2026 VT 43

No. 26-AP-112

Vermont State Employees' Association	Supreme Court
v.	On Appeal from Labor Relations Board
State of Vermont	June Term, 2026

David Boulanger, Acting Chair

Alfred Gordon O'Connell and Catherine A. Terrell of Pyle Rome Ehrenberg PC, Brattleboro, for Petitioner-Appellee.

Charity R. Clark, Attorney General, Johnathan T. Rose, Solicitor General, and Ryan P. Kane, Deputy Solicitor General, Montpelier, for Respondent-Appellant.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **WAPLES, J.** The issue in this appeal is whether the State's 2025 Hybrid Work Standard was a change to the existing Telework Policy for members of the Vermont State Employees' Association (VSEA) such that it amounted to an unfair labor practice in violation of 3 V.S.A. § 961. The Vermont Labor Relations Board concluded that the Hybrid Work Standard changed the bargained-for Telework Policy without prior negotiation or bargaining and therefore violated the statute. On appeal, the State's main argument is that the Hybrid Work Standard is consistent with the bargained-for terms of the Telework Policy, which provides substantial discretion to the State as employer to approve and terminate telework agreements. We agree and reverse.

I. Background

¶ 2. The following facts are derived from the Board's findings and the exhibits admitted by the Board and are not disputed unless otherwise indicated. The VSEA is a collective bargaining representative of three units of employees of the Executive Branch. The parties agree that telework is a term or condition of employment that requires bargaining. In February 2012, after Tropical Storm Irene caused damage to state buildings and displaced thousands of state employees, the State and the VSEA negotiated the terms and scope of telework for state employees.

¶ 3. The bargained-for terms were memorialized in personnel policy Number 11.9-Telework and referred to as the "Telework Policy." The policy's stated purpose was to "establish the basic principles and conditions regarding an employee's voluntary request to work remotely from an alternate worksite, including an employee's home, on a regularly scheduled basis." The policy included an eligibility section, which cautioned that not all positions were suitable for telework and explained that approval was subject to the discretion of the employer: "The Appointing Authority or designee has the sole discretion to approve an employee's request for telework, and will only permit telework when consistent with the operating needs of the Agency or Department." The policy required employees seeking to telework to complete a form and submit it to their "Appointing Authority." The policy also contained a "Termination of Telework" clause:

> Telework is a voluntary program, provided at the sole discretion of the Appointing Authority, and may be terminated by the employee or employer at any time, with or without cause. Whenever feasible, either party will provide a minimum of two (2) weeks' notice of the decision to terminate telework participation. The decision to terminate telework is not disciplinary, and any disciplinary action will be addressed separately.

¶ 4. The "Telework Request Form" referenced in the policy required an employee to identify the hours the employee desired to engage in telework and to submit the request "to [the employee's] supervisor for review and approval." The form provided a chart with days and times employees requested telework. Neither the policy nor the form mentioned a requirement for a minimum number of days in the office. The form indicated that at any time the appointing authority could require the employee to report to the official duty station or terminate the employee's "ability to engage in telework." The form also repeated language from the Telework Policy that "Telework is a voluntary program, provided at the sole discretion of the Appointing Authority, and may be terminated by the employee or employer at any time, with or without cause." The form contained signature lines for the employee, the "Division Manager or Director," and the "Appointing Authority or Designee."

¶ 5. The term appointing authority[1] is defined in the collective bargaining agreements as

> the person authorized by statute, or lawfully-delegated authority, to appoint and dismiss employees. For purposes of reduction in force: within an agency, the Secretary shall be the appointing authority except as such authority may be delegated to a Commissioner; within a department not a component of an agency, the Commissioner or executive head shall be the appointing authority.

[1] The term is used in several statutes related to the Executive Branch. See, e.g., 3 V.S.A. § 116a (regarding registry of boards and commissions); id. § 207 (allowing appointing authority to authorize reimbursement for incidental expenses); id. § 264 (allowing appointing authority to request documentation for use of accumulated sick leave even if return to duty is impossible); id. § 309 (setting forth duties of Commissioner of Human Resources, including cooperating with appointing authorities); id. § 330 (giving appointing authority discretion to continue training of intern); id. § 331 (allowing approval of temporary position on request of appointing authority); id. § 972 (including appointing authority in definition of department head for purposes of whistleblower protection); id. § 2454 (referring to appointing authority in organization of Executive Branch).

