

**VOLUNTARY ARBITRATION TRIBUNAL**  
**Before George T. Roumell, Jr., Arbitrator**

*In the Matter of the  
Arbitration between:*

CITY OF CHICAGO, CHICAGO  
POLICE DEPARTMENT

Grievance Nos:

-and-

Lodge No. 7: 129-21-014 (as amended),  
129-21-016, 129-21-018

FRATERNAL ORDER OF POLICE  
CHICAGO LODGE NO. 7, POLICEMEN'S  
BENEVOLENT & PROTECTIVE  
ASSOCIATION OF ILLINOIS,  
UNITS 156 A, B, C – SERGEANTS  
LIEUTENANTS and CAPTAINS

PBPA: 545-21-071, 546-21-025  
548-21-011

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**ARBITRATOR'S OPINION AND AWARD**

**APPEARANCES:**

**FOR CITY OF CHICAGO POLICE  
DEPARTMENT:**

David A. Johnson, Special Asst. Corp. Counsel  
Jennifer A. Dunn, Special Asst. Corp. Counsel

**FOR FRATERNAL ORDER OF  
POLICE CHICAGO LODGE NO. 7:**

Joel A. D'Alba, Attorney  
Ryan A. Hagerty, Attorney  
Naomi Frisch, Attorney

**FOR PBPA UNITS 156A, B & C:**

Jason W. Lee, Attorney  
Donna M. Dowd, Attorney

**Background**

The sworn members of the Chicago Police Department who are not exempt are represented by four Unions. The Fraternal Order of Police Chicago Lodge No. 7 represents Officers below the rank of Sergeant. The Policemen's Benevolent & Protective Association of Illinois has three Units. Unit 156A represents the Sergeants; Unit 156B represents the Lieutenants and Unit 156C represents Captains which, in this Opinion are referred to jointly as

PBPA.

On August 25, 2021, the Mayor of the City of Chicago announced that all City employees, including members of the Chicago Police Department, must be fully vaccinated against Covid-19 by October 15, 2021 unless they have received a medical or religious accommodation. The City's Labor Negotiator, Cicely Adams-Porter, subsequent to the announcement, did engage in what she described on the record as negotiations with the Police Unions jointly concerning the effect of the Policy as contrasted to the decision to implement the Policy. The parties were unable to reach any agreement in relationship to the Policy. The City on October 8, 2021 sent a letter to all employees, including a copy of the City's Covid-19 Vaccination Policy, announcing that the Policy was effective October 8, 2021. The accompanying letter signed by the Chief of Staff and the DHR Commissioner contained the statement referring to the August 25<sup>th</sup> announcement: "Since that time, we have been working with our labor partners to create a vaccination policy that is effective, fair and workable. We appreciate your patience as we finalize the policy."

The Policy that was announced in its entirety read:

**Effective October 8, 2021**

**City of Chicago COVID-19 Vaccination Policy**

**I. Purpose**

Consistent with its duty to provide and maintain a workplace that is free of recognized hazards, the City of Chicago ("City") has adopted this policy to safeguard the health and well-being of employees, and the residents that spend time in our facilities or interact with City employees as they receive City services. This policy is intended to comply with all federal, state, and local laws. All employees must continue to comply with any applicable safety requirements related to COVID-19.

**II. Scope and Applicability**

This Policy applies to all City employees, personnel of contractors and vendors who have regular direct contact with, or regularly work in close proximity to, City employees, and volunteers. It does not apply to visitors.

### **III. Limitations**

Nothing in this Policy is intended to nor shall be construed to provide a private right of action against the City or any of its employees. Furthermore, no part of this Policy shall be construed to create contractual or other rights, obligations, or expectations.

### **IV. Policy**

- A. Effective October 15, 2021, City employees, as a condition of employment, and personnel of contractors and vendors as outlined in Section II, must either be fully vaccinated against COVID-19 or undergo COVID-19 testing as set forth in Section IV.B. You are considered fully vaccinated 14 days after receiving the final dose of a two-shot vaccine (Moderna or Pfizer) or a dose of a one-shot vaccine (Johnson & Johnson). All City employees who are fully vaccinated by October 15, 2021 shall receive one (1) personal day that must be used by June 30, 2022. The personal day granted by this Policy shall not count toward the carryover day limit contained in an employee's applicable collective bargaining agreement.
- B. Employees, volunteers, and contractors who are covered by this policy who are not vaccinated, for reasons including but not limited to verified medical conditions or restrictions or sincerely held religious beliefs (as discussed in Section VI), must undergo COVID-19 testing on a twice weekly basis with tests separated by 3-4 days. Employees shall be responsible for obtaining tests on their own time and at no cost to the City and reporting those results in the manner described by Section VII below. This testing option will sunset on December 31, 2021. Thereafter, employees, volunteers, and contractors covered by this policy must be fully vaccinated as a condition of employment unless they have received an accommodation as described in Section VI below.
- C. Employees who are not fully vaccinated by December 31, 2021, unless they have received an approved exemption as described in Section VI will be placed in a non-disciplinary no-pay status until they have become fully vaccinated.
- D. Employees, volunteers, and contractors covered by this Policy with a medical condition or other medical restrictions that affects their eligibility for a vaccine, as verified by their medical provider, or those employees with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation as described in Section VI below.

E. Violations of this policy, including but not limited to, non-compliance with this Section; or providing false or misleading information about the vaccination status, test results, or the need for an accommodation; or the failure to test as applicable as discussed in Section VII, will result in disciplinary action up to and including discharge.

**V. Proof of Vaccination**

A. Employees who receive a vaccination are responsible for scheduling and obtaining all recommended doses of an FDA-approved COVID-19 vaccine, a COVID-19 vaccine granted Emergency Use Authorization by the FDA, or the World Health Organization (WHO). Employees shall receive two (2) hours of paid leave time for each required dose of a COVID-19 vaccine.

B. All employees, volunteers, and contractors who are covered by this policy must report their vaccination status through the COVID-19 Vaccination Portal no later than October 15, 2021, with the following information:

- The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson);
- Date of first dose of vaccine;
- Date of second dose of vaccine for a two-shot vaccine;
- Declaration that the information submitted is true and correct; and
- Documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee's healthcare provider, or documentation issued by the State of Illinois by going to <https://idphportal.illinois.gov>.

C. Employees hired by the City after the effective date of this policy must be fully vaccinated by their date of hire or submit to the regular testing protocol outlined in Section IV, as a condition of employment. Proof of vaccination will be required prior to the employee's start date unless the employee has received an accommodation as outlined in Section VI of this Policy. New hires who are not fully vaccinated at the time of hire, and have not received an accommodation as outlined in Section VI, must submit to regular testing outlined in Section IV until they are fully vaccinated. Failure of newly hired employees to become fully vaccinated will result in their termination from employment unless they have received an accommodation as outlined in Section VI.

D. Any employee who becomes fully vaccinated after October 15, 2021 must report their change in vaccination status in the manner prescribed in Section V.B above within three (3) business days.

E. In cases where the City has reason to believe that the vaccination

information provided by the employee was not true or accurate, an employee may be required to submit verification of vaccination from a state immunization information system.

- F. Employees who have not reported their vaccination status by October 15, 2021 will be placed in a non-disciplinary no-pay status until they have reported their vaccination status.
- G. All employees must continue to comply with masking, testing, and other safety requirements as outlined in other City policies and directives.

## **VI. Accommodations**

### **A. Disability and Medical Accommodations**

- 1. In accordance with the City's Reasonable Accommodation Policy, the City provides reasonable accommodations to qualified persons with a disability that enables them to perform the essential functions of their job unless such an accommodation would create an undue hardship or the accommodation would result in a direct threat to the health and safety of the employee or others. Requests for accommodations will be made on a case-by-case basis consistent with existing procedures for reasonable accommodation requests.
- 2. Employees who believe they need an accommodation regarding this policy because of a disability or a medical condition may request a reasonable accommodation through the Department of Human Resources. A form for requesting such an accommodation is attached to this policy as Exhibit A.

### **B. Religious Accommodations**

- 1. The City provides religious accommodations to employees with sincerely held religious beliefs that unless an accommodation would create an undue hardship. Requests for accommodations will be made on a case-by-case basis consistent with existing procedures for reasonable accommodation requests.
- 2. Employees who believe they need an accommodation regarding this policy because of a sincerely held religious belief may request a reasonable accommodation through the Department of Human Resources. A form for requesting such an accommodation is attached to this policy as Exhibit B.

## **VII. Reporting Test Results**

- A. Employees, volunteers, and contractors who are covered by this policy who are not fully vaccinated by October 15, 2021, for reasons including but not limited to verified medical conditions or restrictions or sincerely held religious beliefs (as discussed in

Section VI), shall be required to undergo COVID-19 testing on a twice weekly basis with tests separated by 3-4 days. Employees shall be responsible for obtaining tests on their own time and at no cost to the City.

- B. Employees must report their test results through the COVID-19 Employee Testing Portal. Employees will be required to submit the following information:
  - 1. The date of the test;
  - 2. The type of test obtained;
  - 3. The results of the test;
  - 4. A declaration that the information provided is true and accurate; and,
  - 5. A copy of their test results.
- C. In cases where the City has reason to believe that the testing information provided by the employee was not true or accurate, an employee may be required to provide additional information, including but not limited, a written statement describing the testing process.
- D. Employees who fail to report test results as required by this section will be placed in a non-disciplinary no-pay status until they report their test results.

#### **VIII. Vaccination Encouragement**

The City and signatory unions agree to encourage and support the vaccination of City employees.

The Policy defines “fully vaccinated”, provided for a testing regimen until the employee is fully vaccinated, and provided that the testing option was no longer available after December 31, 2021. This meant that employees had to be fully vaccinated by December 31, 2021 as, after that date, the testing option was not available. Further, as outlined in the Policy and accompanying letter, if an employee did not report their vaccinated status by October 15, 2021 in the portal provided for reporting vaccination status, the employee would be put on no-pay status.

