

INTEREST ARBITRATION

FRATERNAL ORDER OF POLICE, LODGE NO. 5

and

CITY OF PHILADELPHIA

Arbitration Panel

Alan Symonette, Esq.
Neutral Arbitrator and Panel Chair

Ralph J. Teti, Esq.
Willig, Williams & Davidson
FOP Lodge 5-Appointed Arbitrator

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

Appearances

FOR FOP Lodge 5:

Richard Poulson, Esq.
William Campbell, Esq.
Willig, Williams & Davidson

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

This Award is issued pursuant to the continued jurisdiction and authority conferred in the Act 111 interest arbitration award between the City of Philadelphia and FOP Lodge 5 on September 14, 2021.

Since March 2020, the City of Philadelphia and its Police Officers have struggled to cope with the impact of the global COVID-19 pandemic. To date, more than 50 million people in the United States have been diagnosed with COVID-19 and more than 800,000 Americans have died, including approximately 500 police officers.

Despite the City and the Police Department's efforts to respond to the COVID-19 pandemic, more than 200,000 Philadelphians have had COVID-19 and more than 4,000 have died, including 8 Philadelphia Police Officers. Despite those 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.

In August 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. Also in August 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.

In November 2021, the City 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.

In November 2021, the City proposed to implement a similar vaccine mandate for the Police Department. The matter was referred to this arbitration panel pursuant to Section 17 of the September 14, 2021 Act 111 award. The parties conducted hearings on December 15, 2021 and January 12, 2022, 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.

The Panel notes that the extension of COVID-19 vaccination requirements to the Police Department is challenging and unique among City departments due to another current and significant threat to public health – illegal gun violence. During the period of the COVID-19 pandemic, the City of Philadelphia and its Police Department have struggled to contain an epidemic of gun violence in the City. In 2020 and 2021, the City endured more than 8,000 shootings and over 1,000 homicides, and the Department continues to struggle to maintain a compliment of police officers sufficient to address the twin threats of COVID-19 and gun violence.

The Panel is cognizant of the impact to public safety and health of ensuring that as many police officers as possible are vaccinated against COVID-19, while also ensuring the Department has sufficient staff compliment to successfully fight our gun violence epidemic.

In light of these concerns within the shared concern of protecting the citizens of Philadelphia, a majority of the Panel has adopted the following Award.

AWARD

I. Vaccination Requirement

1. 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 February 11, 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. Officers who receive a first dose of a COVID-19 vaccine by February 11, 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. Officers must provide proof that they have completed their vaccination series within the required timeframe. Any officer 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 officer has a request for exemption to the vaccination requirement pending on February 11, 2022 that is later denied, the officer 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 officer 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. Officers who fail to receive a first vaccine dose and who have not requested an exemption by February 11, 2022 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.

5. By close of business on February 18, 2022, the City shall provide the Panel with an updated accounting of vaccinated and unvaccinated officers. Without providing names or payroll or badge numbers, this accounting will include information by unit on the duty status of unvaccinated officers, including when restricted or no duty status began for those who are in that status, and the number of unvaccinated officers who are scheduled to DROP on or before June 30, 2022.

6. Following submission of this updated accounting, the Panel will reconvene to determine the consequences to be effective March 1, 2022 for non-compliant officers. In the absence of further action by the Panel, any officer who has not requested an exemption or provided proof of receipt of their first vaccine dose by noon on February 28, 2022, shall be placed on unvaccinated leave (“U-Vax Leave”) beginning on March 1, 2022 as set forth below.

7. Officers 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 (U-Vax Leave). The interaction of U-Vax Leave and appeals of exemption denials is discussed in Section III below.

8. Officers who receive a first vaccine dose of a COVID-19 vaccine during U-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 officer 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.

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

10. The Panel will meet no later than March 21, 2022, to determine the ultimate consequences for non-compliance with the requirements of this Award, up to and including administrative separation from employment.

11. The Panel will retain jurisdiction to resolve any disputes if the City seeks to require employees to receive a booster shot to be considered fully vaccinated in compliance with this Award.

II. U-Vax Leave

1. Unless modified by further action by this Panel as a result of its review of vaccination data from the Department and its review of current conditions in City and the Department, officers may be placed on U-Vax Leave following their removal from work for failure to comply with the requirements of this Award.

2. Officers on U-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 paid leave available to cover the period of U-Vax Leave. If the employee does not have sufficient accumulated paid leave available, any unpaid period of U-Vax Leave beyond 15 calendar days will be considered a break in service.

3. Officers on U-Vax Leave will be required to utilize accumulated paid vacation, holiday and compensatory time. Officers who do not have paid leave available will be unpaid.