The term also appears multiple times in other areas of the collective bargaining agreement. For example, it is up to the "appointing authority" to recommend a salary adjustment for outstanding performance or to approve a performance bonus. The appointing authority is also responsible for or involved in decisions regarding dismissal, classification review, hiring, alternate work schedules, job sharing, overtime, vacation scheduling, sick leave, leave of absence and career development, expense reimbursement, and many other conditions of employment.

The meaning of the term in these other statutes and provisions of the bargaining agreement is not necessarily the same as our construction of the term in the context presented in this appeal.

¶ 6. Vermont's Director of Labor Relations, John Berard, who has worked in the Vermont Department of Human Resources for twenty-one years, explained that the reason the policy afforded discretion to appointing authorities resulted from the fact that not all appointing authorities supported telework when the policy was created. Director Berard indicated that appointing authority as used in the policy meant the person who was ultimately responsible for operation of the department or agency.

¶ 7. After the Telework Policy was created, its use was rare and infrequent. Deputy Secretary of Administration Sean Brown estimated that initially employees who utilized the policy teleworked one or two days a week. A 2020 employee-engagement survey reported that at that time less than a fifth of employees teleworked even one day a week. In 2013, the Legislature enacted the Flexible Working Arrangements Act (FWAA), 21 V.S.A. § 309, allowing employees to request flexible working arrangements that met the needs of the employer. The State did not modify the Telework Policy in response to the statute, believing it to be in accordance with the FWAA.[2]

¶ 8. In March 2020, in response to the COVID-19 pandemic, the Governor issued an executive order to facilitate increased telework for state employees. The March 13, 2020 order provided: "The Secretary of Administration shall also, in consultation with the Commissioner of Human Resources, encourage and facilitate telework among those State employees with the capacity to work remotely." Subsequent executive orders required individuals to stay home and directed state employees that were not required to report to a worksite to telework if possible. The VSEA urged the Governor to take additional measures to protect state employees by requiring employees to telework. The Secretary of Administration issued a memorandum to all "appointing

[2] Review of the State's compliance with the Act is not within the Board's jurisdiction and therefore was not addressed by the Board and is beyond the scope of this appeal. See 21 V.S.A. § 309(e) (providing Attorney General, State's Attorney, or Human Rights Commission with authority to enforce sections of FWAA, and specifying that civil division has power to award injunctive relief).

authorities" recommending that they consider telework for state employees and use their best discretion based on required essential functions. Subsequent guidelines from the Secretary of Administration indicated that state employees were not required to complete a Telework Agreement. The Governor's stay-at-home order and the work-from-home directive were both extended several times.

¶ 9. In May 2021, the Secretary of Administration informed state employees that employees would return to the office by September 2021 and those seeking remote work should submit a request under the Telework Policy. Follow-up memos described telework as voluntary "with approval of the appointing authority," and encouraged employees to talk with their supervisor. The administration's policy explained that it was up to each supervisor to determine if a particular position was appropriate for telework. Any in-person requirements were set by "appointing authorities, managers and supervisors" based on "the needs of the organizations." The administration's resulting guidelines and answers to frequently asked questions indicated that employees' requests would be considered on a case-by-case basis, there was no restriction on the number of days employees could apply for telework, and employees could live and telework from outside the State with approval of their Commissioner and Secretary.

¶ 10. In May 2023, Vermont Department of Human Resources Commissioner Beth Fastiggi testified before the House Committee on Corrections and Institutions to discuss teleworking. She testified that based on reported telework agreements, approximately 44% of the estimated 3100 executive branch employees were teleworking, and that the statistics likely underreported the numbers. She indicated that more than 82% of the 3100 state workers were working from home more than two days per week, with 31% working remotely more than four days a week.

¶ 11. In October 2024, the Deputy Commissioner of the Economic Services Division (ESD) of the Department for Children and Families (DCF) notified district office staff that she was suspending telework for an indefinite period for several named positions. She identified several reasons prompting the decision, including concerns from Vermonters about services, lack of frontline staff support, and a disconnection between staff. VSEA reached out to the DCF Commissioner for more information. After Secretary Bedard met with VSEA representatives and provided information regarding the complaints received from constituents and political representatives, VSEA did not file any charges or grievances related to the suspension of telework.

