needs.

The Coalition argues that the SLBO would create "a disjointed and chaotic process" for administrating telework. The Arbitrator finds the terms to be hyperbolic, but the point is well taken. It is not clear how the agency cap or the potential cap will fit in or complement the AUL. Furthermore, SEBAC maintains that the proposal will cause chaos, because the standard that the cap will be adjudicated by, and the structure of the appeal process is not explained. The State counters in length, that the standard and the structure are no different than the process spelled out in the AUL and moreover, that Section 4.7 dictates that the arbitrated disputes should be combined for "similar situated employees"; therefore, any litigation on the cap should be no more onerous than the litigation under the Coalition's proposal. Lastly, SEBAC argues that there could be literally hundreds of caps and that they could change every six months per Section 5. Again, to the Arbitrator, the intent of *making the decision at the right level, so the right decision is made* is admirable. However, it is not clear how the AUL diminishes that ability for the agencies to act at the appropriate level. Moreover, there is lack of clarity on how the agency cap would complement the AUL, how the cap would not cause more litigation through the sheer number of caps and the possibility of changing caps every six months. In their Brief, the State correctly pans the "inefficient or ineffective" facilitations of telework under the Interim Telework Agreement, however, it is within reason that the added layer of potential litigation from the proposed language will doom this agreement to the same fate.

Another argument that the State makes against the CLBO, is the clarity of the

Coalition's language.

> All such requests shall be reviewed and granted, denied, or modification suggested in accordance with the procedures and standards of this telework policy, **except that the determination of an agency to refuse to grant telework above an amount that would provide one day per workweek at the worksite shall not be subject to arbitration under this policy**.

The Arbitrator bolded the specific language that the State is referring to. They reason that "[t]he one thing clear about this language is that IT'S NOT CLEAR" (Brief pg 18). Throughout their Briefs, they note the different interpretations that can be elicited from the verbiage and therefore, the potential litigation that this language will cause. They further point out that SEBAC's own interpretation is conflicting: stating in the Coalition Brief that the meaning is "'less than one work day per week on site.'" and then later on the meaning is "'…allowing the agencies to require that employees come into the office one day per work week,'" (Reply Brief pgs 9,10) Finally, the State cites the only comparable telework policy: The Federal Guide to telework (St 1B pg 16) to bolster their argument. They point out that that the Guide advises: "[a] well written policy for a good telework policy…", and that: "[t]he policy should be written in such a way that it can be clearly understood and easily used." Thus, the State contends that the ambiguous language should be rejected because the "verbiage will be incorporated in the final Agreement, by which the parties must live [with] going forward. (Reply brief pg 9) The Coalition counters that the specific language, which is proposed to provide a *soft* cap for the State, is clear and understandable as written. The ability of the language to be clearly understood is proven by the State's correct interpretation of the language in their Brief. The Arbitrator acknowledges and understands the point on the clarity of contract language. Although, the language does not take the straightest path to its meaning, there is enough evidence in the record that the language can be easily understood by the following: "[a]n agency's determination that [an] employee must be in the office one day per week is simply not appealable." (Coalition Reply Brief pg7).

An issue that was argued and counter argued throughout the briefs is the comparison to the Federal telework policy (St 1 & 1B). The policy was developed and implemented more than a decade ago. so it can serve as a seasoned guide. More importantly, as reasoned by the State, it is the most appropriate comparable, since the State and the Federal government exists not for *bottom lines*, but to serve the citizens. The State argues that the well-developed Federal telework policy designates agency determined caps and therefore, so should the State policy. The Coalition counter argues that the enormity of the Federal government does not serve as an appropriate comparable. The Coalition's point is well taken. The population of Connecticut is less than 1% of the US total and thus, it stands to reason that the State government workforce would be within 1% of the total Federal government's workforce. Put

differently, the smallest agency in the Federal government will most likely be larger than the entire State government workforce. To follow the Federal policy, such as having designated a Telework Managing Officer for each unit, would in reason, be inefficient and onerous for the smaller agencies or work units.

