STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Coalition of Unionized Public Employees and American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Parties,	)	
and	)	Case Nos. L-CA-22-014
	)	L-CA-22-015
City of Chicago,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 29, 2021, the Coalition of Unionized Public Employees (COUPE) and the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), filed separate charges with the Illinois Labor Relations Board's Local Panel (Board) alleging that the City of Chicago, (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charges were investigated in accordance with Section 11 of the Act.

On January 1, 2022, and March 30, 2020, the Board's Executive Director issued Complaints for Hearing on charges L-CA-22-014 and L-CA-22-015, respectively. In each case, the Respondent filed motions to defer the complaints to arbitration under the post-arbitral deferral standard.

Following the issuance of the complaints, the cases were consolidated at the request of the parties. The parties subsequently agreed to proceed on a stipulated record and likewise agreed to a briefing schedule. After submission of the stipulated record but before the submission of briefs, the Charging Parties moved to amend the complaints to conform them to the evidence presented in the stipulations.

After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS[1]

The parties stipulate and I find that:

1. The Charging Parties and Respondent stipulate to the authenticity and admissibility of the exhibits submitted with and referenced in their stipulations, reserving any arguments regarding relevance or internal hearsay.
2. At all times material, Respondent, City of Chicago, has been a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act.
3. At all times material, Respondent has been subject to the jurisdiction of the Local Panel of the Illinois Labor Relations Board ("Board") pursuant to Section 5(b) of the Act
4. At all times material, Charging Party Architectural & Ornamental Ironworkers Local 63 (Local 63) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 63 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 63 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
5. At all times material, Charging Party Bricklayers Local 21 has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Bricklayers Local 21 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022.
6. At all times material, Charging Party Cement Masons' Union Local 502 (Local 502) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of Respondent. Local 502 is party to a collective bargaining agreement with Respondent with a term of July 1, 2017 to June 30, 2022. Local 502 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).

[1] The remainder of the parties' stipulations are included in the findings of fact. The stipulations listed omit the links to the parties' individual collective bargaining agreements.

7. At all times material, Charging Party Chicago Journeymen Plumbers Local Union 130, UA (Local 130) has been a labor organization within the meaning of Section 3(i) of the Act, and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 130 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 130 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
8. At all times material, Charging Party Chicago Regional Council of Carpenters (a/k/a Mid-America Carpenters Regional Council) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. The Chicago Regional Council of Carpenters is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. The Chicago Regional Council of Carpenters participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
9. At all times material, Charging Party Carpenters Union Local 13 (Local 13) has been a labor organization and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 13 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 13 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
10. At all times material, Charging Party International Association of Bridge, Structural, and Reinforcing Ironworkers, Local 1 (Ironworkers Local 1) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Ironworkers Local 1 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Ironworkers Local 1 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
11. At all times material, Charging Party International Association of Machinists and Aerospace Workers, Local No. 126 (Local 126) has been a labor organization

within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 126 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 126 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).

12. At all times material, Charging Party International Assoc. of Sheet Metal, Air, Rail, and Transportation Workers' Local Union 73 (Sheet Metal Local 73) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Sheet Metal Local 73 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Sheet Metal Local 73 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
13. At all times material, Charging Party International Brotherhood of Boilermakers, Local 1 (Boilermakers Local 1) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Boilermakers Local 1 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Boilermakers Local 1 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
14. At all times material, Charging Party International Brotherhood of Electrical Workers, Local Union No. 9 (IBEW Local 9) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. IBEW Local 9 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. IBEW Local 9 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
15. At all times material, Charging Party International Brotherhood of Electrical Workers, Local Union No. 134 (IBEW Local 134) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. IBEW Local 134 is party to a

collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. IBEW Local 134 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).

