

INTEREST ARBITRATION

IAFF LOCAL 22

and

CITY OF PHILADELPHIA

Arbitration Panel

Robert Gifford, Esq.
Neutral Arbitrator and Panel Chair

Michael Bresnan
President, IAFF Local 22
Local 22-Appointed Arbitrator

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

Appearances

FOR IAFF Local 22:

Lance Rogers, Esq.
Brian T. Newman, Esq.
Rogers Counsel

FOR THE CITY:

Catharine Lubin, Esq.
Elliot Griffin, Esq.
Ballard Spahr LLP

Aleena Sorathia, Esq.
Ahmad Zaffarese LLC

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

AWARD

This Award is issued pursuant to the authority conferred on the Panel by Act 111 consistent with Section 15 of the Act 111 interest arbitration award dated December 16, 2021 between the City of Philadelphia and IAFF Local 22, to address the implementation of a COVID-19 vaccination mandate for Local 22 members.

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. Those requirements remain in effect.

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.

Given the extensive history between the parties on this issue, the parties submitted prehearing statements to the Panel. In addition, the parties conducted hearings on March 7, March 21, and April 11, 2022, at which time both parties had a full and fair opportunity to present additional documentary and other evidence, examine and cross-examine witnesses, and offer additional argument in support of their respective positions.

The Panel takes note that, in the interim, vaccine mandates have been put in place through agreement or an interest arbitration award with the City's other three municipal unions. The City has made a commitment, expressed in the existing interest arbitration awards and agreements governing the vaccine mandate for the City's other municipal unions, that all represented employees should be treated consistently with respect to the vaccination requirement, the consequences of failing to comply with the requirements, and the financial incentive for those who are vaccinated. The City has expressed that commitment by including employees represented by Local 22 in the financial incentives that have been paid to date, even though it had no obligation to do so.

The Panel has thoroughly considered all of the evidence and arguments presented in this matter. Although Local 22 presented an alternative to the policy that has been implemented for the remainder of the City's municipal

workforce, whether it be unionized, exempt, or non-represented, the majority of the Panel concludes that the evidence does not support a deviation from the policy that has been successfully put into place either through City implementation, collective negotiations, or an interest arbitration award. The majority of the Panel concludes it is appropriate to continue to treat represented municipal employees consistently through the issuance of an award that comports with the established pattern.

I. Vaccination Requirement

All individuals covered by this Award are subject to the attached Vaccine Mandate Policy. In particular, individuals must provide proof that they have received at least one dose of a COVID-19 vaccination or submitted an exemption request to the vaccination requirements by June 30, 2022. Employees who have not received the first dose of a COVID-19 vaccination or submitted an exemption request by June 30, 2022 will be placed on unvaccinated leave ("U-Vax Leave") beginning on July 6, 2022 for a maximum of 30 calendar days following their removal from work. Employees who do not come into compliance with the Vaccine Mandate Policy by the end of U-Vax Leave may be separated from employment.

If an individual's exemption request is denied, they may file an appeal. All appeals must be submitted to the Employee Relations Unit within 10 calendar days of the latter of either the date of the notice of denial of the employee's exemption request and the date the interest arbitration award establishing this policy was issued. Failure to appeal in this timeframe will constitute a waiver of the right to appeal.

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.

II. Reinstatement

Individuals separated from employment for failure to meet the vaccination requirements set in the Vaccine Mandate Policy are entitled to reinstatement for one year following the date of their separation, subject to their meeting all qualifications of the position, including any vaccination requirement, provided that the Department has budgeted vacancies in the position to which they seek reinstatement.

III. 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.

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.

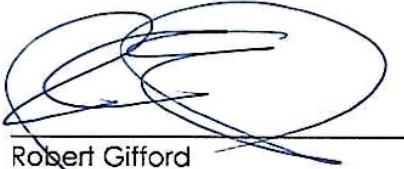
IV. Effective Date

The Effective Date of the mandate provided for in this Award is June 30, 2022.

V. Panel's Jurisdiction

The Panel shall retain jurisdiction to hear any disputes arising from the implementation of this Award and the terms of any COVID-19 vaccine requirements.

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.



Robert Gifford
Neutral Arbitrator and Panel Chair

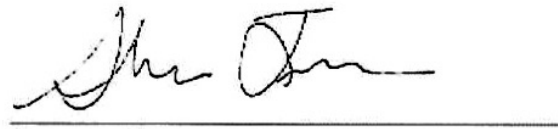
Date: 5/26/22



Michael Bresnan
Local 22-Appointed Arbitrator

Date: 05-25-2022

Concur _____ Dissent X



Shannon Farmer
City-Appointed Arbitrator

Date: May 25, 2022

Concur X Dissent _____

VACCINE MANDATE POLICY

I. Vaccination Requirement

1. By June 30, 2022, all individuals covered by this Policy 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. Employees on a leave of absence on June 30, 2022 must comply with this provision before being permitted to return to work.

2. Employees who receive a first dose of a COVID-19 vaccine by June 30, 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 Policy until the vaccination schedule is complete. Employees must provide proof that they have completed their vaccination series within the required timeframe. Any 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 June 30, 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 Policy, 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 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. 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 leave (U-Vax Leave), as discussed below. The interaction of U-Vax Leave and appeals of exemption denials is discussed in Section III below.

5. Employees 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 Policy until the vaccination schedule is complete. Should the employee fail to complete the schedule and provide proof that they have 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 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.

II. U-Vax Leave

1. Employees who have not received the first dose of a COVID-19 vaccination or submitted an exemption request by June 30, 2022 will be placed on U-Vax Leave beginning on July 6, 2022 for a maximum of 30 calendar days following their removal from work.

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

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

5. Employees who do not comply with the mandate by becoming vaccinated or submitting an approved exemption request by the end of the U-Vax Leave may be separated from employment.

III. Exemptions

A. General Provisions

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

2. 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. If an employee does not submit an exemption request by June 30, 2022, the employee will be deemed unable to work and placed on U-Vax Leave while the request is pending review.

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.

4. Although employees granted exemptions are not expected to resubmit their requests annually or on a periodic basis, the City reserves the right to require resubmission of exemption requests if circumstances change, including the approval of new vaccine technologies that may alleviate the basis for certain exemptions. The City will provide Local 22 with a list of members for whom they are reevaluating approved exemptions, and that notice/reevaluation period will be no less than 45 days.

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 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 a religious or medical exemption may appeal their denials as described in this section.

2. All appeals must be submitted to the Employee Relations Unit within 10 calendar days of the latter of the date of the notice of denial of the employee's exemption request and the date the interest arbitration award establishing this policy was issued. 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 the end of the day on June 30, 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 Local 22.

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 and 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

1. Employees who received their first shot on or before February 11 and provided proof of their full vaccination status in accordance with Section VIII by March 13, 2022 will receive a cash bonus of \$500.

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

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

4. 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 Fire 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 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

Employees 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.