Concerning the LBOs and the bargaining history, the Coalition argues that the State going from a CBO of a 50% statewide cap, to an LBO of an agency determined cap is regressive, because the cap could be more than 50% with any agency. The State counter argues that the offer is not regressive, because the cap in any agency could be below the CBO 50 statewide cap. There was not enough evidence to determine the SLBO was regressive. Also, both parties contend that their LBOs are compromises from their CBOs and their compromises should weigh to favor their proposals; the compromises were noted, however they were not a determining factor.

Finally, the nature and the context (proposed language in a new agreement with a great deal of agreed upon language) of this open issue defies using the proverbial check-off list of relevancies to statutory factors (plus the factors added from the CUA and the Structure). As stated throughout the briefs, few of the factors have relevancy to the issue. The most relevant factor, and therefore, the most utilized to make the decision, is the criteria set in the CUA: consideration of the legitimate operational needs of employer and the interests of the employee. These criteria, which is the classic balance sought in almost every labor relations issue, encompasses factors 5 (the interests of the employee) and 6 (the interests of the employer). For example, operational need is a core employer interest. Therefore, throughout the Award, when a particular issue is discussed within the context of the CUA, the relevancy to the statutory factor is assumed. In other words, even if the statutory factor is not mentioned, it is being addressed under the encompassing CUA criteria. On a related note, the most relevant statutory factor is the "history of negotiations" which is dealt with numerous times through the Award, such as: the genesis of the CUA, the SEBAC 2017 quid-pro-quo effect on the decision and most importantly the AUL's effect on the award.

Conclusion

The Arbitrator has considered all the evidence and arguments made by the parties. The Arbitrator, however, may not have repeated every item of documentary evidence or testimony: nor re-stated each argument of the parties.

7. Award

Having heard the evidence and the arguments of the parties, the Arbitrator awards as follows:

The Coalition Last Best Office is awarded:

> An employee may request telework schedules of any amount the individual employee believes to be consistent with job duties and operational needs. All such requests shall be reviewed and granted, denied, or modification suggested in accordance with the procedures and standards of this telework policy, except that the determination of an agency to refuse to grant telework above an amount that would provide one day per workweek at the worksite shall not be subject to arbitration under this policy

Michael Ricci

December 27, 2021 Arbitrator Michael R. Ricci

Telework Policy

1. **Purpose and Derivation.**
   1.1. This policy and related documents derive from the bargaining and award(s) over a statewide telework policy as set forth in the SEBAC 2017, Cross Unit Agreement, and the 7/31/2021 Stipulated agreement. Absent mutual agreement otherwise, they establish the State's telework policy with respect to all bargaining units listed in Appendix A.
   1.2. Any agency or bargaining unit may suggest modifications, changes or additions to the requirements herein. Such suggestions by an agency shall be made to the Office of Labor Relations, or by a bargaining unit, to the SEBAC Coalition, to be reviewed by the two-person statewide Telework Grievance Committee consisting of a representative designated by OLR and a representative designated by SEBAC. If there is any disagreement, the issue shall be submitted to and scheduled for arbitration and any modification resulting therefrom shall take place upon the date as set forth in the agreement, and/or the date set forth in the arbitration decision, except to the extent legislative approval is required under 5-278 of the general statutes.
   1.3. The classifications deemed eligible for telework pursuant to this policy are set forth is Attachment B, section 1, as may subsequently be amended through mutual agreement, or through the procedure set forth in Attachment C.
   1.4. This policy is effective the first day of the second pay period following execution or award (as applicable), and governs telework schedule occurring on or after 1/1/22, except that the implementation of any provision requiring legislative approval shall not occur until such approval occurs.
2. **Telework pursuant to this Policy.**
   2.1. Telework is a voluntary agreement whereby an employee is permitted to work from home, or other approved location, on a pre-approved basis for part of his or her workweek. Telework does not change the nature of an employee's work, the hours the employee is expected to be working, the employee's official duty station, or the employee's obligation to comply with laws, regulations, and state and agency policies. This policy identifies the requirements employees must follow to apply for telework, establishes the rules an agency must follow when analyzing requests to telework, granting, granting as modified, or denying such requests, as well as the process the parties will follow with respect to the review of any disputed agency decisions.
   2.2. There are two types of telework. (1) Routine telework in which telework occurs as part of an ongoing, regular schedule; and (2) situational telework, which is approved on a case-by-case basis, where the hours worked were NOT part of a previously approved, ongoing and regular telework schedule. To be eligible to engage in situational telework under this policy, an employee must either have an approved application for situational telework, or an approved application for regular telework.
   2.3. Eligible employees with field assignments who have been historically directed to perform work at a neutral location following the completion of their field assignment for the day, may be allowed to situational telework as an alternative to performing work at the neutral location.
   2.4. governing the employee's collective bargaining agreement. None of the rights of such Telework is not a basis for changing the employee's salary or benefits which remain subject to the rules