16. At all times material, Charging Party International Brotherhood of Teamsters, Local 700 (Local 700) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of multiple bargaining units of employees of the Respondent. Local 700 is party to a collective bargaining agreement with the Respondent covering a bargaining unit of truck drivers and other employees with a term of July 1, 2017 to June 30, 2022. With respect to its truck driver bargaining unit, Local 700 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE). Local 700 is also party to a collective bargaining agreement with the Respondent covering a bargaining unit of employees in the Supervising Police Communications Operator (SPCO) job classification. Local 700 is also a party to a collective bargaining agreement with the Respondent covering a bargaining unit of employees in the Shift Supervisor of Security Communications Center (SSSCC) job classification, with a term of December 13, 2018 to June 30, 2022.
17. At all times material, Charging Party International Organization of Masters, Mates and Pilots – Great Lakes & Gulf Maritime Region (Master, Mates, and Pilots Union) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. The Master, Mates, and Pilots Union is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. The Master, Mates, and Pilots Union participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
18. At all times material, Charging Party International Union of Operating Engineers, Local 150 (Local 150) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of multiple bargaining units of employees of the Respondent. Local 150 is party to a collective bargaining agreement with the Respondent covering deck hands, with a term of July 1, 2017 to June 30, 2022. Local 150 is also party to a collective bargaining agreement with

the Respondent covering bridge operators and certain other employees, with a term of July 1, 2017 to June 30, 2022. Local 150 is also a party to a collective bargaining agreement with the Respondent covering certain heavy equipment engineers and other employees, with a term of July 1, 2017 to June 30, 2022. Local 150 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).

19. At all times material, Charging Party International Union of Operating Engineers, Local 399 (Local 399) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 399 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 399 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
20. At all times material, Charging Party Laborers International Union of North America, Local 1001 (Local 1001) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 1001 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022.[2] Local 1001 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
21. At all times material, Charging Party Laborers International Union of North America, Local 1092 (Local 1092) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 1092 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 1092 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
22. At all times material, Charging Party Painters District Council No. 14 (Painters Council No. 14) has been a labor organization within the meaning of Section 3(i)

[2]https://www.chicago.gov/content/dam/city/depts/dol/Collective%20Bargaining%20Agreements/BU%2053,%2054%20Laborers%20CBA.pdf

of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Painters Council No. 14 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Painters Council No. 14 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).

23. At all times material, Charging Party Pipefitters' Local 597 has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 597 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 597 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
24. At all times material, Charging Party Service Employees International Union, Local 1 (SEIU Local 1) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. SEIU Local 1 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. SEIU Local 1 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
25. At all times material, Charging Party Service Employees International Union, Local 73 (SEIU Local 73) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of multiple bargaining units of employees of the Respondent. SEIU Local 73 is party to a collective bargaining agreement with the Respondent covering a bargaining unit of window washers and other employees with a term of July 1, 2017 to June 30, 2022. SEIU Local 73 is also a party to a collective bargaining agreement with the Respondent covering a bargaining unit of custodians and other employees with a term of July 1, 2017 to June 30, 2022. With respect to its window washer and custodian bargaining units, SEIU Local 73 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE). SEIU Local 73 is also a party to a collective bargaining agreement with the Respondent covering a bargaining unit, known as Unit 2, with a term of January 1, 2018 to June 30, 2022.

26. At all times material, Charging Party Sign and Pictorial Painters Union Local 830 (Local 830) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit of employees of the Respondent. Local 830 is party to a collective bargaining agreement with the Respondent with a term of July 1, 2017 to June 30, 2022. Local 830 participates in the coalition of unions known as the Coalition of Unionized Public Employees (COUPE).
27. At all times material, Charging Party Coalition of Unionized Public Employees (COUPE) has been a coalition of labor organizations identified above in paragraphs 4 to 26. COUPE unions negotiate separate labor agreements with the Respondent. The COUPE unions, however, cooperate in negotiations with the Respondent over common language and terms and conditions of employment in their respective agreements. The COUPE unions also each negotiate separately with the City concerning terms and conditions uniquely applicable to their respective bargaining units.
28. At all times material, Charging Party International Brotherhood of Electrical Workers, Local Union No. 21 (IBEW Local 21) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of certain employees in a bargaining unit, known as Unit 2, of the Respondent. IBEW Local 21 is not a member of the COUPE coalition. IBEW Local 21 is party to a collective bargaining agreement with the Respondent covering Unit 2 with a term of January 1, 2018 to June 30, 2022. As noted above, SEIU Local 73 also represents certain job classifications in Unit 2 and is party to the same collective bargaining agreement with IBEW Local 21 covering Unit 2.
29. At all times material, Charging Party in Case No. L-CA-22-015 American Federation of State, County and Municipal Employees Council 31 (AFSCME) has been a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of certain employees in multiple bargaining units of the

