

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
GENERAL COUNSEL**

Fraternal Order of Police, Lodge No. 7 and	)	
Policemen’s Benevolent and Protective	)	
Association Unit 156 A, B, and C,	)	
	)	
Labor Organizations,	)	
	)	Case No. L-DR-22-001
and	)	
	)	
City of Chicago (Police Department),	)	
	)	
Employer/Petitioner.	)	

**DECLARATORY RULING**

On October 25, 2021, the City of Chicago (Police Department) (“Employer” or “City”) unilaterally filed a Petition for Declaratory Ruling pursuant to Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board. 80 Ill. Admin. Code 1200.143. The petition seeks a determination as to whether the Employer’s COVID-19 vaccination policy (“vaccination policy”) concerns a permissive or mandatory subject of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (“Act”). Both parties filed briefs.

**I. Background**

The Policemen’s Benevolent and Protective Association (“PBPA”) represents the Employer’s sergeants, lieutenants, and captains, each in separate units. The Employer and the PBPA are parties to agreements covering the three units, which are effective July 1, 2016 through June 30, 2022. The Fraternal Order of Police, Lodge No. 7 (“FOP”), represents the Employer’s non-probationary police officers. The Employer and the FOP are parties to an agreement with a stated term of July 1, 2012 through June 30, 2017. Pursuant to Section 28.1 of that agreement, its

terms are extended while the parties negotiate a successor agreement.<sup>1</sup> All four contracts contain a management rights clause (Article 4), a clause addressing safety issues (Article 15), and a clause addressing impasse resolution procedures (28.3).

On October 8, 2021, the Employer announced its finalized vaccination policy. The policy applies to all of the Employer's employees. It states that, effective October 15, 2021, employees, as a condition of employment, must either be fully vaccinated against COVID-19 or undergo COVID-19 testing on a twice weekly basis, with tests separated by 3-4 days. The policy further states that employees are responsible for obtaining tests on their own time and at no cost to the Employer, and that they must report their test results to the Employer through the COVID-19 Employee Testing Portal. Pursuant to the policy, the testing option will sunset on December 31, 2021, unless employees have received an exemption.

Employees may seek exemptions from the vaccination requirement by submitting a written request. The Employer allows religious exemptions from the policy and exemptions for certain medical reasons.

Pursuant to the policy, 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. Similarly, employees who are not fully vaccinated by December 31, 2021, and have not received an exemption will likewise be placed in a non-disciplinary, no-pay status until they have become fully vaccinated.

The policy further states that "violations of this policy, including but not limited to, non-compliance with this Section; or providing false or misleading information about vaccination

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<sup>1</sup> The FOP filed a request for mediation panel with the Board on November 22, 2017.

status, test results, or the need for an accommodation, or the failure to test as applicable...will result in disciplinary action up to an including discharge.”

On October 12, 2021, the FOP and the PBPA Units 156 A, B, and C (collectively “Unions”) filed an unfair labor practice charge against the Employer in Case No. L-CA-22-008 alleging that the Employer violated Sections 10(a)(4) and (1) of the Act by unilaterally implementing the vaccination policy. The Unions also filed a request with the Board for injunctive relief pursuant to Section 11(h) of the Act.

That day, the Unions additionally filed a Request for Grievance Mediation/Grievance Arbitration Panel with the Board asserting that the “COVID-19 policy has been unilaterally implemented.”

On October 13, 2021, the FOP filed a Demand for Compulsory Interest Arbitration with the Board in Case No. L-MA-18-016.<sup>2</sup>

On October 14, 2021, the four unions each filed grievances that challenged the Employer’s vaccination policy and the Employer’s refusal to proceed to expedited interest arbitration proceedings provided for in Article 28 of the respective contracts.

Also on October 14, 2021, the Unions filed a motion in the Circuit Court of Cook County in Case No. 2021 CH 5276, seeking a temporary restraining order (TRO) to enjoin the Employer from implementing the vaccination policy until the Unions’ grievances could be arbitrated pursuant to their collective bargaining agreements.

On November 1, 2021, a Circuit Court Judge Raymond Mitchell granted in part the Unions’ request for a TRO. The judge entered a stay of enforcement only of the part of the Employer’s

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<sup>2</sup> The FOP filed an earlier Demand for Compulsory Interest Arbitration on October 25, 2019. However, the FOP and the Employer subsequently asked the Board to hold the case in abeyance. The FOP’s October 13, 2021, Demand for Compulsory Interest Arbitration appears to reinstate its earlier, 2019 demand.

vaccination policy that required vaccinations by December 31, 2021. He refused to enjoin any other aspect of the Employer's vaccination policy.

The Employer appealed the judge's ruling to the First District of the Illinois Appellate Court, and on November 9, 2021, the Appellate Court issued an order affirming the circuit court judge's decision to grant the Unions' motion for a TRO.

On December 1, 2021, the Board's Executive Director issued a complaint in Case No. L-CA-22-008. The Unions' grievances are still pending at arbitration.

## **II. Relevant Statutory Provisions**

The duty to bargain is defined in Section 7 of the Act which provides in relevant part:

A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.