The Policy also provided that employees could apply for a medical exemption or a religious exemption on a form provided by the Department of Human Resources, whose personnel would decide the validity of such a claimed exemption. While the petition for an exemption was pending, the employee was required to undergo testing and report the results in

the vaccine portal.

The Police Unions, pursuant to their respective contracts, had requested mid-term interest arbitration which the City believed was not applicable to the decision to require the vaccination protocol.

The Police Unions responded by filing an unfair labor practice against the City challenging the unilateral implementation of the Covid-19 vaccine policy and filed the grievances at issue now before this Arbitrator.

### **The Grievances**

As to the FOP grievances, Gr. No. 129-21-014 (14 October 2021) alleges violations of Section 28.2 and 28.3 as to the claim that interest arbitration should be invoked. Grievance No. 129-21-014 (second amended) alleges violations of Articles 4, 8, 10 and App. Q in addition to Section 28.2 and 28.3, namely, maintaining that the City did not follow the discipline procedures of the contract and discriminated.

Grievance No. 129-21-016 (8 November 2021) challenges the acts of the City as being discipline in nature and, therefore, subject to the provisions of Articles 4, 8 and 10.

Grievance No. 129-21-018 alleges violations of Articles 8, 20 and others alleging that the City violated the just cause provision and the hours provision of the Lodge's Collective Bargaining Agreement.

Grievance Nos. 129-21-016 and 129-21-018 also protest the City's unilateral implementation of the Covid-19 Policy and failure to engage in impasse resolution procedure.

PBPA Unit 156A Grievance 545-21-071 seeks expedited interest arbitration as does PBPA Unit 156B Gr. No. 545-21-025 and PBPA Unit 156C Gr. No. 548-21-011.

These grievances were all denied by the City. Also introduced in the record were FOP Gr. Nos. 129-21-015 and 018-21-014 which essentially address challenges to the Department's implementation of the vaccination policy.

Also introduced into the record, which were not included in the caption of the Union's brief, were three grievances from PBPA Unit 156A-Sergeants, namely, Gr. Nos. 545-21-081, 545-21-082 and 545-21-084, filed on behalf of individual Sergeants who have been placed in no-pay status for failure to comply with the vaccine policy.

The Police Unions filed an action in the Circuit Court of Cook County IL seeking a temporary restraining order in aid of arbitration, being Case No. 2021CH5276, wherein there was a hearing before Circuit Judge Raymond W. Mitchell who, on November 1, 2021, issued the following Order:

Therefore, it is hereby ORDERED:

- (1) Plaintiffs' motion for temporary restraining order in aid of arbitration is GRANTED in part:

As to any of the bargaining unit members represented by Plaintiffs, their compliance with the December 31, 2021 vaccination requirement is STAYED until such time as their grievances can be arbitrated.

In all other respects, the City's vaccination policy remains in effect, and all other relief sought by Plaintiffs is denied.

- (2) The matter is continued to November 10, 2021 at 1:00 p.m. for status.

Dated: November 1, 2021 at 10:00 a.m.

By an Order entered November 9, 2021, the Appellate Court of Illinois 1<sup>st</sup> District affirmed Judge Mitchell's Order.



At some point after the issuance of the vaccination policy on October 8, 2021, there were upwards to 286 Department sworn members who had not revealed their vaccination status in the portal. Of these 286 individuals, some have had a CR Number issued as part of the discipline procedure against them for failure to comply with an order to enter vaccine status information in the portal.

**Relevant Contract Provisions**

The parties have different views as to the relevant contract provisions. The City and the Department maintain that the management rights article, which is essentially the same in all four CBAs, is applicable and reads in relevant parts:

**Article 4/Management Rights**

The Employer has and will continue to retain the right to operate and manage its affairs in each and every respect. The rights reserved to the sole discretion of the Employer shall include, but not be limited to, rights:

- A. to determine the organization and operation of the Department of Police;  
\* \* \*
- C. to set standards for the services to be offered to the public;
- D. to direct the Officers of the Department of Police, including the right to assign work and overtime;  
\* \* \*
- J. to add, delete or alter methods of operation, equipment and classifications;  
\* \* \*
- N. to add, delete or alter policies, procedures, rules and regulations.

Inherent managerial functions, prerogatives and policymaking rights, whether listed above or not, which the Employer has not expressly restricted by a specific provisions of this Agreement are not in any way, directly or indirectly, subject to the grievance and arbitration procedures contained herein, provided that no right is exercised contrary to or inconsistent with other terms of this

Agreement.

In addition, the City and the Department rely on the following provisions that are essentially the same in all of the CBAs:

Section 9.7A (or 9.4A)/Authority of Arbitrator

Except as specified in subsection (C) below, the Arbitrator shall have no right to amend, modify, nullify, disregard, add to, or subtract from the provisions of this Agreement. The Arbitrator shall only consider and make a decision with respect to the specific issue or issues presented to the Arbitrator and shall have no authority to make a decision on any other issues not so submitted. The Arbitrator submit in writing his or her decision to the Employer and to the [Union] within thirty (30) days following the close of hearing unless the parties agree to an extension thereof. The decision shall be based upon the Arbitrator's interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented, and shall be final and binding upon the parties.

Article 32 (or 33)/Complete Agreement

The parties acknowledge that, during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Except as may be stated in this Agreement, each party voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Agreement.

The Lodge and the PBPA Units rely on the following continuing effect and impasse resolution language as set forth in the Lodge's CBA which is essentially the same as in the PBPA

CBA's and reads in part:

**Section 28.2 – Continuing Effect**

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after any expiration date while negotiations or Resolution of Impasse Procedure are continuing for a new Agreement or part thereof between the Parties.

**Section 28.3 – Impasse Resolution, Ratifications and Enactment**

\* \* \*

B. If complete agreement is not reached between the parties as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:

1. In the event that disputed items cannot be resolved during the negotiation period, all disputed items shall be referred to a three person Arbitration Board, one member to be selected by each of the parties and the third member to be jointly agreed upon by the parties.

\* \* \*

6. The Employer and the Lodge shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations. During the course of proceedings, the Chairman of the Board shall have the authority as necessary to maintain decorum and order and may direct (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public and the parties understand and agree that the provisions of 5 ILCS 120/1 et seq. are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate in his or her discretion to meet with either the Employer or Lodge for mediation or conciliation functions, the Board may do so,

provided only that notice of such meetings shall be communicated to the other party.

\* \* \*

11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply; Subsections (h), (I), (k) and (m).

The Lodge's contract was effective from July 1, 2012 through June 30, 2017 but continues in effect as the parties have not completed negotiations for a successor CBA.

The references to Articles 8, 10 and Appendix Q in the Lodge's Agreement refer to the just cause standard to provisions addressing non-discrimination and the discipline procedure.

There are similar provisions in the PBPA CBAs.

The PBPA Unit CBAs are effective July 1, 2016 through June 30, 2022.

### **Discussion**

The sole responsibility of this Arbitrator is to interpret the respective Collective Bargaining Agreements addressing the dispute that has arisen between the parties following the City's announced implementation of the vaccine mandate and the requirement to report one's vaccination status with the Unions maintaining, based upon their CBAs, that the *status quo* be maintained and that there was a duty to engage in contractually provided impasse procedures, alleging that the vaccination policy was a change in working conditions. The Unions also maintain that their respective contracts were violated in that the Department failed to apply the contractually provided just cause standard and discipline procedures as well as engaged in discrimination contrary to the CBAs.

The City and Department maintain that the negotiated Management Rights permitted the

Department to implement the Covid-19 vaccine mandate and requirement to report one's vaccination status and was a reasonable exercise of management rights and consistent with arbitral authority between the parties.

To address the contractual issues as just summarized by this Arbitrator, there are several steps to be followed in the analysis of the contractual issues raised.

First, this Arbitrator, in interpreting the CBAs, must first determine the nature of the Covid-19 vaccine mandate which became a point of contention between the parties. The Unions called as a witness Cicely Porter-Adams, the City's Chief Labor Negotiator. Ms. Porter-Adams was asked the following question and answered:

Q And you acknowledged at that meeting that the COVID vaccination requirement is a new condition of employment for the police officers, is that correct?

A The policy expressly says that it is a condition of employment.

Q Yes.

A Yes.  
(Tr. 688).<sup>1</sup>

Later in her testimony, Ms. Porter-Adams testified:

Q And there was an email dated September 22 that you responded in which you said that our draft policy for vaccinations will state fully vaccinated as a condition of employment, correct?

A I don't have the email in front of me to recall what I stated.

Q But you did send an email to that effect, correct?

A I sent an email saying consistent with our policy that we

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<sup>1</sup> "Tr." is a reference to the transcript of the arbitration hearing.

sent on the 25th or the – that the City sent, I explained what would happen to those who did not comply.

(Tr. 700).

Ms. Porter-Adams also testified:

Q ... correct?

A I said that we didn't have a duty to bargain over the decision, but the effects and impact, yes, we wanted to sit down – to the extent there was an obligation, we wanted to sit down and have that discussion with the unions.

(Tr. 686).

Though the Police Unions argue that Ms. Porter-Adams' reference to conditions of employment in her above-quoted testimony is a recognition that the decision to implement a vaccine mandate for the sworn members of the Department represented by the Unions was required to be negotiated and, if necessary, become subject to the impasse procedure in the Unions' respective CBAs. However, as quoted, Ms. Porter-Adams specifically stated that there was no requirement to bargain over the decision to implement a vaccine mandate. (Tr. 686). In doing so, Ms. Porter-Adams was relying on the management rights article set forth in each of the Police Unions' CBAs which recognize specifically that "the Employer has and will continue to retain the right to operate and manage its affairs in each and every respect ... provided that no right to exercise contrary to or inconsistent with the other terms of this agreement." Among the rights reserved was the right "to add, delete or alter policies, procedures, rules and regulations."