agreement are enhanced or abridged by the implementation of telework programs, nor shall any employee receive any additional compensation as a result of this program. Notwithstanding the foregoing, employees may be asked to adjust their work schedules, to facilitate teleworking opportunities for the maximum number of interested staff. The employee's official duty station remains at the work location assigned prior to any telework application, and there is no expectation of mileage reimbursement or auto use fee to go to or from meetings at the official duty station. The employees work, performance, efficiency, productivity, and conduct remain subject to the usual agency procedures, standards and the employee's collective bargaining agreement, as well as the requirements set forth herein. Nothing herein precludes an agency from using computer technology that currently exists, or may be developed in the future, to monitor employee productivity.

2.5. Teleworkers are subject to the same rules for using sick leave, vacation, personal leave and other leave. If the teleworking employee is unable to work any portion of his/her teleworking day, the employee will be required to use applicable personal leave, earned compensatory time, or accrued vacation or sick leave for the hours not worked, subject to standard Agency rules and procedures regarding such leave.

2.6. Any employee-initiated change(s) to the telework schedule must be preapproved, in writing, by the Agency. Any changes in the approved schedule of the teleworker are subject to the Agency's internal review process and the appeal process under this policy. If the change is intended to be ongoing, then the new schedule must be memorialized in writing.

2.7. The number of hours an employee spends teleworking shall be recorded by entering the time reporting code "REGTC" on the CORE timesheet or other appropriate documentation in the applicable system.

2.8. With notice to the Union, the Employer may suspend telework schedules due to unexpected emergent situations for the duration of the emergent situation.

3. **Applying for Telework.** An employee may apply for telework through the online portal established on the DAS website. No material change in the portal will occur without mutual agreement of the parties.

4. **Analyzing Specific Telework Applications.**

4.1. An application that is not fully completed at the DAS Portal will be returned to the employee to be considered following completion. Applications to Telework must be analyzed by the agency based on specific job duties and approval is not guaranteed. All employees wishing to telework must qualify for participation under Appendix B.

4.2. Applications will be denied as written if the employee is unable to perform the full range of the duties needing to be performed during the telework period, including any supervisory duties, and to protect any confidential information while teleworking.

4.3. Applications may also be denied if there is an objective basis to conclude that allowing the employee to telework will impair the efficiency and productivity of the employee or the work group. The agency will offer a modification of the telework schedule requested to require more on-site presence if it determines that one of the above factors prevents granting the application as requested, but would not prevent granting such modified telework request Applications may also be denied if the employee is: in their first year of employment; in an initial working test period; in a promotional or transfer working test period for which the job duties are substantially or materially different than those in the prior position, or if at a different location either inter or intra-agency, and the job duties are similar, if there was an approved telework schedule but the schedule cannot be operationally accommodated in the new location, in the employee's first six

months of employment in a trainee class; the employee has a less than satisfactory rating on their most recent performance rating issued within 2 years of the application; the employee has a disciplinary action of a reprimand or above after the last performance rating and within the last 2 years

4.4. Other applications will normally be granted as written except to the extent modification is required under paragraph 5 below.