Respondent. AFSCME is party to a collective bargaining agreement with the Respondent with a term expiring June 30, 2022.[3]

30. Collective bargaining agreements for the Charging Parties are available from the Respondent website. On that website, the COUPE union bargaining units are listed under the "Trades Coalition."[4]

II. ISSUES AND CONTENTIONS

The issues in the amended complaints[5] are the following: (1) Whether the Respondent violated Sections 10(a)(4) and (1) of the Act when it allegedly unilaterally implemented its vaccination policy and sick leave addendum without bargaining to impasse or agreement over the decision or its effects; (2) whether the Respondent engaged in direct dealing in violation of Sections 10(a)(4) and (1) of the Act by its communications with employees regarding its vaccination mandate; (3) whether the Respondent violated Sections 10(a)(4) and (1) of the Act by announcing its vaccination mandate to employees while negotiations with the Unions were pending; (4) whether the Respondent violated Sections 10(a)(4) and (1) of the Act by allegedly refusing to provide the Unions with relevant and necessary information they requested. An additional issue is whether the allegations related to the Respondent's implementation of the vaccination policy and sick leave addendum should be deferred under the Spielberg standard.

The Charging Parties argue that the Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally implementing a COVID-19 vaccination policy and changes to the "Sick Leave Policy Addendum." The Charging Parties assert that the vaccine policy and the addendum are mandatory subjects of bargaining under the Central City test. They contend that the vaccination policy establishes a new condition of employment, concerns employees' health and safety, creates new opportunities for discipline, and has the potential to impact employees' wages through the imposition of no-pay status for failure to report vaccination status or test results. They similarly argue that the sick leave addendum concerns leave time related to COVID-19 exposure and illness,

[3]https://www.chicago.gov/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement3/AFSCME_CBA2017_22.pdf

[4]https://www.chicago.gov/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html

[5] As set forth in the decision below, the Unions moved to amend the complaints to include additional allegations and the Respondent did not object. Accordingly, the complaints are amended.

and whether employees will be compensated for such leave. The Charging Parties deny that the vaccine policy or the sick leave addendum are matters of inherent managerial authority, but argue in the alternative, that the balance favors bargaining because the Charging Parties were capable of offering proposals that addressed the Respondent's concerns.

The Charging Parties next assert that the Respondent unilaterally implemented the vaccination policy and the sick leave addendum by announcing them as a fait accompli and denying that it had any obligation to bargain over decisional matters. In the alternative, the Charging Parties argue that the parties never reached impasse or agreement on the vaccination policy or the sick leave addendum. The Charging Parties further note that even if the Respondent's bargaining obligation was limited to negotiating the vaccination policy's effects, the Respondent violated the Act by failing to complete effects bargaining before implementing the policy.

The Charging Parties next argue that the Respondent separately violated Sections 10(a)(4) and (1) of the Act by communicating directly with employees about the vaccine mandate, while negotiations were pending, and thereby undermined the bargaining process.

The Charging Parties further argue that the Respondent again violated Sections 10(a)(4) and (1) of the Act when it unilaterally changed the vaccination policy in 2022 during the pendency of negotiations for the parties' successor agreements. The Charging Parties assert that the Respondent newly began terminating employees who had previously been on non-disciplinary and no-pay status for failing to report their vaccination status or failing to become fully vaccinated against COVID-19. The Respondent also rescinded the twice-weekly testing requirement for employees who had obtained exemptions from vaccination. The Charging Parties contend that the Respondent presented both these changes as a fait accompli.