¶ 12. In August 2025, the Governor announced at a press conference that the administration planned to bring state employees back to the office. Secretary of Administration Sarah Clark subsequently communicated to state employees that the State was seeking "a more consistent and balanced hybrid work standard for state employees" and under the Governor's "hybrid work standard," there would be a minimum of three days in the office. There were several subsequent messages from the Secretary and a video message from the Governor describing the implementation of what came to be known as the Hybrid Work Standard. In his video message, the Governor stated that the goals of the policy were to increase camaraderie and collaboration. The State elicited feedback from employees using telework through an anonymous survey. The survey showed that 3663 respondents teleworked at least one day per week, with 3027 teleworking three or more days per week. Of those, 2523 responded that there was some kind of obstacle to increasing their days in the office. An advisory group made up of state management leadership representatives from four agencies and departments reviewed the results of the employee survey and assisted the administration with how to meet employees' needs during the transition.

¶ 13. In September 2025, the State notified VSEA that the State intended to order all Executive Branch employees to return to being physically present in their offices for a minimum of three days per week starting December 1, 2025. The State indicated that the requirement was in accordance with the existing Telework Policy and therefore was not subject to bargaining. VSEA responded with concerns about how the change would impact employees.

¶ 14. The Hybrid Work Standard rescinded all previous telework agreements as of December 1, 2025, and required employees to make a new, formal request to telework going forward. This was subsequently implemented through a new online form.[3] The standard specified that no approval would be given to requests that did not meet "the three in-person day requirement."[4] The State allowed employees who worked from out of the state and were committed to meeting the standard to delay relocation until June 30, 2026. The standard allowed employees to request an exception to the three-day in-office requirement "if all job duties can be performed remotely, and compelling reasons . . . exist." The standard indicated that employees seeking exceptions were required to complete an Exception Request Form, detailing the "compelling reasons" for requesting an exception. The form required approval from the employee's supervisor, the appointing authority, the Department of Human Resources, the exception review team,[5] and the Secretary of Administration.[6] The guidance indicated that exceptions were limited, and listed possible reasons such as military spouse relocation, court-ordered custody arrangements, and relocation for personal safety.

[3] It is unclear from the record whether the online telework request form differed in substance from the paper form that was part of the original Telework Policy.

[4] The procedures also included allowance for employees who sought a reasonable accommodation for a disability.

[5] The Exception Review Committee received approximately 610 requests, and the Secretary of Administration approved 127. These individual exceptions were separate from the exceptions or waivers to the in-person requirement for some departments or agencies for various reasons including that there was insufficient office space available.

[6] At oral argument, VSEA asserted that requiring employees to complete the exception form was a new procedural step not contemplated by the Telework Policy and therefore an unfair labor practice. Because VSEA did not raise this claim in the proceedings before the Board, it is not preserved for appeal, and we do not address it. See In re Amend. #1 to FY23 Accountable Care Org. Budget Ord., 2024 VT 38, ¶ 19, 219 Vt. 461, 323 A.3d 969 (explaining that "parties are generally limited on appeal to arguments preserved before the administrative agency" (quotation omitted)); Vt. Nat'l Tel. Co. v. Dep't of Taxes, 2020 VT 83, ¶ 54, 213 Vt. 421, 250 A.3d 567 (declining to reach due-process argument that was not raised before administrative agency "with specificity and clarity" (quotation omitted)).

¶ 15. In October 2025, the State and VSEA met and VSEA shared employees' concerns regarding the standard, especially around lack of affordable housing near worksites, lack of sufficient office space, and lack of data to support the new standard. On October 24, 2025, VSEA demanded that the State engage in bargaining and cease implementing the Hybrid Work Standard. The State declined, indicating that it had met its obligation by engaging in bargaining over the Telework Policy. On November 17, 2025, VSEA filed an unfair-labor charge alleging that the State unilaterally changed employees' conditions of employment by altering the Telework Policy and imposing the new Hybrid Work Standard.

¶ 16. The State responded procedurally and substantively. As to procedure, the State argued that VSEA's grievance was untimely because it should have been raised after telework agreements were suspended for DCF's ESD employees as a group in November 2024. The State alleged that VSEA waived its objection by failing to oppose the rescission of telework for ESD office workers at DCF at that time. As to substance, the State argued that the Hybrid Work Standard was a permissible implementation of the Telework Policy, which afforded the State substantial discretion to terminate and approve telework agreements. The State argued that there was no meaningful difference between rescission and agreement by the Governor versus an appointing authority since all department and agency heads ultimately were subject to the Governor's direction.

