

INTEREST ARBITRATION

AFSCME District Council 33

and

CITY OF PHILADELPHIA

Arbitration Panel

Alan Symonette, Esq.
Neutral Arbitrator and Panel Chair

Omar Salaam
District Council 33
District Council 33-Appointed Arbitrator

Shannon Farmer, Esq.
Ballard Spahr LLP
City-Appointed Arbitrator

Appearances

FOR DC 33:

Samuel Spear, Esq.
Vlad Kachka, Esq.
Spear Wilderman, P.C.

FOR THE CITY:

Catharine Lubin, Esq.
Ballard Spahr LLP

Cara E. Leheny, Esq.
City of Philadelphia Law Department

Aleena Y. Sorathia, Esq.
Ahmad Zaffarese

Introduction

We are now more than 20 months into a global pandemic that currently shows no sign of abating. In fact, cases in the City of Philadelphia, the nation and the world are surging, with cases in some areas at record levels. More than 50 million people in the United States have been diagnosed with COVID-19 and more than 800,000 Americans have died.

Although Philadelphia has worked hard to turn back COVID-19, more than 200,000 Philadelphians have had COVID-19 and more than 4,000 have died. Despite masking rules and other efforts, cases and hospitalizations are on the rise in the City and COVID-19 remains a threat to the health and safety of all City employees and residents.

Given the critical work that City employees perform, it is more important than ever that City employees are vaccinated to help protect other City employees and the public from this deadly disease and help reduce the spread in the City generally. For that reason, on August 11, 2021, the City announced that all newly-hired employees starting work on or after September 1, 2021 must be vaccinated as a condition of their employment and established additional masking requirements for current employees who remain unvaccinated after that date. On August 16, 2021, the Board of Health for the City of Philadelphia issued an Emergency Regulation Governing the Control and Prevention of COVID-19 Mandating Vaccines for Workers and In Higher Education, Healthcare, and Related Settings.

The City thereafter announced that all exempt and non-represented civil service City employees must be fully vaccinated or have been granted an exemption from the vaccination requirement by December 1, 2021. On November 19, 2021, the City extended the vaccination requirements to all represented City employees and City contractors effective January 14, 2022.

District Council 33 requested bargaining over the effects of the City's announcement and made a number of proposals including allowing more time for employees to comply with the deadline, lengthening the period of leave provided to employees who do not comply with the mandate by the deadline, allowing employees who leave employment because of the mandate to return, and ensuring that City employees in different bargaining units are subject to the same rules. Following that request, the City and the Union agreed, on a non-precedential basis, to put all proposals regarding the effects of the City's vaccine mandate before an interest arbitration panel.

A hearing in this matter was conducted on December 17, 2021, in Philadelphia, Pennsylvania, at which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. Following executive sessions, the following Award was adopted by a majority of the Panel.

AWARD

I. Covered Individuals

This Award covers all employees of the City of Philadelphia represented by DC 33, regardless of work location, including employees who are eligible for interest arbitration, but not including any employees of the First Judicial District. Any interest arbitration panel shall not have jurisdiction to address the provisions in this Award.

II. Vaccination Requirement

1. In order to continue working in their current position, all individuals covered by this Award are required to receive at least a first dose of COVID-19 vaccination(s) and provide proof of their vaccination status; or, have an exemption request to the vaccination requirements submitted and under review, by January 14, 2022. Employees on a leave of absence on the Effective Date of the Award must comply with this provision before being permitted to return to work.

2. City employees who receive a first dose of a COVID-19 vaccine by January 14, 2022 will be required to complete their vaccination series according to the schedule prescribed for the vaccine they receive and will be required to double-mask or wear an appropriate N95 or equivalent as well as participate in the testing requirements detailed in this Award until the vaccination schedule is complete. Employees must provide proof that they have completed their vaccination series within the required timeframe. Any City employee who does not complete their vaccine series within 14 days of the prescribed schedule for the vaccine they received will be considered out of compliance with this mandate.

3. If an employee has a request for exemption to the vaccination requirement pending on January 14, 2022 that is later denied, the employee must begin the vaccination process by receiving a first dose of a COVID-19 vaccine within 14 calendar days of the denial of their exemption request or the denial of their appeal of that request under this Award, if a timely appeal is filed under the process below. They must then complete their vaccination series in accordance with the schedule prescribed for the vaccine they receive. Any City employee who does not complete their vaccine series within 14 calendar days of the prescribed schedule for the vaccine they received will be considered out of compliance with this mandate.

4. City employees who fail to comply with this mandate to become fully vaccinated and who are not granted an exemption will be considered unable to perform their duties, will be informed they may no longer report for work, and will be placed on unpaid leave (Vax Leave). The interaction of Vax Leave and appeals of exemption denials is discussed in Section IV below. At the end of the period of Vax Leave, if they have not started their schedule of vaccination, they may be separated from employment.