For the purpose of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

5 ILCS 315/7 (2014).

Section 4 of the Act sets forth an employer's management rights, over which an employer shall not be required to bargain, and states the following in relevant part:

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

5 ILCS 315/4 (2014).

### **III. Issues**

The issue is whether the Employer's vaccination policy is a mandatory or permissive subject of bargaining.

The Employer initially asserts that the Unions' demand for interest arbitration is premature because a grievance arbitrator must first determine the scope of the existing collective bargaining agreements before any determination may be made concerning the Employer's bargaining obligation. The Employer explains that contract interpretation is a necessary first step because its dispute with the PBPA plainly concerns alleged mid-term bargaining obligations, as the PBPA contracts are still in force. The Employer notes that a similar interpretation of the FOP contract is required because the dispute with FOP has a comparable procedural posture. Although the FOP and the Employer are currently negotiating a successor contract, the existing contract remains in effect by its terms. In addition, the FOP's objection to the policy arose in response to the Employer's present exercise of authority, rather than in response to the Employer's negotiation position in bargaining for a successor agreement.

The Employer further argues that the Unions' request for interest arbitration is too vague because they have not identified the particular subjects that should be submitted to interest arbitration, and it asks for an order to clarify the matter.

The Employer next argues that its vaccine policy is a permissive subject of bargaining under the Central City test. The Employer concedes that the vaccination policy impacts employees' terms and conditions of employment. However, it also asserts that the policy is a matter of inherent managerial authority, which is intimately linked to its standards of service. The Employer concludes that the burdens that bargaining imposes on its inherent managerial authority outweigh any benefits of bargaining to the bargaining process, particularly where the policy is not economically motivated.

The Employer further suggests that it has no duty to bargain over the impacts of the policy. It asserts that the impacts are not severable from the underlying decision. It additionally argues that the Unions have consistently sought to block the policy rather than to bargain over any discrete impacts.

The Unions argue that the vaccine policy is a mandatory subject of bargaining. They assert that the policy created a new condition of employment for police officers that did not exist when they were hired. The Unions also emphasize that the policy includes disciplinary consequences for officers who do not comply with it. For these reasons, the Union additionally argues that the policy is not a matter of inherent managerial authority because it directly affects employees' terms and conditions of employment.

In the alternative, the Unions argue that the benefits of bargaining over the vaccination policy outweigh any burdens that bargaining imposes on the Employer's inherent managerial authority. In most relevant part, the Unions assert that they are capable of offering an adequate response to the Employer's concerns by presenting proposals on training, testing, provision of high-quality face coverings, disinfection, improved ventilation, pay incentives, exemptions, and social distancing. They emphasize their sincere interest to reach agreement and note that the

parties' bargaining was fruitful before the Employer unilaterally implemented the policy. The Unions also argue that bargaining has significant benefits for their members and that bargaining would also help combat vaccine hesitancy.

The Unions deny that they waived the right to bargain the vaccination policy because the parties have never previously bargained such matters, and the contracts are silent on the issue.

#### **IV. Discussion and Analysis**

The Employer's petition for declaratory ruling is dismissed because it raises material issues of disputed fact that render the matter more appropriate for resolution in the parties' pending unfair labor practice proceeding, Case No. L-CA 22-008.

Section 1200.143(b)(2) of the rules provides, in relevant part, that "in the case of a unilateral petition for declaratory ruling in which the General Counsel has determined that material issues of fact are in dispute, the General Counsel may...dismiss the petition without prejudice to the requesting party's right to file an unfair labor practice charge...." 80 Ill. Admin. Code 1200.143(b)(2).

The parties factual dispute in this case is evident from the manner in which they presented their arguments. The parties submitted extensive exhibits, 24 submitted by the Employer and 13 submitted by the Unions. These exhibits include emails, affidavits, correspondence, and past bargaining proposals. The parties' briefs include reference to public statements made by the parties' respective representatives, and the Unions even included copies of materials they submitted to the Board in support of their charge related to the vaccination policy. Such materials are not typically submitted with a petition for declaratory ruling, which is intended to resolve purely legal issues.

Moreover, a review of the materials submitted alongside the parties' briefs leaves little doubt that the parties seek a factual finding regarding their respective bargaining conduct as part of the Central City analysis. For example, the Unions argue, in part, that the benefits to the bargaining process are significant because the Unions are sincere in attempting to understand the Employer's position, as demonstrated by their requests for information and responsive proposals. The Employer, by contrast, asserts that the benefits are non-existent because the Unions' true intent is to obstruct the vaccination policy, as demonstrated by the inflammatory public statements of FOP Union President John Catanzara and the Unions' failure to make themselves available for bargaining. Such factual determinations concerning the parties' intent are clearly beyond the scope of a declaratory ruling. See 80 Ill. Admin. Code 1200.143(b)(2).

The Unions' pending unfair labor practice charge, which alleges that the Employer unlawfully implemented its vaccination policy, additionally weighs against issuance of a declaratory ruling. The factual disputes raised in this petition are the same as those at issue in the unfair labor practice case, and it is not the function of the General Counsel to provide an advisory opinion on that pending proceeding. See 80 Ill. Admin. Code 1200.143(b)(2).

**Issued in Chicago, Illinois, this 4th day of January, 2022.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD**

**/s/ Helen J. Kim**

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**Helen J. Kim  
General Counsel**