Not only is this management rights language in the current PBPA CBAs, but it is management rights language in the FOP CBA that is continuing by its terms. Thus, the City and Department, as noted by Ms. Porter-Adams, were exercising a management right in announcing a vaccine mandate policy consistent with existing management rights CBA language. In addition,

there is no language in any of the CBAs that would prohibit the exercise of management rights by promulgating a Covid-19 vaccine mandate.

The position of the City and Department that the implementation of the vaccine mandate unilaterally was consistent with the negotiated management rights is supported by arbitral authority between the parties. In 1990, Arbitrator Elliott Goldstein upheld the Department's promulgation of a limited duty policy concluding that the Department's actions were reasonable and related to a legitimate object of management. *In the Matter of the Arbitration Between the City of Chicago and the Chicago Police Department and Fraternal Order of Police Chicago Lodge No. 7 (Gr. No. 129-89-035)*.

Following the issuance of an interim award, Arbitrator Peter Meyers issued a final award in *City of Chicago ad PB&PA Unit 156A-Sergeants Gr. SGT-12-001* (2002) wherein he held that the Department, pursuant to the management rights set forth in the applicable CBA, could change the Department's limited duty policy.

One year later in 2013, this Arbitrator likewise concluded pursuant to the same Subparagraph N in the management rights language, as now appears in the current management rights language of the FOP CBA, that the Department could modify its limited duty policy. *City of Chicago and Fraternal Order of Police Chicago Lodge No. 7 Gr. No. 129-11-037/488*.

This Arbitrator acknowledges that the PBPA in cross-examination of Ms. Porter-Adams and in the submitted post-hearing brief have suggested that the City should have set forth pandemic related issues to be incorporated into their CBAs during the interest arbitration conducted by this Arbitrator between the PBPA Units and the City in December 2019 and January 2020. Counsel noted that briefs were due in April 2020 and that this Arbitrator issued

the Panel's opinion and awards in June 2020. Counsel asked Ms. Porter-Adams whether "the City was heavily affected by Covid-19 in March 2020 in that employees began to work from home". Ms. Porter-Adams responded that employees began working from home in March 2020 and that the City did not move to reopen the impasse hearing to address pandemic issues. (Tr. 692, 693).

The argument that the Unions make from this approach is to suggest that the announcement and implementation of a vaccine policy was an exception to the enumerated management rights which was known at negotiations and should have been raised in the impasse procedure; that the failure to do so required a decision that the City now engage in impasse negotiations addressing the decision to implement a vaccine mandate with the Unions. The answer to this argument is that Subparagraph N of the management rights article is there to be read and arbitrators, as noted, have interpreted management rights to permit the Department to promulgate limited duty policies which in the broadest sense is related to the Department determining whether an Officer, health-wise, can perform required duties.

On the health point just noted by this Arbitrator, the City and Department maintain that the implementation of the vaccine policy is a health issue designed to protect the health and safety of sworn members of the Department as well as the public while performing police duties. This position of the City and Department brings forth an examination of the medical testimony in conjunction with the reasonableness of the Department's management right to implement a vaccine mandate.

As to the physical facts, the Chicago Police Department has a complement of approximately 13,000 sworn members of all ranks. (Tr. 508). An Officer testing positive for



Covid or Covid-related symptoms is placed on the Medical Roll for a minimum of 10 days. In order to come back to work, the Officer has to be symptom-free for 72 hours after the 10 day period. If the Officer is still exhibiting sick symptoms within the 72 hours, the Officer will be continued on the Medical Roll until released by a doctor. (Tr. 512).

Since January 2020 through January 3, 2022, 6,171 sworn members of all ranks have gone on the Medical Roll for Covid-related reasons. (Tr. 507, 508). Six Officers have died from Covid or Covid-related illnesses. (Tr. 508). For the period from December 14, 2021 through December 28, 2021, there were 788 Officers who were placed on the Medical Roll due to Covid or Covid-related illnesses. (Tr. 512). Breaking down these figures further, on December 14, 2021 there were 34 Officers placed on the Medical roll due to Covid affecting personnel throughout the Department. By way of example, two individuals in the 001<sup>st</sup> District and one individual in the 002<sup>nd</sup> District reported positive for Covid on December 14, 2021. (Tr. 511).

The physical evidence is the second step in the analysis as to whether the City and the Department were reasonable in exercising the contractually provided managements rights to issue a Covid-9 vaccination mandate. The physical facts just set forth clearly establish that the Covid pandemic had a significant impact on the health and safety of the Officers as well as the Department's ability at any given time to staff its various Units with healthy Officers at levels the Department deems necessary to fulfill its function in serving the public.

There are two salient points that give credence to the above observation. Officers have interactions with the public under various circumstances, emphasizing the need to provide for an Officer's safety when confronted with public members in a Covid-19 inspired contagious pandemic. Second, by analogy, the Department could argue, and through Counsel has argued,

the physical evidence is no different than the Department, consistent with its operational needs, has limited the duration of limited duty which arbitrators have upheld as being part of management rights as set forth in the CBAs.

The third step in the analysis is whether the medical testimony supports the reasonableness of the City and Department's vaccination mandate in addressing the safety and health of the Officers and the Department's operational needs.

The medical evidence on this record reflects the differed approaches as between the Unions and the City and Department in addressing the Covid-19 pandemic affecting Officers in the workplace. The Unions are emphasizing testing rather than a vaccine mandate, whereas the City and the Department are opting for a mandatory vaccine mandate.

Unions witness Dr. Christopher Brooke is an Associate Professor of Microbiology at the University of Illinois. Dr. Brooke operates a basic research lab that studies the replication, pathogenesis and evolution of influenza viruses. Dr. Brooke is the co-inventor of Covidshield, a saliva based test used to determine the presence of Covid-19. (Tr. 426).

Dr. Brooke testified that back in 2020, when there were no approved Covid-19 vaccines available and students were not attending classes in person, students on the University of Illinois campus as well as faculty were frequently tested for Covid-19 using the saliva tests which he maintained was successful in containing the spread of the Covid-19 virus. Currently, with the availability of vaccines, the University has changed its policy with the students now attending in person classes. Currently, students are required to be vaccinated and are only tested within a span of a week upon returning to campus. (Tr. 476-477).

In his testimony, Dr. Brooke did advocate for frequent testing, including among those

who were vaccinated, as a means of identifying individuals infected with Covid-19 or who may be spreading the virus. (Tr. 421-456).

After so testifying, Dr. Brooke acknowledged that in an email to the Champagne News Gazette, a local newspaper, he stated “get vaccinated, get boosted, avoid crowded indoor spaces without masks, and boost ventilation in indoor spaces”. (Tr. 467). Dr. Brooke was also asked the following question and answered:

Q Professor, in terms of the difference between December 1<sup>st</sup> of 2021 and January 3<sup>rd</sup> of 2022, in the presence of the Omicron variant, in your view, in your mind, does the Omicron variant reduce the need for individuals to be vaccinated?

A No, not at all. It increases it.  
(Tr. 475).

Thus, Dr. Brooke is on record as supporting the need for vaccination regardless of his views on testing. As he further noted, after initially relying on testing when no vaccines were available, the University of Illinois relies on vaccination.

The second medical witness called by the Police Unions was Dr. Saman Soleymani, M.D. Dr. Soleymani is board certified in internal medicine. He has studied issues involving nutrition, physiology, sports medicine, and anti-aging practices. (Tr. 609).

Since 2005, Dr. Soleymani’s practice consists of operating six urgent care facilities in Jacksonville, Florida known as AVECINA Medical. (Tr. 610). According to Dr. Soleymani, between 150,000 and 200,000 patients are seen annually across the six locations; that since March-April 2020, 200,000 patients related to Covid exposure symptoms have been seen across the six facilities. (Tr. 612). Dr. Soleymani explained that AVECINA Medical addresses patients related to Covid issues by providing testing and being able to provide results on a rapid basis.

Thus, Dr. Soleymani testified:

So being able to test in a timely manner, identifying the people that are positive and removing them from the population, obviously, voluntarily, so they can quarantine until they end up testing negative, has been the most successful way of reducing the propagation of the virus.  
(Tr. 615).

Dr. Soleymani noted that patients who have been vaccinated, including two shots and a booster shot, have been infected with the Covid-19 virus. (Tr. 616, 618). When asked after noting “the thousands of people you and that staff have seen”, Dr. Soleymani was asked, “Have your colleagues concluded that vaccinations are not an assured way to protect persons from the Covid-19 pathogens?” Dr. Soleymani responded, “Absolutely”. (Tr. 620). Dr. Soleymani acknowledged that more than half of his staff have been vaccinated. (Tr. 624).

On direct examination, Dr. Soleymani stated that he would not oppose new vaccinations for persons 65 years and older if they have Covid morbidities. (Tr. 632-633). However, throughout his direct testimony, Dr. Soleymani maintained that it was unnecessary for healthy younger persons to be vaccinated to prevent the spread of Covid-19, but that frequent testing is the way to prevent the spread of Covid-19 by early detection provided by testing. (Tr. 633-644).

On cross examination, Dr. Soleymani was asked and answered:

Q I want to direct your attention, Doctor, back to last July, July of 2021. And approximately July 28 of last year. Do you recall being interviewed by Channel 4 in the Jacksonville area?

A I do many interviews. I honestly don't remember day and dates. I've done probably a hundred.

Q I'm going to ask you a question. I'm going to ask you if you remember or if you recall being asked this question by a reporter for Channel 4 and whether you gave this answer.

The question was: There's a big push – quote. There a big push from local leaders, both Democrats and Republicans, for people to get vaccinated. What is the status right now of patients that are vaccinated versus those who are not vaccinated?

That was the question.