4. Officers on U-Vax Leave shall continue to be subject to applicable departmental restrictions on outside work.

III. Exemptions

A. General Provisions

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

2. Officers 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 February 11, 2022 or the officer will be subject to the requirements in Paragraph I.4 of this Award. If an officer does not submit an exemption request by noon on February 28, 2022, the officer will be deemed unable to work and placed on U-Vax Leave while the request is pending review. Officers 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 officer 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. 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. 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. Failure to appeal in this timeframe will constitute a waiver of the right to appeal.

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 noon on February 28, 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 U-Vax Leave.

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

6. Appeals will be considered by one or more referees mutually agreed upon by the parties, engaged by the City for this purpose. The City will pay the fees for the referees considering the appeals.

7. The referees will convene virtual sessions at which employees will be provided the opportunity to appear and make a sworn statement before the referee, if they request to do so at the time they file an appeal. The referees will establish time limits for such statements in advance. These sessions will not be formal hearings, but rather an opportunity for the employee to appear and make a statement to the referee on their own behalf. No arguments by counsel or briefs after the sessions will be permitted. Employees are not required to appear before the referee to have their appeal considered. Failure to appear at a virtual session constitutes a waiver of employees' right to make any additional statement beyond what the employee submitted at or before the time of their appeal. Virtual sessions will be scheduled at the discretion of the referee. The employee will receive at least 5 calendar days' notice of the session via email sent to their City email address with a copy to the FOP.

8. The referees 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 and statement submitted by the employee. In doing so, the referees 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, including the employee's statement to the referee, if applicable.

9. If the referee grants an appeal, then the employee will be deemed to have an approved exemption. If the referee 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.

IV. 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.

V. Vaccination Bonus

Officers who receive their first shot on or before February 11 and provide proof of their full vaccination status in accordance with Section VIII by March 15, 2022 will receive a cash bonus of \$500.

Officers who receive their first shot after February 11, but on or before February 18, and provide proof of their full vaccination status in accordance with Section VIII by March 22, 2022 will receive a cash bonus of \$300.

Officers who receive their first shot after February 18, but on or before February 28, and provide proof of their full vaccination status in accordance with Section VIII by March 29, 2022 will receive a cash bonus of \$100.

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 who receives their first shot after February 28, 2022.

VI. Vaccine Side Effects

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

VII. Department Responsibility

The Police Department 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;

- provide periodic updates to the FOP regarding mandate progress and enforcement issues in a format agreed to by the parties;
- 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.

VIII. Employee Responsibility

Officers must:

- be vaccinated according to an approved schedule;
- provide proof in the form of providing a copy of an official vaccination card or other appropriate medical documentation that demonstrates that the employee has completed their schedule of COVID-19 vaccinations;
- provide accurate information on their vaccination status; and,
- comply with mandate requirements including testing, masking, and exemption documentation as appropriate.

IX. 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 V shall be extended to the later date such payment is due under that other agreement or award, if applicable.

2. If any agreement or interest arbitration award between the City and another bargaining unit regarding the City’s vaccine mandate provides for a longer period of U-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 or interest arbitration award between the City and 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 this Award until the effective date of the corresponding provision in the later agreement.

X. Effective Date

The Effective Date of the mandate provided for in this Award is February 11, 2022.

XI. Panel’s Jurisdiction

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

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

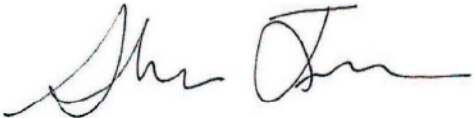
Date: 2/1/2022



Ralph J. Teti
FOP-Appointed Arbitrator

Date: 2-1-2022

Concur _____ Dissent _____



Shannon Farmer
City-Appointed Arbitrator

Date: 2-1-22

Concur _____ Dissent as to the amount of the bonus in Section V

City of Philadelphia

Request for Medical Exemption from COVID-19 Vaccination **(Please print legibly)**

Name: _____ Title: _____
Employee #: _____ Department: _____
Unit: _____ Supervisor: _____

The City of Philadelphia's mandate regarding the COVID-19 vaccination may allow for a medical exemption if they have obtained a medical exemption from their health care provider. Medical exemptions must include;

- a statement signed by a licensed healthcare provider that states the exemption applies to the specific individual submitting the certification
 - a **"licensed healthcare provider" is defined as a physician, certified nurse practitioner, or physician assistant licensed by an authorized state licensing board.**
- specific reason why the COVID-19 vaccine is medically contraindicated for the individual.

Medical exemptions must be requested annually. If approved, the exemption will remain in effect for one year. Individuals with approved exemptions may request to recertify exemptions each year.

Individuals with an approved exemption will be required to comply with additional preventive requirements as specified in the exemption approval. These requirements may be amended in order to protect all members of the communities we serve.

This request will be reviewed, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Individuals are permitted to reapply if new documentation and information should become available.

Important Note: Please note that requesting a medical immunization exemption does not equate to a workplace medical accommodation.