II. Board's Decision

¶ 17. The Board held hearings over several days in February 2026. In April 2026, the Board issued a decision, concluding that the State had unlawfully refused to bargain over changes to the Telework Policy. The Board concluded that the Governor did not have authority to rescind all telework agreements through unilateral action because this power was accorded to the "Appointing Authority" in the Telework Policy and that term afforded discretion to agency heads to make operational decisions reflecting the needs of a particular department or agency. Relying on principles of contract interpretation, the Board held that the plain language of the policy indicated that it was therefore up to the "Appointing Authority," not the Governor, to assess their operational needs and terminate any particular telework agreement. The Board further held that even if the Governor could rescind existing telework agreements, the Hybrid Work Standard was not consistent with the bargained-for Telework Policy because it set a minimum number of days in the office and included a new exceptions process, which required a compelling reason to deviate from the three-day in-office requirement. The Board found that the Telework Policy contained neither a blanket in-office requirement nor an application for an exception based on a compelling reason.

¶ 18. The Board rejected the State's assertion that VSEA's challenge was untimely or waived due to the decision not to challenge the termination of telework for certain ESD district office workers in 2024.

¶ 19. The Board ordered the State to rescind the Hybrid Work Standard and return to the telework patterns that existed prior to its imposition. The Board also ordered the State to reinstate any employee who left employment because of the Hybrid Work Standard and to reimburse affected employees for monetary losses caused by the change. The State appeals.

III. Arguments on Appeal

¶ 20. On appeal, the State argues that the Hybrid Work Standard was a permissible exercise of the State's discretionary authority under the bargained-for Telework Policy. The State contends that the Board's construction of the requirements of the Telework Policy is inconsistent with the policy's language, which gives the State broad discretion to approve and terminate agreements. Moreover, the State contends that the Board impermissibly precluded the Governor from overseeing the discretion of subordinates and inappropriately required the State to prove its assessment of its operating needs.

¶ 21. This Court gives "substantial deference to the Board in decisions that lie within its area of expertise, and presume[s] its decisions are correct, valid and reasonable." Vt. State Emps.' Ass'n v. State, 2009 VT 21, ¶ 19, 185 Vt. 363, 971 A.2d 641 (citation omitted). Interpretations of employment contracts and collective bargaining agreements are within the Board's expertise and therefore entitled to deference. Id.; see In re VSEA, Inc., 143 Vt. 636, 642, 471 A.2d 230, 234 (1983) (explaining that Board decisions within its area of expertise "are presumed to be correct, valid and reasonable, with a clear and convincing showing required to overcome the presumption"). There are limits to the discretion afforded the Board, however, including "when the Board exceeds its authority." In re Carnelli, 2020 VT 12, ¶ 12, 211 Vt. 522, 228 A.3d 990. This Court "must ensure that the Board has not overstepped its authority by substituting its own judgment for that of the State." In re Jewett, 2009 VT 67, ¶ 25, 186 Vt. 160, 978 A.2d 470 (concluding that Board overstepped its role by substituting its own judgment for that of State as employer and holding that State's decision to dismiss employee was reasonable). When the State's exercise of its "management function is reasonable," then its decision should be upheld. Carnelli, 2020 VT 12, ¶ 17 (quotation omitted).

¶ 22. As explained more fully below, we conclude that the State acted within the authority granted to it under the Telework Policy, which provides employees with an opportunity to request telework but gives the State as employer "sole discretion" to rescind existing agreements and to determine the scope of any approved telework. The Hybrid Work Standard, although ordered by the Governor, was an exercise of that discretion and the Board acted unreasonably in placing constraints on the State's ability to direct its workforce and make management decisions. Therefore, we reverse and remand.

A. Waiver

¶ 23. Before reaching the merits of the appeal, we first address the State's contention that VSEA's charge was untimely filed. Under the State Employees Labor Relations Act (SELRA), a complaint asserting an unfair labor practice must be filed within six months of the violation occurring. 3 V.S.A. § 965(a). If a party fails to timely assert its rights, the charge is dismissed. See Milton Educ. & Support Ass'n v. Milton Bd. of Sch. Trs., 171 Vt. 64, 75, 759 A.2d 479, 487 (2000). Waiver of the statutory right to have an issue bargained will not be found "lightly," however, and "[t]he expectations caused by the actions of the opposing party are relevant to whether there has been a contractual waiver." Loc. 2787, AFSCME v. City of Montpelier, 161 Vt. 567, 568, 643 A.2d 838, 840 (1993) (mem.). To waive bargaining rights requires a showing that the party "consciously and explicitly waived its rights." Local 98, IUOE, AFL-CIO v. Town of Rockingham, 7 VLRB 363, 375 (1984).