And the answer that I'm asking if you recall giving was as follows:

Quote, Obviously, it's a personal decision for a lot of people and like you said, it's very controversial. But the data show overwhelmingly that the patients that are hospitalized that are severely sick, almost 97 percent plus of them are unvaccinated patients. Now, in our office are being double vaccinated does not prevent you from catching coronavirus, whether Delta or not, but we do not see those patients ending up on a ventilator or ending up in the hospital, so your mortality and morbidity are significantly less. And when you look at even at hospitals in Jacksonville, 95 percent plus patients that are hospitalized are all unvaccinated. End of quote.

Do you recall giving that answer to that question?

A It's a hundred percent correct.  
(Tr. 645-646).

Following this response, Dr. Soleymani was asked and answered:

Q And then, finally, I believe, I just want to make sure my notes are correct, with respect to CDC recommendations, you said you take those with a, quote, unquote, grain of salt; is that an accurate statement?

A Absolutely.  
(Tr. 646).

After giving these answers, Dr. Soleymani made the following statement:

This is not an argument against the vaccine. This is argument about mandation and forcing a group of people that would not necessarily benefit because of the factual data that we have that

vaccines do not prevent you – you cannot find a source that can disagree with that. Vaccines will not prevent you from catching the virus, vaccines will not prevent you from passing on the virus.

And the best way, if the entire point of this is to keep the public safe and the officers safe, would be to have them tested regularly, twice a week. And if those officers are negative, they can resume their roles and if they're positive, they should be quarantined until they test negative.

It's very hard to find a real scientist or an M.D. that will tell you that that is not a sound way to prevent passing on the virus. (Tr. 648-649).

When asked whether he agreed that people should be vaccinated, Dr. Soleymani responded:

Unfortunately, medicine is not a yes or no question. There are conditions that apply. As I mentioned, my parents are vaccinated and I made them get vaccinated because they're in their 70s. But if you ask me, I have a 25-year-old son who's healthy, should he get vaccinated, my answer would be no. (Tr. 650).

Finally, when Dr. Soleymani was asked about the difference between the Omicron and Delta variants, he noted that the Omicron virus was a milder disease; that the deaths from Omicron were primarily from elderly persons with underlying medical conditions. (Tr. 651-652).

In summary, Dr. Soleymani was an advocate against the vaccine mandate urging instead testing, questioned the recommendations of the CDC, but did recommend vaccination at least as to some portion of the population, and acknowledged that unvaccinated persons are more likely to be hospitalized than vaccinated persons.

The City and Department produced as their medical witness, Dr. Allison Arwady, M.D., who has a Masters Degree from Columbia University and a medical degree from Yale University. Dr. Arwady is board certified in internal medicine and pediatric. After doing clinical work for 10 years following residence, Dr. Arwady did a training program through the CDC

known as the Epidemic Intelligence Service where she obtained experience in outbreak responses. Dr. Arwady worked for the CDC in Botswana working on tuberculosis and HIV outbreaks. She also worked on outbreaks internationally in Liberia for the Ebola outbreak and in Saudi Arabia for the Middle East respiratory syndrome. (Tr. 765-766).

Prior to her employment with the Chicago Department of Health, Dr. Arwady worked for the Illinois Department of Health on outbreaks of infectious diseases in various settings in the state. Prior to the summer of 2019, Dr. Arwady had been employed as the Chief Medical Officer of the Chicago Department of Health for about five years where her duties included addressing issues involving communicable diseases. (Tr. 766). After serving as Acting Commissioner, Dr. Arwady, four days before the Department activated for Covid-19, became the Commissioner of the Chicago Department of Health. (Tr. 764).

The Chicago Department of Public Health has 600 employees including an Epidemiology Program consisting of 40 full-time trained epidemiologists. A Pd.D. epidemiologist leads the Department's Covid-19 response. (Tr. 769). The Chicago Department of Public Health maintains a Covid-19 data portal which reports hospitalizations, death, vaccinations, administered tests performed and positivity rates on a daily basis. The dashboard does not identify the number of Covid-related deaths associated with individuals with underlying medical conditions, but the Department has this information. (Tr. 771, 774).

In compiling the statistics as to Covid-related issues, including deaths, the Department's epidemiologists rely as to the cause of death on the reports of the attending physician, the primary physician and the medical examiner in determining whether the cause was Covid-19 related. Dr. Arwady stated that the Chicago Department of Public Health tracks the percentage

of deaths among those who are vaccinated as opposed to those who are unvaccinated from Covid-19. (Tr. 778).

Based upon the information obtained by her staff, Dr. Arwady testified on January 5, 2022:

A ... I mean, I don't know if you want more reason or not, but in the Omicron surge, for example, just since Thanksgiving where we look at deaths, we've seen people who are unvaccinated be five times as likely to die from COVID as people who are vaccinated. And actually nine times as likely to die from COVID as people who are both vaccinated and boosted. And that's similar to what we have seen during Delta and previously.

So I know I've shared data before, I can give updated data if you want about percentages but that just gives you a sense of risk. The biggest risk factor continues to be the unvaccinated.

Q When you mention the factor of nine times as likely, that's with respect to recent data?

A That's recent, exactly. That's right now during our Omicron surge, but it is similar to what we were seeing in Delta. No surprise there. If anything, that difference is getting sort of more substantial.

Q And you've executed various affidavits between October and November of this year and depending on the point in time of the affidavit, you concluded, you found that anywhere between 97.5 to close to 99 percent of the deaths of Chicagoans were among those who were unvaccinated?

A That's right.

Q And that was with respect to the beginning of the pandemic, correct?

A Yes.

Q And you also, however, looked at the percentage of deaths



in terms of vaccinated versus unvaccinated since vaccines became available?

A Yeah, of course.

So, overall, if you look at the entire pandemic from the very beginning up until now, again, we ran this because I always run it ahead of press conferences this morning, 97.4 percent across the whole pandemic of deaths in Chicagoans have been in people who were unvaccinated.

If you limit it just to the year 2021, you know, roughly as vaccines started to become available, it was 93 percent still of the deaths that we have seen in Chicago residents in people who were not vaccinated.

(Tr. 779-780).

Dr. Arwady testified that in December 2021 three people in the 18 to 29 year age group in Chicago died from Covid, all of whom were unvaccinated; that based on the Omicron variant in December 2020 for working adults in the 30 to 64 year age range the “risk of being hospitalized with Covid, 35 times as great and those who are unvaccinated, as opposed to those who are vaccinated or boosted.” (Tr. 281-282). Dr. Arwady, based on the recommendation of the CDC, recommended that persons who previously had Covid should still be vaccinated as such persons can be reinfected and the vaccination provides higher immunity. (Tr. 785). Dr. Arwady testified that the vaccines were safe and that there have been no deaths in the City of Chicago or Cook County as a direct result of the Covid-19 vaccine. (Tr. 786).

Dr. Arwady did not dispute that social distancing and the use of masks are mitigating factors in dealing with Covid. She testified: “Testing is important, but it is not the be all and end all and it’s just a moment in time telling you that the person is infected at that time.” (Tr. 809-210). In making this point, Dr. Arwady stated, “I would give up all testing for the vaccine, frankly, because the vaccine is what is our safe way to teach our immune system how to fight all

Covid and testing is just not a substitute ... for vaccination. (Tr. 788-807).

Dr. Arwady, testifying in January 2022, noted that hospitalizations because of Covid are “high again” with the “huge” majority of patients being admitted are unvaccinated and that she believed that getting folks vaccinated was important “for keeping employment settings safe.” (Tr. 821).

On cross-examination, Dr. Arwady acknowledged that 56% of the Covid deaths reported in Chicago were among the elderly, but her testimony establishes that there were deaths among working age individuals. Dr. Arwady did not dispute that persons who have been vaccinated have come down with the Covid virus, but she also noted that in such cases the infection was “typically” milder. (Tr. 845).

Based on the data collected and reviewed by epidemiologists employed by the Chicago Department of Public Health, her own experience with infectious diseases and the recommendation of the CDC, Dr. Arwady recommended that the City have a vaccine mandate for all of its employees and that this recommendation was consistent with her medical opinion.

The Unions presented the testimony of Jessica Hockett, Ph.D., an educational psychologist and trained as an academic researcher. (Tr. 736-737). Dr. Hockett, as part of her Ph.D. training, took courses in statistics. Based upon this background, Dr. Hockett did an analysis of reports from the Illinois Department of Health since August 2021 reporting Covid-related deaths and concluded that since August 2021 30% to 50% of the deaths involved fully vaccinated persons. (Tr. 752-753). She produced PUE FFF as support of this conclusion which obviously was designed to challenge the testimony and figures produced by Dr. Arwady.

There are several reasons that have caused this Arbitrator not to be persuaded by Dr.

Hockett's analysis and conclusions designed to suggest that a vaccine mandate is not appropriate. One of the attachments to PUE FFF contains the statement "not fully vaccinated in my term, chosen in contrast to fully vaccinated." Above this statement is a bar chart for each week showing that consistently the not fully vaccinated deaths substantially exceed the fully vaccinated Covid deaths. Dr. Hockett also writes in PUE FFF "per the CDC, Covid-19 was the only cause mentioned on the death certificate of only 5% of all Covid-related deaths annually."