5. Employees who receive a first vaccine dose of a COVID-19 vaccine during Vax Leave will be given an appropriate length of time to complete that vaccine schedule as determined by the type of vaccine and will be required to double mask or wear an appropriate N95 or equivalent as well as participate in the testing requirements detailed in this Award until the vaccination schedule is complete. Should the employee fail to complete the schedule and

provide proof that they've completed their schedule of vaccination in the time frame provided, they may be separated from employment.

6. Employees who submit a request for exemption during their Vax Leave will remain on Vax Leave until a determination is reached on their exemption request, until they exhaust the period of Vax Leave, or if they receive a first vaccine dose, whichever occurs sooner.

7. An individual who fails to comply with the requirements of this Award and is separated from employment shall be considered to have abandoned their position and their separation shall not be subject to the just cause provisions of the applicable collective bargaining agreement and shall not be reviewable by the Civil Service Commission to the full extent permitted by law.

8. The City will provide the Union at least 30 calendar days' notice and an opportunity to meet and discuss before it requires employees to receive a booster shot to be considered fully vaccinated in compliance with this Award.

III. Vax Leave

1. Employees may be placed on Vax Leave for a maximum of 30 calendar days following the employee's removal from work for failure to comply with the requirements of this Award.

2. Employees on Vax Leave shall continue to be eligible for health benefits and shall not experience a break in seniority or pension service, provided that they have sufficient vacation time available to cover the period of Vax Leave. If the employee does not have sufficient accumulated vacation available, any period of Vax Leave beyond 15 calendar days will be considered a break in service.

3. Employees on Vax Leave will be required to utilize accumulated paid vacation. Employees who do not have paid vacation available will be unpaid.

4. Employees on Vax Leave shall continue to be subject to applicable departmental restrictions on outside work.

IV. Exemptions

A. General Provisions

1. An individual may not simply opt out of vaccination. However, religious or medical exemptions are permitted as provided in this section.

2. City employees wishing to request such an exemption may request the appropriate exemption forms from their departmental human resources professional. The exemption request must be submitted to the Employee Relations Unit within the City's Department of Labor by January 14, 2022 or the employee will be deemed unable to work and placed on Vax Leave while the request is pending review. Employees are strongly encouraged to submit their requests as soon as possible to avoid delays in the review of their requests.

3. The Employee Relations Unit will determine if an exemption applies, and when circumstances necessitate, consult with the appointing authority on such determination. An employee granted an exemption must strictly follow the applicable accommodations.

B. Medical Exemptions

1. A covered Individual may request an exemption by submitting a certification from a licensed healthcare provider to their HR professional. In the case of a City employee, these requests may be submitted to the Employee Relations Unit directly utilizing the appropriate exemption form. Medical exemptions must include documentation from a licensed healthcare provider that demonstrates the exemption applies to the specific individual submitting the certification because the COVID-19 vaccine is medically contraindicated for the individual. The request must also be signed by the employee. For the purposes of this mandate, a licensed healthcare provider means a physician, nurse practitioner, or physician assistant licensed by an authorized Pennsylvania licensing board.

C. Religious Exemptions

1. A covered Individual may request an exemption by submitting a signed statement to their HR professional that the individual has a sincerely held religious belief that prevents them from receiving the COVID-19 vaccination. In the case of a City employee, these requests may be submitted to the Employee Relations Unit directly using the appropriate exemption form. The request must include a certification as to why the worker's religious belief prevents them receiving the COVID-19 vaccine and must be signed by the employee. Philosophical or moral exemptions are not permitted.

D. Appeals from Exemption Denials

1. Employees denied religious or medical exemptions may appeal their denials as described in this section.

2. All appeals must be submitted to the Employee Relations Unit within 7 calendar days of the date of the notice of denial of the employee's exemption request.

3. The appeal must state the basis for the appeal. Employees are permitted, but not required, to submit additional supporting documentation along with their appeal.

4. Employees who submit their exemption requests before January 14, 2022 will be permitted to continue to work pending determination of their appeal, provided that they comply with any requirements imposed on unvaccinated individuals including double masking and testing. If the appeal is denied, the employee will be placed on Vax Leave and subject to separation if they do not comply by the end of their Vax Leave.

5. Employees who submit their exemption requests while on Vax Leave will not be permitted to work pending determination of their appeal and will be placed in unpaid status for a maximum of fifteen 15 calendar days if they exhaust Vax Leave.

6. Appeals will be considered by one or more retired judges, or other individuals agreed upon by the parties, engaged by the City for this purpose. The Union can suggest judges or other individuals to consider the appeals. The City will pay the fees for the individuals considering the appeals.

7. The judges will review the appeals to determine if the employee has established that the employee is entitled to an exemption based on their medical condition or sincerely held religious belief under applicable City, state and federal law based on the documentation submitted by the employee.