¶ 24. The State argues that VSEA waived its right to challenge implementation of the Hybrid Work Standard by not challenging the broad termination of telework for ESD employees at DCF in November 2024. According to the State, this action put VSEA on notice of the State's position that telework agreements could be unilaterally terminated for groups of employees under the existing Telework Policy. The State contends that because VSEA did not challenge the State's action at that time, it was precluded from doing so when the Hybrid Work Standard was implemented.

¶ 25. We conclude that the Board acted within its discretion in finding that the State failed to demonstrate that VSEA intentionally waived its right to challenge the imposition of the Hybrid Work Standard and the three-day in-office requirement by choosing not to challenge the suspension of telework in the ESD. As the Board noted, the circumstances surrounding the suspension of telework for some ESD employees varied greatly from the implementation of the Hybrid Work Standard for all state employees. In particular, the Board relied on the following: telework was suspended for one division, the change was based on a documented history of ineffective operations, and the Department appointing authority made the decision to suspend telework. The Board acted within its discretion in concluding that these circumstances were insufficient to show that VSEA intentionally relinquished its right to bargain over the Hybrid Work Standard because the suspension of telework for this small group of employees based on the appointing authority's assessment of operational needs did not put VSEA on notice of the State's position that it could unilaterally terminate all telework through gubernatorial action and impose a three-day in-office requirement.[7] Therefore, we affirm the Board's decision that the unfair-labor-practice claim was timely filed.

B. Construction of Telework Policy

¶ 26. The State next argues that the Hybrid Work Standard is an appropriate exercise of the discretion afforded to it as employer under the bargained-for Telework Policy. The Telework Policy contains two relevant phrases. In the "Eligibility" clause, the policy provides: "The Appointing Authority or designee has the sole discretion to approve an employee's request for telework, and will only permit telework when consistent with the operating needs of the Agency or Department." There is also a "Termination of Telework" clause: "Telework is a voluntary program, provided at the sole discretion of the Appointing Authority, and may be terminated by the employee or employer at any time, with or without cause."

¶ 27. The Board concluded that the Hybrid Work Standard materially changed the terms of the Telework Policy by overstepping the responsibilities and unique role of appointing authorities. The Board recognized that the Governor had oversight over the Executive Branch, but determined that the plain language of the Telework Policy gave local supervisors, not the Governor, control over managing telework and determining the needs of the particular agency or department. The Board relied on tools of contract interpretation to conclude that it was up to appointing authorities to determine eligibility for and termination of telework based on the department's operating needs. Construing the plain language of the policy, the Board noted that

[7] Given our holding, we need not decide the import of VSEA's declaration at the time ESD telework was suspended that it was not waiving its position or argument regarding whether suspension required bargaining.

the word "Governor" did not appear in the Telework Policy and therefore surmised that its plain language did not grant the Governor authority to terminate and replace telework agreements.

¶ 28. The Telework Policy is part of the parties' collective bargaining agreement, and we give "great deference to the Board's expertise" in interpreting such agreements. In re West, 165 Vt. 445, 448, 685 A.2d 1099, 1102 (1996). "We presume that the Board's actions are correct and reasonable, and we will uphold the Board's order if the findings of fact, taken as a whole, justify the Board's ultimate conclusion." Id. at 449, 685 A.2d at 1102 (citation omitted). Our review is not meaningless, however, and "[t]raditional principles of contract law govern the construction of collective bargaining agreements." Id. at 450, 685 A.2d at 1103; see In re Welch, 2020 VT 72, ¶ 11, 213 Vt. 92, 239 A.3d 235. Where the language of the parties' contract is "clear and unambiguous, we are obligated to enforce it as written." Welch, 2020 VT 72, ¶ 11.