The problem with Dr. Hockett's analysis is that Dr. Arwady is relying on the analysis, including the accuracy of data from Chicago, including the number of persons hospitalized with Covid, the numbers in the ICU and whether the persons are on ventilators, by the epidemiologists in the Chicago Department of Public Health who in doing so viewed individual medical histories and hospital records. (Tr. 773, 792-793). Causes of death are reviewed with the records of the medical examiner. (Tr. 772, 796). Then Dr. Hockett is not an epidemiologist trained to interpret the available records in relationship to public health concerns in dealing with infectious diseases. Finally, PUE E EE, a line graph with the following caption, seems to be contrary to Dr. Hockett's conclusions and, if anything, support Dr. Arwady's testimony:

Good News: Vaccine still highly protective against INFECTION, through Omicron variant leads to more breakthroughs.  
\*Since Thanksgiving in Chicago, **unvaccinated** diagnosed with COVID at more than twice the rate of vaccinated Chicagoans, and THREE times the rate of **vaccinated** and boosted Chicagoans

In summary, the medical testimony on this record supports the proposition that the City and Department acted reasonably, pursuant to Article 4N, and requiring a vaccine mandate for the sworn members of the Department. Dr. Brooke agreed that individuals should get vaccinated, noting that his academic institution, the University of Illinois, after relying on testing

prior to the availability of vaccines, now has a vaccine mandate for all students and faculty. Dr. Arwady, based on the data analyzed by epidemiologists in the Chicago Department of Public Health of which she is the Commissioner and on her own expertise in infectious diseases, recommended and agreed that there should be a vaccine mandate for all City employees including sworn members of the Department. It may be that Dr. Soleymani has a different view and urges reliance on testing but, after reviewing the testimony of Dr. Broke and Dr. Arwady, their combined testimony is more persuasive that vaccination is “still highly protective against infection.”

In reaching the above conclusion that the medical evidence supports the City and Department’s vaccine mandate as a reasonable exercise of contractually recognized management rights in Article 4N, this Arbitrator recognizes that on recall, when Commander Donna Rowling stated that currently there were 1,098 Officers on the Medical Roll due to Covid, the Unions sought an explanation as to how many of the 1,098 Officers had been previously vaccinated. (Tr. 677). But such information would not alter the persuasiveness of the dominant medical evidence on this record that those who are vaccinated and experience so-called breakthrough Covid infections, the infections are typically milder because of the protection afforded by the vaccine as noted by Dr. Arwady. (Tr. 845). *Also see, PUE EEE.*

As part of their respective arguments, the parties have invited this Arbitrator to consider Court review of vaccine mandates. As a starting point, it is noted that both the United States Supreme Court and the Seventh Circuit have recognized that vaccination mandates by state and local governments are constitutional. *Jacobson v. Massachusetts*, 197 US 11 (1905); *Zucht v. King*, 260 US 174, 176 (1922). *Also see, Klasassen v. Trustees of Indiana Univ.*, 7 F 4<sup>th</sup> 592 (7<sup>th</sup>

Cir., 2021).

The Unions rely on decisions of two United States District Judges in Texas who enjoined in separate cases the vaccine mandate for military personnel and federal civilian employees on the grounds that the President did not have the authority to issue such a mandate. Therefore, the Unions argue the vaccination mandate in the Chicago Police Department, based upon these rulings, is unreasonable. *See, US Navy Seals 1-26 v. Biden*, 2022 WL 344443 (N.D. Tex, Jan. 3, 2022); *Feds for Med Freedom v. Biden*, 2022 WL188329 (S.D. Tex., Jan. 21, 2022).

However, the Texas United States District Courts are not the Supreme Court of the United States. On January 13, 2022, a majority of the United States Supreme Court stayed the implementation of a vaccine mandate for private employers issued by the Department of Labor Occupational Safety and Health Administration on the proposition that the agency did not have the statutory authority to do so. Yet, in the concurring opinion of Justice Gorsuch, he noted that “there is no question that state and local authorities possess considerable power to regulate public health. They enjoy the general powers of government including all sovereign powers envisioned by the Constitution and not specifically vested in the federal government.” This statement is consistent with previous United States Supreme Court decisions holding that state and local vaccination mandates are constitutional.

On the same day, January 13, 2022, a majority of the Supreme Court in a Per Curiam Opinion stayed the injunctions issued by two District Courts enjoining the Secretary of Health and Human Services from requiring a Covid-19 vaccine mandate for medical workers in facilities receiving Medicare and Medicaid funding. The majority believe that the Secretary had the authority to issue such a mandate and suggested, depending on further litigation, that the mandate

could be reasonable. *Biden v. Missouri*, Case Nos. 21A240 and 21A241.

The cited Court cases do not support any claim by the Unions that the City and Department did not have the authority to issue a vaccine mandate or that doing so was unreasonable, particularly given the fact that Police Officers, by virtue of their duties, interact with the public and among themselves in a variety of circumstances that could lead, and has led, to Covid-19 exposure causing Dr. Arwady to testify that Police Officers “are at higher risk in the same way that health care workers, frankly, are at higher risks.” (Tr. 777).

By letter dated February 17, 2022, FOP Counsel submitted to this Arbitrator a February 15, 2022 decision by Justice Singh of the Appeals Court, Commonwealth of Massachusetts entitled *Boston Police Superior Officers Federation and Others vs. Mayor of Boston and another*. On December 20, 2021, the City of Boston announced a vaccine mandate policy whereby employees were to verify they were fully vaccinated by January 15, 2022, which was extended to February 15, 2022, against Covid-19. The police union sought a preliminary injunction enjoining the enforcement of the announced vaccine mandate policy and seeking to maintain the *status quo* alleging that the announced policy violated the terms of the existing MOA in the Trial court. The Trial court denied the injunction request.

Justice Singh vacated the order of the Trial Court (the Superior Court) and entered an order granting an injunction against enforcement of the announced vaccine mandate policy, concluding that there was a likelihood of success on the part of the union after a trial on the merits. In doing so, this Arbitrator recognizes that Justice Singh relied on many, if not all, of the arguments against a mandatory vaccine policy that the Unions have presented to this Arbitrator in these proceedings. This Arbitrator has considered and reviewed these arguments. This

Arbitrator further noted, as discussed above, there are Court decisions by Judges who, in one way or another as to mandatory vaccination policies, analyzed the issues similar to the approach of Justice Singh.

However, as also noted by this Arbitrator, on January 13, 2022 five Justices of the United States Supreme Court in a per curiam opinion stayed preliminary injunctions against vaccine mandates issued by two United States District Courts in *Biden v. Missouri and Becerra v. Louisiana*. The five Justices, in their per curiam opinion, considered some of the arguments being made by the Unions in this proceeding that were a basis for Justice Singh's analysis and concluded that these arguments did not support a granting of preliminary injunctions.

Then, too, with the exception of Judge Mitchell, Judges of the Cook County Circuit Court and the United States District Court for the Northern District of Illinois have unanimously declined to issue preliminary injunctions against the City's vaccination mandate policy. *See, Local 2 v. City of Chicago*, Case No. 2021CH5715 (Judge Moreland); *LIUNA et al v. City of Chicago*, Case No. 21CH5630 (Judge Cohen); *Troogstad v. City of Chicago et al*, Case No. 21C5600 (Judge Lee); *Cisneros et al v. City of Chicago*, Case No. 21CV5818 (Judge Coleman).

As to Judge Mitchell's order in *Fraternal Order of Police Chicago Lodge No. 7 et al v. City of Chicago*, Case No. 2021CH5276, all Judge Mitchell did was to enjoin the implementation of the vaccine mandate pending arbitration of the Unions' grievance challenging the City's actions.

The bottom line is, for the reasons previously discussed and just discussed, after considering Justice Singh's opinion, this Arbitrator continues to rely on his analysis of the various Court decisions that have been referenced in these proceedings in reaching the Award

following this Opinion.

In considering whether the vaccine mandate issued by the City and Department is reasonable, the Unions invited this Arbitrator to consider the fact that out of nine large cities the majority do not have a vaccine mandate for their police departments. The cities surveyed were New York, Philadelphia, Dallas, Houston, San Antonio, Phoenix, San Diego, Los Angeles and San José. Of these cities, New York, Los Angeles, San Diego and San José have mandates for their respective police departments. It is noted that New York and Los Angeles have the first and second highest population in the country. Chicago may be third in population in the country, causing this Arbitrator to conclude that there are other departments in large cities that have vaccine mandates which support the reasonableness of the vaccine mandate in the Chicago Police Department.

It may be true locally that neither the Chicago Board of Education nor the Illinois State Treasury have a vaccine mandate. Yet, the University of Illinois has a vaccine mandate. Although imposed by an arbitrator, the Chicago Transit Authority has a vaccine mandate.

In other words, the fact that there are state and local public entities that do not have vaccine mandates does not serve to undermine the reasonableness of a vaccine mandate in the Chicago Police Department which, as noted, has been adopted in other large police departments.

Having concluded that the medical evidence on this record supports a vaccine mandate, that the issuance of a vaccine mandate was within management rights pursuant to Article 4, and that there was no legal impediment to the issuance of the vaccine mandating, the question remains concerning the nature and scope of the award to be issued by this Arbitrator. The Policy provided that an employee be fully vaccinated by December 31, 2021. The Moderna and Pfizer



vaccines require two shots – 28 days apart in the case of Moderna and 21 days in the case of Pfizer. The Johnson & Johnson vaccine requires one shot. The December 31, 2021 deadline has passed and it is not practical at this point to rely on that date.

Recognizing this practicality, in the Award that follows this Arbitrator has relied on the approach taken by Arbitrator Steven Bierig who in an award dated September 10, 2021 in *Amalgamated Transit Union Locals 241 and 308 and the Chicago Transit Authority*, wherein he extended the deadline of October 25, 2021 to be fully vaccinated to November 1, 2021. This Opinion is being issued on February 23, 2022, given the timing of the extended hearing dates and the filing of post-hearing briefs. The Award will provide that the sworn members of the Department are to have received the first shot of the vaccine selected by no later than March 13, 2022 and the second shot of vaccine no later than April 13, 2022.

This Arbitrator appreciates that these time lines have extended into 2022 beyond, for example, the time line in *Chicago Transit Authority*, but this delay, caused by the nature of the litigation, does not diminish the medical support for the vaccine mandate as the medical testimony supports the proposition that vaccine is effective against serious illness due to Covid-19. Furthermore, vaccines are being administered in most drug stores and apparently the Chicago Health Department where the vaccine can be obtained.