4.5. To the extent an employee files an application for telework which is the same as his/her existing schedule, and is timely under the Semi-annual application process, the employee may continue his or her schedule during any period in which the renewed application is pending.

4.6. Applications filed at times different from those set forth under paragraph 5 may be granted but shall extend only until the next renewal period under that paragraph.

4.7. Denials or modifications of telework applications shall be submitted to a designated email address reporting to the SEBAC representative of the Statewide Telework Grievance Committee, and will be reviewed by the Statewide Telework Grievance Committee if the parties mutually believe such review likely to be helpful. If not, or if such review is unsuccessful -- and if the Coalition determines to bring the matter forward -- it shall be reviewed under the SEBAC Arbitration process. For purposes of this agreement, any arbitration necessary under that process shall be as informal and expedited as possible, and grievances involving similarly situated employees will be combined.

4.8. The arbitrator, in rendering a decision, will uphold the state's determination to deny or modify a telework request if management has demonstrated that approving the application would have a material negative impact on service delivery to internal or external customers, clients, consumers or the general public. The arbitrator shall not be empowered to direct the Employer to hire additional staff or accrue additional overtime costs, nor shall the arbitrator be empowered to substitute his/her judgement for management's judgement as to which directly provided services may be performed through other than in person contact. Any remedy awarded shall only be prospective.

4.9. Denials of subsequent requests to situationally telework, once situational telework has been granted under this process, may be appealed under the local collective bargaining agreement and only if a pattern of such denials has occurred.

4.10. An employee may request telework schedules of any amount the individual employee believes to be consistent with job duties and operational needs. All such requests shall be reviewed and granted, denied, or modification suggested in accordance with the procedures and standards of this telework policy, except that the determination of an agency to refuse to grant telework above an amount that would provide one day per workweek at the worksite shall not be subject to arbitration under this policy.

5. Semi-annual Application Process. Individual applications not denied under section 4 above will also be reviewed in connection with the semi-annual telework application process provided herein.

5.1. The granting of individual telework applications will be for six months and shall occur each year effective with the first day of the pay period in January and July of that year.

5.1.1. Applications from employees will be submitted not more than 60, but not less than 30 days in advance of such dates.

5.1.2. If the approval of applications in a particular work group would create less onsite presence than is required for those business needs of the agency, that must be performed on site, the agency will establish a rotational schedule in which eligible employees are granted an equal amount of telework, except to the extent an individual has requested otherwise. In such

case, if the Union representing the employees requests a different manner of distribution of Telework, it shall present such requests to the agency with disputes to be brought to the Telework Grievance Committee.

5.1.3. If there are conflicts between employees as to particular workdays to telework, they will be resolved on the basis of general seniority as defined if the specific bargaining agreement if only one bargaining unit is involved. Otherwise said conflicts will be resolved on the basis of statewide seniority. ADA accommodations are an example of agreed upon exceptions to the seniority rule.

5.2. Regular telework will generally be granted as full days, but half-day telework may be permitted in the following circumstances: (1) To accommodate coverage or rotation issues under this section; (2) as situational telework.

6. Termination of Telework within the 6-month period.

6.1. If a teleworker is transferred, promoted, or otherwise moved into a new job classification and in which the job duties are substantially or materially different than those in the prior position, which requires a working test period, the granting of telework may be revoked subject to such later application that may occur under this policy. If a teleworker is transferred, promoted or otherwise moved into a new job classification, in a different location, either inter or intra agency, in which the job duties are substantially or materially the same as those in the prior position, but the schedule cannot be operationally accommodated in the new location, the granting of telework may be revoked or modified subject to such later application that may be made under this policy.