¶ 29. Although we are mindful of the deference ordinarily accorded to the Board, we conclude that in this case the Board's construction of the Telework Policy was in error. The Board's interpretation of the Telework Policy rests primarily on its use of contract-interpretation principles, rather than its expertise in labor law. Therefore, we do not accord its analysis the same level of deference that is due when the Board assesses matters within its expertise. See Vt. State Emps.' Ass'n, 2009 VT 21, ¶ 19 (reciting that "substantial deference" is accorded to Board's decisions "within its area of expertise"); see also In re State Airport Hangar Lease Disps., 2025 VT 21, ¶ 16, 221 Vt. 57, 336 A.3d 327 (reviewing Agency of Transportation decision and explaining that even though deference is due to agency for matters within its expertise "[c]ontract interpretation is a question of law that we review de novo" and therefore "[w]hen a contractual provision is clear and unambiguous, we construe the provision as a matter of law").

¶ 30. The Board acknowledged the broad discretion guaranteed to the State by the bargained-for Telework Policy but concluded that the Hybrid Work Standard did not comply with the Telework Policy, which it interpreted as giving discretion to terminate and approve agreements to the appointing authority, not the Governor. As explained more fully below, the Board's distinction between whether the modification of existing agreements was precipitated by the Governor or the agency appointing authority makes little practical or legal sense. On a practical level, the VSEA appears to concede that the Governor could accomplish the same result he achieved here by instead simply directing his appointing authorities to revoke all telework agreements. To insist that the Governor does not have authority to do directly what he could do through delegation is illogical. From a legal standpoint, limiting the Governor's power to approve or terminate telework substantially alters the terms of the policy that the State reserved to itself when it bargained for the original Telework Policy. Even under our deferential standard of review, the Board's decision must be reasonable. See Carnelli, 2020 VT 12, ¶ 13 (explaining that Court defers to Board's construction of CBA "if its interpretation is reasonable"); see also Wood v. Wallin, 2024 VT 21, ¶ 16, 219 Vt. 164, 316 A.3d 266 (noting that courts' deference to agency decisions within agency's "area of expertise is not absolute and will not be afforded if the agency fails to provide sufficiently clear guidance on the issue or if the agency's decision is not rational").

¶ 31. In interpreting a collective bargaining agreement, we begin with the plain meaning. West, 165 Vt. at 450, 685 A.2d at 1103. If contract language "will admit of more than one interpretation, we will look at the situation and motives of the parties, the subject matter of the contract, and the object sought to be attained by it." In re Gorruso, 150 Vt. 139, 143, 549 A.2d 631, 634 (1988). "In construing a contract, courts must endeavor to avoid what is unequal, unreasonable, and improbable, if this can be done consistently with the words of the contract." Id. at 143-44, 549 A.2d at 634.

¶ 32. Therefore, to interpret the policy at issue here, we start with the plain language. Appointing authority is defined as "the person authorized by statute, or lawfully-delegated authority, to appoint and dismiss employees." Certainly, managers and other supervisors are included in this definition. But, in the context of this policy, the use of the term "appointing authority," and not "Governor," does not necessarily mean that the Governor is excluded from the definition of the former. It is understandable that the policy would not require action by the Governor to terminate telework or reject a request for telework, but that does not preclude the Governor instead of an agency head from acting directly. Other language in the policy supports this conclusion. The policy also uses the term employer, specifying that a telework agreement "may be terminated by the . . . employer at any time, with or without cause." Under SELRA, "employer" is defined as "the State of Vermont . . . represented by the Governor or designee." 3 V.S.A. § 902(7)(A); see also 3 V.S.A. § 905(a) (providing that Governor or designee is "employer representative[]" in negotiations over collective bargaining). Read together, the use of the terms appointing authority and employer demonstrates that the Governor may act directly to both terminate and approve or disapprove of telework agreements. Construing this language otherwise leads to an improbable result where subordinates of the Governor may terminate telework agreements or refuse requests for telework, but the Governor is unable to do so directly.[8] See In re Gregoire, 166 Vt. 66, 72-73, 689 A.2d 431, 435 (1996) (explaining that in construing collective bargaining agreement, this Court is "obligated . . . to avoid constructions that are unequal, unreasonable, and improbable, if this can be done consistently with the words of the contract." (quotation omitted)).