8. The judges will consider all documentation submitted by the employee in connection with their original request and any supplemental documentation submitted by the employee during the review process or as part of the appeal. There will be no hearings as part of the appeals.

9. If the judge grants an appeal, then the employee will be deemed to have an approved exemption. If the judge denies the appeal, then the original exemption denial shall stand and the employee will be required to comply with the mandate under the time frames identified above. Denials of appeals are not subject to the grievance and arbitration process in the collective bargaining agreement or to review by the Civil Service Commission to the full extent permitted by law.

V. Accommodations for Exemptions

1. Employees granted exemptions must strictly follow all safety protocols in place for unvaccinated individuals, which will include double-masking or wearing an appropriate N95 or equivalent and submitting to routine testing at a frequency and manner to be determined by the City in consultation with an employee's Appointing Authority.

2. Testing protocols will be developed by the City in consultation with the Appointing Authority and may vary based upon the nature, frequency, and location of an employee's work.

3. Costs of any testing for City employees shall be covered by the City.

4. Employees granted exemptions who fail to follow the safety protocols specified by the City shall be subject to discipline for insubordination.

VI. Vaccination Bonus

All permanent City employees who have completed their full schedule of COVID-19 vaccination and provided proof of their vaccination status in accordance with Section IX by February 15, 2022, will receive a cash bonus of \$300, which shall be paid by April 1, 2022. This includes City employees covered by prior vaccination mandates.

This bonus does not extend to any employee receiving an exemption to the vaccination requirements or any employee working less than 20 hours per week. The amount of the bonus

will be pro-rated for permanently-appointed employees working 20 or more hours but less than 37.5 hours per week.

VII. Vaccine Side Effects

Temporary or permanent disabling conditions caused by the COVID vaccine will be considered work related for purposes of disability benefits system.

VIII. Department Responsibility

City departments and agencies must:

- identify and notify employees covered by the mandate;
- inform employees of the mandate and their responsibilities under the mandate;
- receive, track and document the employee's vaccination status;
- take appropriate next steps with employees who fail to conform to the mandate; and,
- enforce mandate requirements including testing, masking, and exemption documentation as appropriate.

IX. Employee Responsibility

City employees must:

- be vaccinated according to an approved schedule;
- provide proof in the form of an official vaccination card or other appropriate medical documentation which demonstrates that the employee has completed their schedule of COVID-19 vaccinations. A copy of an employee's medical documentation of their vaccination status shall be uploaded into the City's Oracle human resources information system through Employee Self-Service or presented to the employee's HR manager, who will enter the information into the Oracle system;
- provide accurate information on their vaccination status; and,
- comply with mandate requirements including testing, masking, and exemption documentation as appropriate.

X. Reinstatement

Individuals separated from employment for failure to meet the vaccination requirements set forth in Section II of this Award shall be considered to have resigned their position in good standing for the purposes of reinstatement pursuant to Civil Service Regulation 15.031.

XI. Other Awards or Agreements

1. If any interest arbitration award or agreement between the City and another bargaining unit regarding the City's vaccine mandate provides for a greater financial incentive than set forth in this Award, those provisions shall be deemed to apply to employees covered by this Award and the timing of the payment of the vaccination bonus in Section VI shall be extended to the later date such payment is due under that other agreement or award, if applicable.

2. If any agreement between the City and another bargaining unit or interest arbitration award involving the Neutral Arbitrator covering another bargaining unit regarding the City's vaccine mandate provides for a longer period of Vax Leave than set forth in this Award, those provisions shall be deemed to apply to employees covered by this Award.

3. If any agreement between the City and another bargaining unit or interest arbitration award involving the Neutral Arbitrator covering another bargaining unit regarding the City's vaccine mandate provides for an effective date after the Effective Date of the mandate provided for in this Award, employees covered by this Award will not be subject to removal from the workplace or separation from employment pursuant to Sections II.4 or II.7 until the effective date of the corresponding provision in the later agreement.

XII. Effective Date

The Effective Date of the mandate provided for in this Award is January 14, 2022.

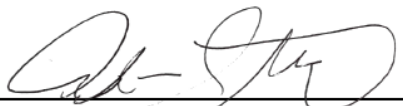
XIII. Panel's Jurisdiction

The Panel shall retain jurisdiction to hear any disputes arising from the implementation of this Award.

XIV. Conclusion

All proposals of the parties not included in the Award are denied.

It is understood that the signature of the Arbitrators attests to the fact that the provisions of the Award represent the majority opinion and Award on each issue by the members of the Arbitration Panel.



Alan Symonette
Neutral Arbitrator and Panel Chair

Date: 12/29/21



Omar Salaam
DC 33-Appointed Arbitrator

Date: 12/29/21

Concur X Dissent _____



Shannon Farmer
City-Appointed Arbitrator

Date: 12-22-21

Concur x Dissent _____