Medical exemption process:

- **Complete and sign the following page(s) of this form**
- **Complete the Personal Statement Form**
- **Submit a certification signed by a licensed healthcare provider as defined above.**
- **Include facts explaining why the exemption applies to the specific individual submitting the certification because the vaccine is contraindicated for the specific individual**
- **Submit all the completed documents**

Incomplete submissions will not be reviewed. Be sure all forms and documentation are submitted at the same time.

City of Philadelphia

Print Name: _____ **Employee #:** _____

Title: _____ **Department:** _____

Email: _____ **Contact Number:** _____

Initial next to each of the statements below:

I request exemption from the COVID-19 vaccination requirement due to a medically contraindicated reason.	
I understand and assume the risks of non-vaccination and accept full responsibility for my health.	
I certify the medical documentation attached is, to the best of my knowledge, accurate and correct.	
I understand that as I am not vaccinated, to protect my own health and the health of the community, I will comply with assigned COVID-19 testing requirements and other preventive guidance for unvaccinated individuals.	
I acknowledge there may be disciplinary action if any of the information I provided in support of this exemption is false.	

By checking this box and typing/print my name above, I understand and agree that I am submitting this document electronically and this it is the legal equivalent of having placed my handwritten signature on the submitted document.

The individual must also acknowledge the information on the exemption request is true and accurate. Section 1-108 of the Philadelphia Code uses the following language:

"I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement herein, I am subject to such penalties as may be prescribed by statute or ordinance."

Signed _____ Date _____

Accommodations for Exemptions

Employees granted an exemption must comply with requirements set forth by the department including the following:

- 1. Routine Testing:** Exempt individuals must be tested by a PCR test or an antigen test for COVID-19 at least twice (2x) per week. The two tests should be spread out appropriately over the week, but there is not a required time interval to account for varying schedules.

Once you have completed this document, submit, along with all documentation, to the Employee Relations Unit by emailing to EmployeeVax@Phila.gov or provide to your HR Manager

City of Philadelphia

Request for Religious Exemption from COVID-19 Vaccination

(Please print legibly)

Name: _____ Title: _____

Employee #: _____ Department: _____

Unit: _____ Supervisor: _____

The City of Philadelphia's mandate regarding the COVID-19 vaccination, may allow for a religious or sincerely held belief exemption if:

- (i) **the employee holds a religious or sincerely held belief which is not necessarily based on a religious tenant which are contrary to the practice of vaccination,**
- (ii) **completes this form, and**
- (iii) **provides the required personal statement and documentation (if applicable) to support the exemption request.**

The City of Philadelphia is committed to providing a safe, inclusive, and supportive experience for all and recognizes and protects an employee's religious or **sincerely held belief** as it pertains to the practice of vaccination. Religious exemptions must be requested annually

Individuals with an approved exemption will be required to comply with COVID-19 testing and other preventive requirements as specified in the exemption approval and as may be updated by later policies. These requirements may be amended in order to protect all members of the communities we serve.

This request will be reviewed, approval is not guaranteed. After your request has been reviewed and processed, you will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal.

Religious exemption process:

- Complete and sign the following page of this form;
- Complete and submit the Personal Statement outlining your justification;
- you may Have your religious leader submit the Religious Organization Statement Form; this is not a requirement to have your exemption considered
- Submit the completed documents.

Once you have completed this document, submit, along with all documentation, to the Employee Relations Unit by emailing to EmployeeVax@Phila.gov or provide to your HR Manager

Incomplete submissions will not be reviewed.

City of Philadelphia

Print Name: _____ **Employee #:** _____

Title: _____ **Department:** _____

Email: _____ **Contact Number:** _____

Initial next to each of the statements below:

I request exemption from the COVID-19 vaccination requirement due to my sincere religious beliefs.	
I assume the risks of non-vaccination.	
I accept full responsibility for my health.	
I agree understand that as I am not vaccinated, to protect my own health and the health of the community, I will comply with assigned COVID-19 testing requirements and other preventive guidance for unvaccinated individuals.	

Please provide a personal written statement detailing your religious or sincerely held belief for requesting a vaccination exemption, and explaining why you are requesting this exemption, the principle(s) that guide your informed consent to request a vaccination exemption, and the basis that prohibits the COVID-19 vaccination. Describe the nature of your objection to the COVID-19 vaccination requirement; how complying with the requirement substantially burdens your religious exercise or belief; and how long have you held the religious and/or belief underlying your objection. Provide an attachment should the space provide below be insufficient and any documents you wish to support your request.

I hereby certify that the statement provided is true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement herein, I am subject to such penalties as may be prescribed by statute or ordinance." Any intentional misrepresentation may result in legal consequences, including termination or removal from employment with the City of Philadelphia.

Signed _____ Date _____