¶ 33. The Board's interpretation, which focused narrowly on the phrase appointing authority, does not comport with the overall purpose of the policy or lead to a reasonable result. The construction effectively removes the bargained-for terms of the agreement that allow the State in its "sole discretion" to decide whether and when to approve, deny, or terminate telework. See West, 165 Vt. at 450, 685 A.2d at 1103 (explaining that principles of contract law apply to

[8] Because we conclude that the language of the policy allows the Governor to make decisions regarding telework, we need not decide whether past practice supports construing the policy in this manner given the Governor's actions in implementing telework during the COVID-19 emergency and VSEA's acquiescence to these actions.

construction of collective bargaining agreements and Court will not endorse construction that renders provision meaningless). The plain language of the Telework Policy guarantees neither the continuation of an existing telework agreement nor the right to enter a new telework agreement. Instead, the bargained-for language recognizes the State's interest in being able to structure telework in any way that meets its goals as employer. Any interpretation of the contract must preserve this core purpose.

C. New Conditions of Employment

¶ 34. In addition to its construction of the term appointing authority, the Board concluded that the Hybrid Work Standard was an unfair labor practice because it imposed new conditions on employees seeking to telework. The Board found that the Hybrid Work Standard changed the eligibility requirements for participation by mandating that all employees be present in the office three days a week without any assessment of a specific department's operating needs. The Board also found that the Hybrid Work Standard differed from the existing Telework Policy because it implemented a new process for employees to seek an exception to the three-day in-office requirement and required that any exception had to be based on "compelling reasons." On appeal, the State argues that the Telework Policy does not guarantee any amount of telework and gives the State "sole discretion" to approve telework and to terminate telework "with or without cause." Therefore, the State contends that the Hybrid Work Standard's imposition of a three-day in-office requirement with the possibility for more remote days by exception does not alter the existing policy.

¶ 35. The language of the Telework Policy supports the State's position. Although the Hybrid Work Standard is more specific than the Telework Policy, it does not conflict with the Telework Policy because that policy provides no guarantee of telework for any number of days. The Telework Policy confirms that it is being provided at the sole discretion of the "Appointing Authority" and that the employer may end it "at any time, with or without cause." The Telework

Policy does not prohibit the State from requiring employees to be physically in the office three days per week. The policy provides the State with sole discretion to decide whether telework is suitable and as employer the State can terminate it with or without cause. As to the exceptions process, the State was empowered by the Telework Policy to determine the amount of telework appropriate for any given employee in its "sole discretion." There is nothing inherent about the exceptions process that violates the Telework Policy and that is the sole question before this Court.

¶ 36. The Board also concluded that the Telework Policy allowed for telework when consistent with a department's operational needs, but the Hybrid Work Standard was designed instead based on the State's operational needs. Although the Governor indicated that the Hybrid Work Standard was based on fostering the goals of connection, collaboration, and visibility, the Board found that the State had "not offered any evidence on whether or how these goals were compromised or undermined by the existing telework agreements." The Board further found that the State had failed to identify any shortcomings or lapse in government services that resulted from existing telework agreements. Rather, the Board found that there was evidence that employees engaging in telework were thriving and excelling at their duties.

¶ 37. Under the plain language of the Telework Policy, the State is not required to make any particular showing regarding its operational needs before it terminates a telework agreement. The sole reference to operational needs is in the language clarifying that the State "will only permit telework when consistent with the operating needs of the Agency or Department." This reference is in the eligibility section of the Telework Policy. It is setting the floor for those who are eligible for telework. The policy goes on to state that even if employees are eligible, telework may still not be provided "at the sole discretion of the Appointing Authority," and can be terminated "with or without cause." Therefore, under the policy's plain language, the State is not required to demonstrate its needs or to achieve any level of proof to support its decision to approve or terminate telework. The Board erred in imposing this requirement on the State that was not in the policy.

¶ 38. To the extent that the State as employer must demonstrate some rational reason for its actions, here, the Governor made a management decision regarding the functioning of the government, citing concerns about the need for greater connection, collaboration, and communication. This Court has "explained that as long as the exercise of its management function is reasonable, the State's decision must be sustained because controlling and directing the work force is an inherent management function." Carnelli, 2020 VT 12, ¶ 17 (quotation omitted). The Governor's assessment of the operating needs of his administration was reasonable, and it is not up to this Court to assess the wisdom of that decision.

¶ 39. In sum, the Telework Policy provides the State as employer with broad discretion to manage when and how employees may engage in telework. The Board's decision deprived the State of the discretion afforded to it under the Telework Policy and it is therefore reversed. Because we reverse the Board's decision, we need not reach the question of whether the Board's remedy was within its authority.

Reversed.

FOR THE COURT:

____
Associate Justice