This Arbitrator recognizes that appointments may be necessary to obtain the vaccine. If the employee establishes that he or she made a good faith attempt to obtain a vaccine shot by March 13, 2022 but was not able to obtain such an appointment until after March 13, 2022, then the Department, on a case-by-case basis depending on the facts, is to extend the deadlines to comply for a reasonable time for that employee to comply. Disputes as to whether the individual

Officer acted in good faith and the reasonableness of the time extension as well as any remedy are to be resolved by this Arbitrator in an expedited procedure as determined by this Arbitrator. The Award will incorporate this provision.

The vaccine policy that was announced on October 8, 2021 does provide that employees with medical conditions or medical restrictions that affect their ability for a vaccine as verified by their medical provider or for employees with a sincerely held religious belief that prohibits them from receiving a vaccine may request a reasonable accommodation on a form requiring certain information supporting the requests furnished by the Chicago Department of Human Resources. Upon receiving the form, DHR personnel will make a determination as to whether the request and accommodation will be granted. If the request is denied, the employee is required to become vaccinated.

The provisions for medical and religious accommodations brought forth vigorous debate between the parties. Noting that 6,621 members of the Chicago Police Department have applied for religious accommodations as of December 15, 2020; that 3,833 applications are pending, or 58%; and that “only” 44 or 1.5% have been granted, the Unions argue that the City is unfairly denying religious accommodations to members of the Police Department. In support of this argument, the Unions noted that, in contrast among applications from other City-wide employees, 406 requests had been granted, or 11%, and 4,079 applications, or 52%, remain pending. Though this could be considered an intriguing argument, it is not the basis for setting aside the policy or its accommodations provisions for at least two reasons. First, the fact is that the accommodation requests of members of the Chicago Police Department have been granted. Second, with 3,833 applications pending, depending on the validity of the individual requests

based on the documentation submitted, it well could be that the percentage of applications granted will increase.

In support of the challenge to the City's handling of the religious accommodation requests, the Unions presented the testimony of Officers Teodora Cerceja, Jessica Sherman and Nick Kakos suggesting that their applications were unfairly denied and perhaps violated the provisions of Title VII.

Officer Cerceja described herself as a member of the Christian Orthodox faith. She testified that she believes that being vaccinated will result in fetal cells being injected inside her body contrary to her religious beliefs. (Tr. 281). Officer Cerceja sent a letter to DHR from her local priest in support of her religious beliefs. As pointed out in the record, Officer Cerceja did not sign the DHR form which made inquiries about the medications she had taken as an aid in determining the sincerity of the religious belief.

Officer Jessica Sherman is Roman Catholic as is her daughter, a special education teacher in the Chicago Public Schools. Her daughter received a religious exemption from being vaccinated from the Chicago Public Schools, but Officer Sherman did not receive an accommodation from DHR. Officer Sherman expressed the belief that God gave her a perfect immune system causing her to conclude that she would "fight this virus with my faith versus a vaccine." (Tr. 324). Officer Sherman wrote a letter about her position, but did not complete the required DHR accommodation form.

Officer Nick Kakos is Roman Catholic who basically testified that he relied on his physical shape as protection against the virus. Officer Kakos initially did not fill out Part III of the DHR form asking for an affirmation from the applicant's religious or spiritual leader. He

finally did by typing in “Jesus Christ”. Apparently, the DHR did not consider the application as complete.

After reviewing the testimony of Officers Cerceja, Sherman and Kakos, this Arbitrator concludes that their testimony does not establish with any certainty that the policy as to accommodation is unreasonable, given the evidence that their applications were incomplete limiting the ability of review and decision by the DHR.

Having concluded that the accommodation policies are reasonable, this Arbitrator also concludes that an award should recognize the procedure established by the City for members of the Chicago Police Department to establish the need for a medical or religious accommodation. Thus, the Award will provide that members of the Chicago Police Department who by December 28, 2021, the first day of mediation with this Arbitrator in this matter, have submitted all required forms and documentation to the DHR for either a religious or medical accommodation to the City’s Human Resources Department shall be exempt from the requirement to be vaccinated. However, if a request is denied, the member shall have six weeks from the date of receipt of the denial to become fully vaccinated as defined in the policy. If the member receives an accommodation, the member shall comply with the provisions of the accommodation.

The Unions have argued that the vaccine mandate fails to recognize the right of an Officer to refuse to be vaccinated based upon conscience, citing *Illinois Healthcare Right of Conscience Act*, 745 ILCS § 70/1 *et seq* (IHRCA). Under the IHRCA, “[i]t is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, ... medical care whether acting individually, corporately, or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or

imposition of liability upon which persons or entities by reason of their refusing to act contrary to their conscience of conscientious convictions in ... refusing to obtain [such] medical care.”

The City responds by referring to the legislative history of the IHRCA wherein Senator Rock, in explaining the Bill that created the Act, stated: “It would allow hospitals and medical personnel the right not to participate in medical procedures with which they are .. with which they do not agree in conscience. ... You will recall that two sessions ago, we did, in fact, pass a Statute which creates this right of conscience for hospitals and medical personnel with respect to the subject of abortion. This Bill, frankly, is a little broader. It includes other medical procedures such as sterilization, or advice on family planning ...”.

The Unions did cite cases where Courts in Illinois seemed to expand on Senator Rock’s explanation. In *Vandersand v. Wal-Mart Stores, Inc.*, 525 F Supp 2<sup>nd</sup> 1052, 1057 (C.D. Ill. 2007), the Court denied a motion dismissing a pharmacist’s claim that he was terminated and discriminated against in violation of the IHRCA after he refused to dispense a “ morning after” pill. In *Cohen v. Smith*, 269 Ill App 3d 1087, the Court agreed that a female patient had a claim under the IHRCA when she protested a male nurse treating her while she was naked during a caesarian section.

On the other hand, in a Court decision dealing specifically with the City’s vaccination mandate, Judge John Z. Lee of the United States District Court for the Northern District of Illinois, in *Troogstad v. City of Chicago and Governor Jay Robert Pritzker* denied a preliminary injunction against the City’s vaccine mandate brought by over 100 employees in the City’s Fire, Water and Transportation Departments where, among other allegations, there was a reference to the IHRCA. Judge Lee held there was no likelihood of success. In relationship to the IHRCA

claims against the City the Court, Judge Lee concluded that “Plaintiffs are unlikely to succeed on the merits of these claims, because the City’s vaccination policy’s religious exemption neatly tracks the definition of a protected religious belief under IHRCA. *Compare*, City religious exemption form (granting exemptions for individuals with ‘a sincerely held set of moral convictions arising from the belief in and relation to religious beliefs’), with 745 Ill Comp. Stat. 70/3 (protected persons with “a sincerely held set of moral convictions arising from the belief in and related to God or ... from a place in the life of its possessor parallel to that filled by God among adherence to religious faith”). Judge Lee then cites *Ezell v. City of Chicago*, 651 F 3d 684, 698-99 (7<sup>th</sup> Cir. 2011). Judge Lee’s order was entered on December 21, 2021, seven days prior to the mediation date in this matter.

In addition, on November 8, 2021, Governor Pritzker signed into law the following new section 13.5 of the IHRCA:

Violations related to COVID-19 requirements. It is not a violation of this Act for any person or public official, or for any public or private association, agency, corporation, entity, institution, or employer, to take any measures or impose any requirements, including, but not limited to, any measures or requirements that involve provision of services by a physician or health care personnel, intended to prevent contraction or transmission of COVID-19 or any pathogens that result in COVID-19 or any of its subsequent iterations. It is not a violation of this Act to enforce such measures or requirements. This Section is a declaration of existing law and shall not be construed as a new enactment. Accordingly, this Section shall apply to all actions commenced or pending on or after the effective date of this amendatory Act of the 102<sup>nd</sup> General Assembly. Nothing in this Section is intended to affect any right or remedy under federal law. (Emphasis supplied by Arbitrator.)

It is true, as pointed out, that pursuant to the Illinois Constitution this new Section does not take effect until June 1, 2022. However, in reading the Section, as emphasized by this

Arbitrator, the Legislature declared that this Section was not a new enactment but rather “a declaration of existing law.” This Arbitrator notes that the provision was introduced into the Illinois House of Representatives on October 27, 2021.

The fact that Section 13.5 may not be effective until June 1, 2022, in the opinion of this Arbitrator, begs the point for, as early as October 27, 2021, by the language of Section 13.5, the Legislature was stating that the statement in 13.5 was a declaration of existing law.

The conclusion that this Arbitrator reaches in addressing the arguments over the application of the IHRCA is that, as Judge Lee concluded, the City and Department are following the law.

The announced policy by the City provided that “all City employees who are fully vaccinated by October 15, 2021 shall receive one (1) personal day that must be used by June 30, 2022.” This provision brought forth two issues in this matter.

First, the Unions argued that the personal day time for usage be extended to the end of the year 2022 rather than June 30, 2022. Whether there are operational reasons to extend the opportunity for using the personal day provided for those Officers who were fully vaccinated by October 15, 2021 cannot be determined on the record that was made and can be best resolved by discussion between management and the Unions. For this reason, on this issue, this Arbitrator will remand the matter back to the parties for the opportunity in negotiations to address whether there should be an extension caused by operational needs as to the use of the personal day.

The second issue raised by the Unions was that the method of informing timekeepers at the Districts as to Officers who were eligible for the one personal day had the possibility of revealing personal health information. In this regard, the Award will provide that the Chicago

Police Department, within 14 days of the Award, submit a statement or plan to the Unions designed to safeguard health information when providing the names of Officers entitled to a personal day under the policy. Any disputes as to the resolution of this issue shall be returned to this Arbitrator for final decision, if necessary.

There is the dispute between the parties as to the Department's treatment of Officers who have not reported their vaccination status through the Covid-19 employee testing portal by October 15, 2021. This Arbitrator begins his analysis of this particular dispute by again referencing the policy.