Next, the Charging Parties argue that the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to timely and completely respond to their information requests. The Charging Parties assert that the Respondent failed to provide complete information on vendor and contractor compliance with the vaccination mandate or the policy's testing requirement. They also assert that the Respondent failed to provide requested information on employee compliance with the policy's reporting requirements. The Charging Parties further assert that the Respondent provided delayed responses to others of their requests.

Finally, the Charging Parties assert that deferral is inappropriate under either Spielberg or Dubo. They reason that the complaint includes a non-deferrable claim concerning the

Respondent's refusal to provide requested information. They also assert that the arbitrator did not consider or rule on the unilateral change allegations in the complaint concerning the Respondent's alleged unilateral changes and refusal to bargain in good faith.

The Charging Parties request a bargaining order, rescission of any unilateral changes that were adverse to employees, and that a Board-issued notice be sent to employees' email accounts.

The Respondent initially asserts that the bargaining allegations concerning the Respondent's vaccination policy should be deferred to the award issued by Arbitrator George Roumell. In the alternative, the Respondent argues that it did not violate the Act by unilaterally implementing the vaccination policy. It asserts that its decision to implement a vaccination policy is a permissive subject of bargaining under the Central City test. It reasons that the balancing test weighs in favor of the Respondent's unilateral decision-making because a vaccine mandate is intimately connected to the Respondent's standards of service and public safety during a global pandemic.

The Respondent next contends that it lacked any obligation to bargain over the policy's effects. It asserts that exigent circumstances excused its obligation to bargain effects prior to the policy's implementation. It similarly contends that the effective date of the mandate is not bargainable because it is an inevitable consequence of its decision to impose the vaccination policy. It further argues that the Unions contractually waived the right to bargain all remaining effects issues, including discipline and no-pay status matters, and that the Respondent's actions were consistent with the status quo, as evidenced by the parties' agreements, arbitral history, and the Roumell award.

In the alternative, the Respondent contends that it fulfilled its obligation to bargain in good faith with the Charging Parties over the effects of the vaccination policy by meeting with the Charging Parties, exchanging and modifying its proposals, bargaining in good faith, fully responding to information requests, and reaching a bona fide impasse on effects issues. The Respondent also notes that, even in the absence of a valid impasse, its implementation of the policy was privileged by the Charging Parties' bad faith conduct, including dilatory tactics and conditional bargaining.

Finally, the Respondent denies that it engaged in direct dealing by informing employees about the vaccination policy, and it contends that none of its communications were coercive or misrepresented negotiations.

III. FINDINGS OF FACT

1. The Charging Parties and their Agreements

The Coalition of Unionized Public Employees (COUPE) is a coalition of labor organizations comprised of the following labor organizations: Architectural & Ornamental Ironworkers Local 63 (Local 63); Bricklayers Local 21; Cement Masons' Union Local 502 (Local 502); Chicago Journeymen Plumbers Local Union 130, UA (Local 130); Chicago Regional Council of Carpenters (a/k/a Mid-America Carpenters Regional Council); Carpenters Union Local 13 (Local 13); International Association of Bridge, Structural, and Reinforcing Ironworkers, Local 1 (Ironworkers Local 1); International Association of Machinists and Aerospace Workers, Local No. 126 (Local 126); International Assoc. of Sheet Metal, Air, Rail, and Transportation Workers' Local Union 73 (Sheet Metal Local 73); International Brotherhood of Boilermakers, Local 1 (Boilermakers Local 1); International Brotherhood of Electrical Workers, Local Union No. 9 (IBEW Local 9); International Brotherhood of Electrical Workers, Local Union No. 134 (IBEW Local 134); International Brotherhood of Teamsters, Local 700 (Local 700); International Organization of Masters, Mates and Pilots – Great Lakes & Gulf Maritime Region (Master, Mates, and Pilots Union); International Union of Operating Engineers, Local 150 (Local 150); International Union of Operating Engineers, Local 399 (Local 399); Laborers International Union of North America, Local 1001 (Local 1001); Laborers International Union of North America, Local 1092 (Local 1092); Painters District Council No. 14 (Painters Council No. 14); Pipefitters' Local 597; Service Employees International Union, Local 1 (SEIU Local 1); Service Employees International Union, Local 73 (SEIU Local 73); and Sign and Pictorial Painters Union Local 830 (Local 830).