6.2. Teleworking employees demonstrating difficulty maintaining acceptable performance/production levels set by management may be required to return to the duty station. Performance/production issues resulting in a revocation of telework shall be subject to review under the grievance procedure of the applicable collective bargaining agreement. In such arbitration, which may be expedited, the state will bear the burden of proving or demonstrating performance or production issues by a preponderance of the evidence.

6.3. An employee shall not permit personal obligations, family responsibilities including the presence of other family members in the workspace, to interfere with the productive performance of his/her work. An employee so doing will be denied further telework unless she/he can provide assurance and evidence that any such interference has been abated and ended.

7. TELEWORKING LOCATION

7.1. The teleworker is responsible for maintaining a designated workspace in a safe, healthy, professional and secure manner. The dedicated workspace must have the necessary environment and furnishings to enable the employee to accomplish his/her assigned duties, including an appropriate work surface and chair.

7.2. The teleworker must have reliable phone and internet services in place at the telework location to conduct their work duties. The teleworker is required to provide the phone numbers where they can be reached on telework days. Teleworkers are not authorized to perform work at any site other than the approved teleworking location for the duration of the teleworking shift without specific, written, management approval.

7.3. With one hour's notice, the Agency may make on-site visits to the designated workspace for the purposes of verifying that Employee is teleworking as scheduled, determining that the site is safe and free from hazards or distractions, and/or maintaining, repairing, inspecting or retrieving Agency-owned equipment, software, data, or supplies. The Agency will make inspections only during Employee's scheduled telework hours. An example of notice would include but not be limited to an email or leaving a message on the employee's designated phone number(s) that was

provided by the employee.

8. AVAILABILITY TO REPORT TO THE OFFICIAL DUTY STATION.

8.1. Teleworkers shall report to the official duty station when directed, based on management priorities, such as for meetings, training or other work-related requirements. Business meetings, meetings with customers or regularly scheduled meetings with co-workers shall not be held at the telework location unless they can be accomplished through a teleconference process. The agency will give due consideration of existing technology (teleconference, email, etc.) in order to minimize directing staff to physically report to the office.

8.1.1. Management will provide reasonable notice where practicable prior to mandating the employee report to the office and is encouraged to offer an alternate telework day unless operational needs make it impractical. Any failure to provide such alternative telework days shall be grievable under the affected individual(s) local collective bargaining agreement, but only if there is a pattern of such failures.

8.2. INABILITY TO WORK AT TELEWORKING LOCATION

8.2.1. The teleworking employee must notify his/her supervisor immediately of any situations that interfere with their ability to perform their job including: equipment malfunction; loss of power at the telework location, etc. Depending on the particular circumstances, the Agency may allow the teleworker to use accrued leave or compensatory time, if applicable, or require the employee to report for work at the official duty station. Chronic connectivity issues may be a basis for revoking telework.

8.2.2. If a situation arises which would preclude the employee from working at the telework location, the employee must request the use of leave time, arrange for a change in work schedule, or work at their official duty station.

8.3. LATE OPENING, EARLY DISMISSAL, AGENCY CLOSURE

8.3.1. If a situation arises at the teleworker's official duty station that interferes with the ability of non-teleworking employees to work at the official duty station (e.g. power failure, weather conditions, lack of heat in the office building; etc.) while the teleworker is working at his /her telework location, the teleworker is not excused from duty for this period of time as he/she would not be affected by these conditions.

8.3.2. In addition, teleworkers may be requested to telework on non-telework days as operational needs dictate or in the event of an emergency (e.g. power outage, flooding/water damage at official duty station etc.). Acceptance of such request shall be at the option of the employee.