The policy is set forth in Article IV, Section E, which reads:

Violations of this policy, including but not limited to, non-compliance with this Section; or providing false or misleading information about vaccination status, test results, or the need for an accommodation; or the failure to test as applicable as discussed in Section VII, will result in disciplinary action up to and including discharge.

Article IV, Section E, would suggest that any action taken by the Department would be considered disciplinary. However, Article V is entitled "Proof of Vaccination". Article V, Section F, provides:

Employees who have not reported their vaccination status by October 15, 2021 will be placed in a non-disciplinary no-pay status until they have reported their vaccination status.

Thus, despite the discipline language of Article IV, Section E, the policy in Article V, Section F, modifies Article IV, Section E, when it comes to failure to report vaccination status by providing for an employee to be placed "in a non-disciplinary no-pay status" until compliance with the reporting of the Officer's vaccination status. To this Arbitrator, the language of the policy just noted is there to be read and honored by the Department consistent with the applicable CBAs as



interpreted by arbitrators.

The issues raised as to Officers who had not reported their vaccination status require an inquiry as to the actions of the Department and the applicable CBA language. In this regard, it is noted that as of December 22, 2021, 286 Officers had been placed in no-pay status. 197 of those Officers are now back on pay status presumably because they have complied with the reporting requirement. Of the 197 Officers, 104 were in no-pay status for 10 days or less, 61 were on no-pay status between 11 and 15 days. (Tr. 545; EE X 7).

The Unions, relying primarily on the FOP CBA, note that Section 8.1 reads: “No officer covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any manner without just cause.” (Emphasis by Arbitrator.) The Unions also note that pursuant to Section C of Appendix Q, Officers shall not be required to serve a suspension until an arbitrator rules on the merits of a grievance challenging the suspension.

The Unions further rely on Sections 10.1 and 10.2 alleging that the procedure used by the Department in informing and seeking compliance from Officers as to the reporting requirement was done in a discriminatory manner.

There is no question that arbitrators in disputes between the City and the FOP have concluded that the “relieved from duty” language in Section 8.1 requires a just cause analysis when the removal is for alleged physical or psychological reasons. *See, City of Chicago and Fraternal Order of Police Chicago Lodge No. 7 (Raymond Hayes) Gr. No. 11-84-4 (Goldberg, 1986); City of Chicago and Fraternal Order of Police Chicago Lodge No 7 (Terrence Lynn, Gr. No. 129-84-04 (Witney, 1987); City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, Gr. No. 129-88-022 (Malin, 1989).*

On the other hand, there is a line of arbitrator awards recognizing that placement on a non-disciplinary no-pay status is not a removal requiring a just cause analysis. Arbitrator Peter Meyers upheld the placement of an Officer's no-pay status for failure to comply with a request for records regarding the Officer's treatment for alcoholism. *City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, Gr. No. 129-87-9 (Daniel Rivera)* (1988). Arbitrator Goldstein in *City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, Gr. No. 08/036 (Battaglia)*, concluded that placement of the Police Officer on no-pay status for a period of four weeks due to a delay in the Officer obtaining his FOID card as required by the Department was not a "concealed act of discipline", but involved a contract requirement, thereby denying the grievance.

In a somewhat different situation, Arbitrator Meyers, in *City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, Gr. No. 007-89-003/362 (Clifford Payne)* (1992), denied medical roll benefits to an Officer who had not complied with the required procedures.

It is this latter line of arbitration decisions that causes this Arbitrator to conclude that the placement of an Officer on no-pay status during the time that the Officer failed to submit vaccination status in the Covid-19 vaccination portal was not a "concealed act of discipline" or, for that matter, a "concealed act of removal." Unlike discipline or removal, it is within the exclusive control of the Officer as to when the Officer is returned to the payroll by reporting the Officer's vaccination status in the portal as 197 Officers have done who had been on no-pay status because the Officers had not reported their vaccination status. When an Officer is suspended or removed, the Officer has no control over the consequences of such Department actions except to file a grievance challenging the Department's actions.

For the above reasons, the placement of an Officer on no-pay status who failed to report his or her vaccine status as such did not violate the provisions of Section 8.1 or Appendix Q.

The claims that the actions of the Department discriminated against Officers allegedly in violation of Sections 10.1 and 10.2 center on the procedure that was followed in addressing Officers whom the Department believed had not reported their vaccination status. Shortly after the October 15, 2021 deadline for Officers to enter their vaccination status in the vaccination portal, the Department implemented a three step process, conducted in successive order on the same day, involving Officers as to whom it was believed had not reported their vaccination status. (Tr. 159-160). The Officer was first ordered to appear for a counseling session in the Department's Human Resources office in CPD Headquarters. After the counseling session, the Officers was read a statement advising of the obligation to report the Officer's vaccination status. If the Officer declined to comply, the Officer would be directed to another office in Headquarters where the Officer turned over his or her Star, shield, keys to the Officer's police vehicle, and the Officer would be placed on no-pay status and relieved of police powers and told not to report to duty. (Tr. 161-163). The third step was that the Officer was again asked if the Officer would report his or her vaccination status. If the Officer declined, the Officer was given a direct order to comply.

In mid-November 2021, the Department changed the procedure in that the Direct Order segment was given approximately two weeks after the counseling session. According to Commander Rowling, it was to expedite the procedure in recognition of providing Officers with both Union and legal representation. (Tr. 525-526). The record reveals that a number of Officers involved in the above described process at some point in the process, including when ordered to

do so, chose to report their vaccination status. Though there is a discipline issue raised by the Unions concerning the above described process, which this Arbitrator will address later in this Opinion, the above skeleton outline of the process utilized by the Department to gain compliance, in the view of this Arbitrator, highlights two facts upon which the Unions essentially claim there was discriminatory treatment among Officers by the Department.

FOP First Vice President Michael Mette testified in effect that, if Officers who failed to report their vaccination status by October 15, 2021 were to be put on no-pay status, all such Officers should have employees on no-pay status on the same date, October 15, 2021; that the failure to do so by calling individual and groups of Officers to Headquarters for the three-step process represented different treatment among Officers, namely, discrimination. (Tr. 183).

Commander Rowling of the Department's Labor Relations testified that the Department believed that Officers should not be placed in no-pay status without first being given a chance to rectify matters and come into compliance. (Tr. 518).

There was also testimony that as a result of the process applied by the Department, "probably several dozen Officers, if not more" were able to establish that they had complied with the vaccination notification prior to October 15, 2021. (Tr. 165, 221-222). In addition, given the number of Officers that were initially not in compliance, it could be argued that daily Officer employment needs required a controlled process. Commander Rowling also testified that no unit or watch was exempt from the process. For the above reasons, the Department's application of the three step process applied to individual and groups of Officers represented a practical approach to ascertaining vaccination compliance and was not discriminatory.

The second area of alleged prejudice or discrimination is the claim made that Officers

given a direct order to report their vaccination status two weeks after the counseling session, as compared to Officers who were given a direct order on the same day of the counseling to comply, was discriminatory based on the proposition that the direct order was more likely to cause the Officer to comply. On this theory, it was argued that the Officers given an order on the same day had at least a two week advantage in responding to an order to comply and thereby avoided no-pay status. (Tr. 702). This Arbitrator is not persuaded that the mid-November 2021 procedure change represented discrimination among Officers because the spreadsheet setting forth the Officers who were placed on no-pay status after initially refusing to obey the order to comply establish that in both scenarios Officers continued to refuse to obey, causing the City to persuasively suggest that the resulting time in no-pay status was more likely “the motivating force behind deciding to come into compliance than receipt of a direct order.” (CE X 70 p. 46 City’s brief).

As noted above, this Arbitrator, in setting forth the three step process in addressing an Officer’s compliance with the vaccination status notification in the portal, as noted at pages 36-37 of the FOP’s brief, when the Officer was in the counseling session the Officer was read a statement where in the second page contained the caption “disciplinary process.” PUE Z-1 (Tr. 569-571). Upon being given a direct order to comply with the vaccination status notice, the Officer was given a pre-printed, signed by the exempt member, order which contained the following statement: “You are further advised that should you not comply with this direct order, you will be subject to disciplinary action that could result in a penalty up to and including separation from the Chicago Police Department.” PUE AA.

The evidence further reveals that Officers refusing orders to comply with the notification

requirement were to be given CL numbers which is the start of the investigation process.

According to Commander Rowling, as of December 23, 2021, 138 Officers refusing to comply with the direct order to enter the Officer's vaccination status in the portal were given CR numbers as part of the investigative process. (Tr. 531, 545, 590).

The evidence also reveals that Officers with CR numbers were charged with a violation of a direct order, which is a Rule 6 violation, and were required to attend an interrogation session at the Bureau of Internal Affairs. According to the City and Department, no Officer has yet to be notified of discipline based on a sustained allegation.

As part of the above discussion, this Arbitrator notes that he was the recipient of first, on February 14, 2022, and then on February 16, 2022, a letter as to the status of Police Officer Danielle Stark who was placed on no-pay status on November 17, 2021 as she declined to report her vaccination status. It was first reported that she was being ordered to report at the Bureau of Internal Affairs to be separated, but it turned out she was questioned concerning her failure to report her vaccination status. Nevertheless, Officer Stark had become the subject of a disciplinary investigation.

The point of the above observations as to the Department's response to Officers who decline to report their vaccination status in the portal by initiating the disciplinary proceedings is that, as referenced by this Arbitrator at page 40 of this Opinion, the Department is failing to abide by the announced City policy. To repeat, Article V, Section F, specifically modifies Article IV, Section E, by providing that those employees who fail to report their vaccination status "be placed on a non-disciplinary no-pay status until they have reported their vaccination status."