The labor organizations within the COUPE negotiate separate collective bargaining agreements with the Respondent, but they cooperate in negotiations with the Respondent over common language and terms and conditions of employment in their respective agreements. All the COUPE agreements have an expiration date of June 30, 2022.

AFSCME is the exclusive representative of certain employees in multiple bargaining units of the Respondent. In these units, AFSCME represents a wide variety of titles, including but not limited to clinical therapists, clerical and administrative positions, librarian positions, and positions providing social services to youth and the aged.

Each of the Charging Parties' collective bargaining agreements contains a management rights clause. The clauses in each agreement are similar in most relevant respects. They state that the union "recognizes that certain rights, powers, and responsibilities belong solely to and are exclusively vested in the Employer except only as they may be subject to a specific and express obligation of this Agreement." The Respondent's management rights include the "right to suspend, discipline, or discharge for just cause" and the right "to make and enforce reasonable rules and regulations."

Most of the Charging Parties' agreements also contain provisions addressing the manner in which the Respondent may make changes to its rules of conduct. The COUPE agreements, with two exceptions[6], contain the language set forth below:

> When the Employer proposes to initiate reasonable changes or additions to its rules of conduct, which could subject Employees to discipline, the Employer shall transmit four (4) copies of the proposed changes or additions to the Union. The Union will consider the proposals, and upon request, the Employer will meet with the Union within twenty (20) calendar days of the receipt of the proposals to receive the Union's comments. Absent an emergency, the Employer will not implement its proposed changes or additions until the Union has had a reasonable opportunity to present its views and discuss the proposals with the Employer. No such changes or additions shall be implemented without prior publication and notice to the affected Employees.

AFSCME's agreement contains the following, similar language addressing rules of conduct changes:

> When the Employer proposes to initiate reasonable changes or additions to its rules of conduct, which could subject employees to discipline or harm, the Employer shall transmit a copy of the proposed changes or additions to the Union. The Union will consider the proposals, and upon request, the Employer will meet with the Union within twenty (20) calendar days of the receipt of the proposals to receive the Union's comments. Absent an emergency, the Employer will not implement its proposed changes or additions until the Union has had a reasonable opportunity to present its views and discuss the proposals with the Employer. No such changes or

[6] The agreement covering Laborers Local 1001 & 1092 contains substantially the same language but in most relevant part adds that "[t]he Union will have waived its right to contest the reasonableness of the proposed rules of conduct whenever the Union fails to discuss its objection with the Employer during the twenty-day period allotted for Union comments." The SEIU Local 1 agreement covering the job classifications of stationary fireman and boiler washer does not appear to contain any language comparable to that set forth above.

additions shall be implemented without prior publication and notice to the affected employees.

All the Charging Parties' agreements also contain broad zipper clauses. The COUPE agreements contain the following language or substantially similar language:[7]

> This Agreement constitutes the entire contract between the Employer and the Union and settles all demands and issues with respect to all matters subject to collective bargaining. The Employer and the Union, therefore, voluntarily waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any matter which is subject to collective bargaining whether or not such matter is specifically referred to herein, and even though such matter may not have been within the knowledge or contemplation of the parties at the time this Agreement was negotiated or signed.