9. OUTSIDE EMPLOYMENT

9.1. Teleworking employees remain subject to all State policies, including but not limited to the Code of Ethics for Public Officials, C.G.S. §§ 1-79 through 1-89a; The Summary of the Code of Ethics for Public Officials; and DAS General Letter 214-D. In particular:

9.1.1. Outside Employment. No employee, whether working from a telework location or official workplace, may accept outside employment that will impair his or her independence of judgment with regard to his/her state duties or would encourage the disclosure of confidential information gained in State service. Additionally, although an employee may use his/her expertise, he/she may not use his/her state position to obtain outside employment. An employee is not allowed to use his/her business address, telephone number, title or status in any way to promote, advertise or solicit personal business. No employee shall engage in outside employment during telework scheduled hours.

9.1.2. Financial Benefit. Whether working from a telework location or official workplace, using State time, personnel, or materials for a personal business or for other personal, non-state related purpose is considered a financial benefit to the employee, and is therefore strictly prohibited.

10. EQUIPMENT AND SUPPLIES

10.1. State and federal laws and policies regarding computer security and encryption, confidentiality of data, and software licensing, as well as the technical requirements of the state's networks, databases and firewalls must be fulfilled to perform all computer-based work from home. Teleworkers must have valid Agency-provided tokens and VPN software installed on their state-assigned laptop or on such other equipment as may be approved by both the teleworkers' agency and the Department of Administrative Services, Bureau of Enterprise Systems and Technology. All peripherals (e.g., thumb drives) connected to state equipment must be compliant and purchased through the Agency's IT organization. Personal equipment is not permitted to be used to access any state computing systems except as may be approved by both the Agency and the Department of Administrative Services, Bureau of Enterprise Systems and Technology (DAS BEST). Any such approval shall be reported by the Agency to statewide I.T.

10.2. The agency shall supply a telecommuting employee with the equipment and materials (VPN card, USB drive, etc.) which the agency and DAS BEST or its successor, determines are required to telecommute beyond a personal computer, broad band internet and telephone. The costs of such additional agency requirements shall not be deemed a basis for denial of an application, but the unavailability of such may delay the implementation of approval provided the state is using its best efforts to procure appropriate equipment for the employee. If the state determines that the telework application requires the use of a state-assigned laptop, it shall provide access to such a laptop on an individual or shared basis as appropriate, and the cost of providing such access shall not be a basis for denial of an application, but the availability of such despite the state's best efforts may delay implementation. To the extent an application is made where the state determines equipment is necessary that cannot be provided, it shall be held in abeyance until the barrier is abated.

10.3. Any equipment and supplies purchased by the Agency remains Agency property and must be returned at the conclusion of a telework agreement or when requested by Agency management. The teleworker must obtain authorization before bringing any Agency-owned equipment or supplies to the telework location. The purchase and installation of software licenses shall be coordinated with the Agency's IT organization and must comply with the State's acceptable use policy and procurement guidelines.

10.4. Agency-owned equipment and supplies shall be used only for State business. Personal use of these materials is prohibited, even during non-working hours.

10.5. Teleworking shall not alter the employee's responsibilities under the Freedom of Information Act (FOIA), and information stored on State equipment may be subject to disclosure under the FOIA.

10.6. The state assumes no responsibility for any operating costs associated with the employee using their personal residence as a telework location , including home maintenance, insurance, utilities, telephone service or internet service. Teleworkers must have sufficient internet access at the remote location. There is no expectation of reimbursement for this service. Similarly, out-of-pocket expenses for supplies, including ink, post-it-notes, and paper, etc., normally available through the Agency will not be reimbursed.

10.7. Employees who telework are not eligible for any contractual home office or other monetary stipend other than those to which they would have been entitled in the absence of telework. No challenge to this paragraph may be filed under this agreement.

11. GENERAL PROVISIONS

11.1. SECURITY OF EQUIPMENT AND MATERIALS

11.1.1. Teleworkers are responsible for the physical security of Agency equipment, supplies and information in their possession while teleworking. The teleworking employee will be liable for any loss or damage to Agency equipment or supplies due to the employee's negligence or misconduct.