By initiating disciplinary investigations with CL and CR numbers and having members

interviewed by BIA investigators, the Department was not complying with the announced City policy for failure at the point in time in reporting vaccination status. Counseling and advising Officers of the effect of a non-disciplinary no-pay status did not violate the policy. However, it was represented that no Officer put on no-pay status for failure to report his/her vaccination status who subsequently reported their vaccination status and was returned to pay status has not been notified of any proposed discipline for the failure to notify. Assuming this to be the fact, there is no basis to address at this point any non-existing proposed discipline. The Award that follows will reserve jurisdiction to resolve any resulting discipline issues, if any, in the limited circumstances noted above.

The Unions rely on a 30 December 2015 memorandum signed by then Interim Superintendent John J. Escalante directing that Officers on no-pay status be permitted to use accrued/banked time to continue in pay status, maintaining that Officers who were placed on no-pay status following the failure to report vaccination status in the portal should be permitted the same opportunity to remain in pay status.

The introductory paragraphs of the memorandum read:

Sworn Chicago Police Department (“Department”) personnel who are unable to meet the essential qualifications and conditions of their employment as police officers due to the revocation, suspension or lapse of the member’s Firearm Owner’s Identification (FOID) card and/or Driver’s License shall be placed in a “no-pay” status and will be ineligible to serve as police officers of the Department during the period of such suspension/revocation/lapse.

Members in a “no pay” status will be coded in the City’s payroll system as “[to be determined by OBM]”. (At the discretion of the Superintendent, such members may be permitted) to utilize accrued/banked time during such period of ineligibility. However, members in a “no pay” status will not earn or accrue salary, benefit

time or receive benefits beyond the value of their accrued/banked time, commencing at the point that s/he is placed in a “no pay” status. For the purposes of this communication, accrued/banked time includes earned and unused vacation/furlough days, baby furlough days, personal days, and compensatory time.

In keeping with the Department’s efforts to maintain transparency, the following provides the Department’s protocol for sworn members in a “no-pay” status, (irrespective of the reason the member is placed in a “no-pay” status.)

\* \* \*

(Parentheses added by Arbitrator.)

This Arbitrator has highlighted certain language by the use of parentheses. The first paragraph explains that Officers not having a valid FOID card or driver’s license shall be placed on no-pay status. The second paragraph provides that, at the discretion of the Superintendent, a member “may” be permitted to utilize accrued/banked time to remain on pay status. The third paragraph does reference “irrespective the reason a member is placed in a ‘no-pay’ status.”

FOP First Vice President Michael Mette acknowledged that the Department allowed Officers to “burn their accrued/banked time in order to still be getting paid while you’re trying to fix those issues.” (Tr. 174). Vice President Mette was referring to an FOID card and driver’s license. (Tr. 227). He did suggest that the Department has also permitted Officers facing criminal charges to utilize accrued/banked time “to continue on the payroll.” (Tr. 228).

When read in context with the introductory paragraph the “irrespective” language is referring to either one or the other of two situations referenced in the first paragraph, namely, the Officer not possessing either an FOID card or a valid driver’s license that would cause the Office to be placed in a no-pay status.

Though the memorandum reserved discretion in the Superintendent exercising this discretion, Superintendents over the years have permitted a practice to the development between



the parties as to an Officer's use of accrued/banked time when placed on no-pay status due to the failure to have a current FOID card or valid driver's license. The practice apparently has been extended to Officers facing criminal charges. However, there is no evidence on this record that this practice has been extended to other instances of no-pay status placement. Based on the discretionary language of the memorandum and the lack of evidence that the practice has been extended as claimed, the memorandum is not support for permitting Officers on no-pay status for failure to report vaccination status to utilize accrued/banked time.

At pages 61-62 of the FOP post-hearing brief, the argument is made that the vaccine policy is unreasonable "because no boosters have been required." Dr. Arwady did imply in her testimony on cross-examination that a booster shot for those already fully vaccinated adds to the protection against the consequences of Covid-19. (Tr. 844-845).

However, the reference to the term "booster" highlights that the absence of a booster requirement does not undermine the reasonableness of the City's and Department's vaccination mandate in the context of this dispute. The announced aim of the vaccine mandate is to have all members of the Department fully vaccinated as protection against Covid-19 infections. There was no suggestion in the cross-examination of Dr. Arwady that being fully vaccinated did not give protection against Covid-19. She concluded, based on the evidence compiled by her Department, that vaccinated individuals resulted in milder Covid-19 infections and less hospitalizations as compared to individuals who were not vaccinated. Furthermore, boosters only come into play if one was fully vaccinated. To repeat, the aim of the vaccine mandate was to have members fully vaccinated.

This Arbitrator, having reached this point in a long journey in reviewing the extensive

transcript, briefs of the parties and evidence submitted, as well as case citations and most recent submitted Court decisions, again emphasizes that he is not deciding any pending unfair labor practices between the parties nor is he acting as an interest arbitrator. This Arbitrator's authority is limited to interpreting the respective collective bargaining agreements at issue. This Arbitrator, in doing so, has concluded, as discussed, that the Department pursuant to Article 4, Management Rights, along with the City, had the right to issue the vaccine mandate and that in doing so the Department's action was a reasonable exercise of management rights. This Arbitrator, based upon this conclusion, also concluded that there was no duty under the CBAs that were in effect by their Article 28 language to engage in mid-term interest arbitration. This Arbitrator also addressed the just cause and discriminatory claims as well as other issues raised.

Based on the above summary and recognizing and resolving grievances involving contract interpretation, this Arbitrator has authority to fashion a remedy. The Award that follows provides for the Arbitrator maintaining jurisdiction to address certain issues raised in the opinion and to give the parties the opportunity to clarify two aspects of the vaccine policy so that they can be addressed, if necessary, in a supplemental award.

In the view of this Arbitrator, the two aspects of the vaccine mandate that need clarification so that this Arbitrator can issue a supplemental award as it affects the reasonableness of the policy is the question of masks and testing.

In a memorandum dated September 30, 2021, Ms. Porter-Adams wrote: "With respect to face coverings, the City currently requires all employees to wear masks when entering City buildings, as well as to keep their masks on in common areas and when the social distancing cannot be maintained." This statement, along with other statements in the record, raises

questions as to the City's mask policy in connection with the vaccine mandate.

In addition, recognizing that this Arbitrator has concluded that testing is not to be in lieu of vaccination, it is not clear on this record as to whether any testing, particularly as a number of Officers are awaiting their accommodation requests, is to be included in the policy and in what configuration.

For the above reasons, the Award will provide that the parties engage in at least one negotiation to clarify or resolve these two issues and advise to this Arbitrator as to the result of the negotiations so that this Arbitrator may determine if there is a need to issue a supplemental award clarifying the reasonableness of the vaccine mandate policy as applied to these two situations.

This Arbitrator sets forth the following Award based on his Opinion interpreting the parties' CBAs as applied to the facts presented.

#### **A W A R D**

1. The grievances are denied.
2. Police Department employees are to obtain the first shot of the Moderna or Pfizer shots and the Johnson & Johnson shot by March 13, 2022 and to obtain the second shot of the Moderna or Pfizer shot by April 13, 2022. So long as the employees obtain the shots by the deadlines set forth, they will be in compliance with this Award which is based on obtaining the shots.
3. If the employee establishes that he or she has made a good faith attempt to obtain an appointment to be vaccinated prior to March 13, 2022, but was unable to obtain such an appointment and be vaccinated until after March 13, 2022, then the Department, on a case-by-

case basis, depending on the facts, is to extend the deadlines to comply for a reasonable short period for that employee only. Disputes as to whether the individual employee acted in good faith and the reasonableness of the time extension as well as any remedy are to be resolved by this Arbitrator in an expedited procedure as determined by this Arbitrator.

4. Employees whose request have not previously been denied and who have submitted all required documentation for either a medical or religious exemption by December 28, 2021 to the City's Human Resources Department shall be exempt from the requirement to be vaccinated while a decision on the request is pending. However, if a request is denied, the employee shall have six weeks from the date of receipt of the denial to comply with the vaccination requirements.

5. Employees who receive a vaccine and are unable to report to work due to an adverse reaction shall not be charged with a sick leave violation and will be entitled to the same sick leave benefits for adverse vaccine reactions as they received for any other ailment.

6. The parties are to engage in discussions to resolve scheduling issues as discussed in the Opinion that may arise as to the awarding of personal days within the time line contemplated by the policy.

7. The Police Department shall notify employees of this Award through the Department's method of notification.

8. Based on observations set forth in the Opinion, this Arbitrator reserves jurisdiction to resolve disputes as to discipline, if any, of an Officer initially put on no-pay status for failure to report vaccination status who subsequently reports his or her vaccination status and was returned to pay status because of the initial failure to report or failure to obey an order to

report vaccination status.

9. The parties are to engage in at least one negotiation session to clarify or resolve two issues as referenced in the Opinion, namely, the question of masks and testing, and advise this Arbitrator as to the result of the negotiations so that this Arbitrator may determine if there is a need to issue a supplemental award clarifying the reasonableness of the vaccine mandate policy as applied to these two issues.

10. The Police Department, within 14 days of the Award, shall submit a statement or plan to the Unions designed to safeguard health information when providing the names of Officers entitled to a personal day under the policy. Any disputes as to the resolution of this issue shall be returned to this Arbitrator for final decision, if necessary.

11. The statements made in the Opinion addressing the Award are incorporated herein by reference.

12. This Arbitrator shall continue jurisdiction to resolve any issues raised by the parties concerning this Award or the subject matter of this dispute and hereby reserves jurisdiction to modify or amend the Award at this Arbitrator's discretion.

13. Because of the nature of this Award, this Arbitrator's fees and expenses shall be split between the parties with the City paying one-half, the PBPA Units paying one-quarter, and the FOP Chicago Lodge No. 7 paying one-quarter.

*George T. Roumell, Jr.*  
GEORGE T. ROUMELL, JR.  
Arbitrator

February 23, 2022