The AFSCME agreement likewise contains a broad zipper clause, which states the following:

> 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. The Employer agrees that during the term of this Agreement it shall not change any past practice and/or policy with respect to wages, hours, conditions of employment or fringe benefits of employees without prior notification and discussion with the Union. Where past practice conflicts with the terms of this Agreement, this Agreement shall prevail. 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.

2. The Vaccination Policy

On or about July 29, 2021, the Respondent's mayor announced to the press that the Respondent was considering implementing a policy requiring employees to be vaccinated against COVID-19.

[7] The Laborers Local 1001 & 1092 zipper clause is substantially the same except that it also states that the parties waive the right to bargain over matters "discarded during negotiations."

On August 13, 2021, the Charging Parties as a coalition and Respondent met for an initial bargaining session concerning the Respondent's plans to implement a COVID-19 vaccination policy. The Respondent's representatives stated that the Respondent's position was that it was required only to bargain regarding the effects of Respondent's COVID-19 vaccination policy. The Charging Parties' representatives stated that it was the Charging Parties' position that a COVID-19 vaccination policy for employees was a mandatory subject of bargaining and that the Respondent was required to bargain over both the policy and its effects.

On August 21, 2021, on behalf of the Respondent, Beniamino Capellupo, a Senior Advisor in the Office of the Mayor of the City of Chicago, sent to Robert Reiter, the President of the Chicago Federation of Labor, and others for the Charging Parties, a draft of the "City of Chicago COVID-19 Vaccination Policy." The draft policy stated the following in most relevant part: The policy applied to all City employees and volunteers, but not to contractors or visitors. Employees were required, as a condition of employment, to be fully vaccinated against COVID-19 effective October 15, 2021. Employees could request a reasonable accommodation to be exempt from the vaccination requirement if they had a medical condition that affected their eligibility for a vaccine or if they sincerely held a religious belief that prohibited them from receiving a vaccine. Employees were responsible for obtaining the vaccination on their own time but would receive up to two hours of paid leave for each required dose of the vaccine. Employees were required to report their vaccination status through the COVID-19 vaccination tracker no later than October 15, 2021. Employees were required to declare, under penalty of perjury, that the vaccination information they submitted was true and correct. Violations of the policy, including non-compliance with the vaccine mandate, and providing false or misleading information about vaccination status, test results or the need for an accommodation, could be subject to disciplinary action up to and including discharge. Retaliation against anyone for reporting violations of the policy was prohibited. The Respondent reserved the right to modify the policy at any time.

On August 24, 2021, on behalf of Respondent, Capellupo sent to Reiter and others for the Charging Parties draft exemption forms related to Respondent's COVID-19 Vaccination Policy.

On August 25, 2021, Respondent and Charging Parties met for their second bargaining session concerning the COVID-19 Vaccination Policy, at which time they discussed the COVID-19 Vaccination Policy.

On August 25, 2021, the Respondent sent an announcement to City employees titled "Employee Vaccination Update." It stated that the mayor planned to announce that effective October 15, 2021, the Respondent would require all City employees to be fully vaccinated against COVID-19. It further stated that the Respondent would continue to work with its "partners in labor": to create a workable, fair, and effective vaccination policy.

On August 28, 2021, on behalf of the Charging Parties, Andrea Kluger, the Deputy Chief of Staff of the Chicago Federation of Labor, sent a counterproposal to Capellupo, for the Respondent, in response to the Respondent's draft COVID-19 Vaccination Policy. As part of their counterproposal, the Charging Parties proposed changes to the "City of Chicago Sick Leave Policy Addendum," a policy that had been effective since March 16, 2020.