11.1.2. Materials, documents, etc. that the teleworker transports to and from the official duty station to the telework location are their responsibility and must be kept confidential and secure. The employee must protect the records from unauthorized disclosure or damage and must comply with all state-wide and Agency policies and procedures regarding such matters, including but not limited to the following:

- The Acceptable Use of State Systems Policy;
- The Policy on Security for Mobile Computing and Storage Devices;
- The Telecommunications Equipment Policy;
- The Network Security Policy and procedures, and
- The State HIPAA Security Policy (if applicable).

11.1.3. Telework creates the need for additional diligence and security on telework location security practices. Teleworkers are responsible for appropriate security measures on networks used for performing telework. Breaches of information security while teleworking, whether by accident or design, or failure to notify the supervisor and IT of a potential breach of security, may be grounds to immediately terminate the telework agreement subject to the appeal process under this interim policy, and may be cause for disciplinary action subject to the just cause provisions of the collective bargaining agreement.

11.1.4. Teleworkers using state-issued software must adhere to the manufacturer's licensing agreements, including the prohibition against unauthorized duplication. In particular, the installation, use and removal of software must comply with the Software Vendor's License Agreement, the State of Connecticut Software Management Policy and the Agency's implementation of this policy. State-issued software will be installed by IT only on agency-owned computers following manufacturer licensing agreements.

11.2. LIABILITY FOR INJURIES

11.2.1. The state will continue to provide workers' compensation benefits and coverage to the teleworking employee as governed by the Connecticut General Statutes and the applicable collective bargaining agreement provided the alternate work location has been approved in the telework agreement.

11.2.2. An injury must arise strictly out of and within the course of employment in order to be compensable under workers' compensation, wherein all standard workers' compensation regulations would apply. Accidental injuries sustained at the teleworking employee's home to persons who are not on-duty Agency employees are the responsibility of the employee. A teleworker must contact his/her supervisor as soon as an injury occurs on duty, whether covered by workers' compensation or not. The authority for determining if an injury "arises out of or within the course of employment" falls within the jurisdiction of the Workers Compensation Commission.

11.3. **LOCAL ZONING ORDINANCES.** It is the teleworking employee's responsibility to ensure compliance with any local zoning ordinances related to working at home or maintaining a home office.

11.4. **REPORTING TO DAS.** Agencies must provide to DAS records of approved and denied telework requests in such format as DAS deems appropriate.

11.5. **MANAGEMENTS RIGHTS.** Except as limited by a specific provision of this policy, nothing in this policy should be construed as a waiver of managements reserved rights. The State reserves and retains, whether exercised or not, all the lawful and customary rights, powers and prerogatives of public management. Such rights include but are not limited to establishing standards of productivity and performance of its Employees; determining the mission of an Agency and the methods and means necessary to fulfill that mission, the appointment, promotion, assignment, direction and transfer of personnel; the suspension, demotion, discharge or any other appropriate action against its Employees; the relief from duty of its Employees because of lack of work or for other legitimate reasons; the establishment of reasonable work rules; and the taking of all necessary actions to carry out its missions in emergencies. Nothing in this policy shall expand any management right otherwise limited by a local collective bargaining agreement.

For the State:	Date:	For SEBAC	Date:

Appendices

Appendix A -- The following bargaining units are covered by this Agreement: NP-2, NP-3, NP-5, NP-6, P-1, P-2, P-3A, P-3B, P-4, P-5, P-6, P-7, P-8, and AFSCME Local 1588-covered Employees in the Office of Higher Education.

Appendix B

Those eligible to apply are individuals in the above bargaining units who are not covered by the hazardous duty pension plan. While all non-hazardous duty employees in these units are eligible to apply if they deem telework to be consistent with their job duties and operational needs, those employees who were deemed "level 1, constant" during the COVID 19 pandemic – required to come to the work site every day during the pandemic – will likely have their applications denied due to operational ne

I, Michael R. Ricci, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is my Award.

Michael Ricci

December 27, 2021 Arbitrator Michael R. Ricci

Certification

This is to certify that December 27, 2021 a copy of the above Award was sent electronically:

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