Regarding the vaccination policy, the Charging Parties proposed, in most relevant part, to extend the vaccination policy to personnel of city contractors and vendors who have direct contact with or work in close proximity to City employees. They proposed to eliminate the vaccination requirement and replace it with the option of testing, performed by the Respondent during work hours, on a weekly basis, and at no cost to the employee. They proposed that employees who had elected to obtain vaccination would receive 16 hours of compensatory time. In addition, they proposed that those employees who elected to receive vaccination would be required to report their status but eliminated the requirement to do so under penalty of perjury. The Charging Parties proposed to add a provision stating that the City would prohibit retaliation against any employee for electing not to receive a vaccine. They proposed that the vaccine policy would remain in effect through February 28, 2022, at which point either party could seek an extension, and they further proposed that either party reserved the right to seek a modification of the policy. Finally, the Charging Parties proposed that the sick leave addendum would remain in effect during the term of the agreement between the Charging Parties and the Respondent, and that it would apply to all City employees who were previously sick as a result of being vaccinated or who subsequently became sick in the future as a result of vaccination.

The sick leave addendum, then in effect, stated in relevant part that, during the COVID-19 outbreak, the Respondent would provide additional paid time off to any employee who was absent due to contracting COVID-19 or was directed to isolate themselves by a public health agency or medical provider. The employee would not be required to use his or her normal benefit time. The sick leave addendum further stated that employees who were absent due to an order to quarantine

should determine whether telework was feasible pursuant to City policy, and that if it was not feasible, the City would provide additional paid time off to the affected employee. It additionally provided that employees who are absent due to illness that was not COVID-19 or quarantine related would need to use their benefit time, but that the City would advance the employee's benefit days at the Department Head's discretion. It stated that if employees were absent due to a travel related quarantine, the City would exercise discretion on a case-by-case basis to determine whether to extend the employee additional paid time off. If employees were not granted additional benefit time, they would be allowed to use their existing benefit time to cover their absence, and if their benefit time was exhausted, the department head had discretion to advance that employee's benefit days.

On September 1, 2021, on behalf of the Respondent, Capellupo sent to Kluger, for the Charging Parties, a counterproposal concerning its COVID-19 Vaccination Policy and the Sick Leave Policy Addendum. The Respondent rejected the Charging Parties' proposal to apply the policy to personnel of contractors and vendors. It rejected the Charging Parties' proposal to make vaccination optional and reasserted a proposed deadline of October 15, 2021 for a vaccination mandate. However, it also proposed a limited testing option that would sunset on December 31, 2021. Employees who elected this option would be required to undergo COVID-19 testing on a twice weekly basis, with tests separated by 3-4 days, and were responsible for obtaining the tests on their own; they would nevertheless need to obtain vaccination by the sunset date. The Respondent added provisions requiring employees to report their test results through an employee testing portal under penalty of perjury. The Respondent countered the Charging Parties' proposed incentive for vaccination, proposing one personal day for employees who had obtained the vaccination by October 15, 2021, which needed to be used by June 30, 2022. The Respondent reasserted its proposal that all employees must report their vaccination status by October 15, 2021, and it rejected the Charging Parties' proposal that the reporting of vaccination status did not need to be made under penalty of perjury. It rejected the Union's proposal that the sick leave addendum would apply to employees who became ill as a result of vaccination. However, it proposed that the sick leave addendum would remain in effect until March 31, 2022. It rejected the Charging Parties' proposal to add a prohibition on retaliating against employees who elected not to receive vaccination. Finally, it rejected the Charging Parties' proposed end date to the policy but accepted

the Charging Parties' proposal that both parties reserved the right to seek modification of the policy.

In addition, the Respondent proposed modifications to the sick leave addendum. In most relevant part, it proposed to newly mandate that employees ordered to quarantine use their own benefit time to cover the quarantine period or take an unpaid leave of absence. It included an exception for employees who had not been fully vaccinated and were ordered to quarantine due to an exposure at work; such employees would be provided leave time to cover the duration of their quarantine. It also proposed to modify the travel-related quarantine requirements, stating that fully vaccinated employees did not need to quarantine after travelling out of state or abroad (absent symptoms) but that employees who were not fully vaccinated did need to quarantine and that they would be required to use their own vacation time to cover the absence or could take an unpaid leave. The Respondent removed the previously-existing provision that stated the Respondent would provide additional paid time off for quarantined employees on a case-by-case basis.

On September 3, 2021, the Respondent and Charging Parties met for a third bargaining session concerning the COVID-19 Vaccination Policy, at which time they discussed the COVID-19 Vaccination Policy.

On or about September 11, 2021, on behalf of the Charging Parties, Kluger sent to Capellupo for the Respondent an updated counterproposal concerning the COVID-19 Vaccination Policy and the Sick Leave Policy Addendum. In most relevant part, the Charging Parties maintained their proposal that the policy apply to personnel of contractors and vendors who have direct contact with or work in close proximity to City employees. The Charging Parties accepted the Respondent's "condition of employment" language but proposed that employees could comply with either vaccination or regular testing. It accepted the Respondent's proposal that unvaccinated employees would be required to undergo twice weekly testing, and that they were responsible for obtaining the tests on their own and for reporting the results. However, the Charging Parties proposed to eliminate the deadline of October 15, 2021 for vaccination and also proposed to eliminate the sunset provision for the testing option. The Charging Parties additionally proposed to increase the incentive for vaccination by October 15, 2021 to two personal days and additionally proposed that that employees who obtained vaccination after that date would receive one personal day. They accepted the respondent's proposal that the incentive personal days would need to be used by June 30, 2022 but further proposed that the personal days granted by the policy would not

count towards the carryover day limits contained in employees' applicable collective bargaining agreements. The Charging Parties also proposed to fix the amount of time off allotted to employees for obtaining the vaccine to two hours for each dose. They further proposed that progressive discipline would apply to an employees' failure to provide routine test results in a timely manner. They again proposed to eliminate the requirement that employees' reports of vaccination and testing information be submitted under penalty of perjury but proposed that employees would instead submit a declaration that the information submitted was true and correct. They accepted the Respondent's proposal that the sick leave addendum would remain in effect until March 31, 2022, but additionally proposed that Section III of the addendum would apply to employees who became ill as a result of being vaccinated, such that employees would obtain additional paid leave for such illness. They reinstated their proposal prohibiting retaliation against employees on the basis of their decision not to receive vaccination. They also proposed a new termination date for the policy of December 31, 2021, at which point the parties would determine whether to amend or extend it.

The Charging Parties additionally proposed specific modifications to the sick leave addendum. They proposed that the Respondent provide employees paid leave time to cover the duration of an ordered quarantine, regardless of vaccination status. Regarding mandated travel-related quarantine, the Charging Parties proposed that fully vaccinated employees would be provided paid leave time to cover their quarantine, whereas employees who are not fully vaccinated would be required to use their own vacation time or take an unpaid leave. The Charging Parties further proposed that employees would not be disciplined for taking such unpaid leave.

On September 20, 2021, the Respondent and the Charging Parties met for a fourth bargaining session concerning the COVID-19 Vaccination Policy at which the Respondent tendered a revised counterproposal concerning the COVID-19 Vaccination Policy and the Sick Leave Policy Addendum. The Respondent accepted the Charging Parties' proposed provision that the policy would apply to both employees and personnel of contractors and vendors who have regular direct contact with or regularly work in close proximity to city employees. It further proposed that employees and personnel or contractors and vendors be fully vaccinated against COVID-19 by October 15, 2021 or undergo regular testing. It held to its earlier proposal that employees who are fully vaccinated by October 15, 2021 would receive one personal day, but it accepted the Charging Parties' proposal that the personal day would not count toward the carryover

day limit contained in any collective bargaining agreement. The Respondent accepted the Charging Parties' proposal that employees receive two hours of paid leave time for each required dose of a COVID-19 vaccine. It held to its proposal that the testing option would sunset on December 31, 2021, and that those individuals covered by the policy would need to be fully vaccinated by that date as a condition of employment unless they received an accommodation. It newly proposed that employees who were neither fully vaccinated by December 31, 2021, nor exempt from vaccination would be placed in a non-disciplinary no-pay status until they became fully vaccinated. It held to its proposal that individuals covered by the policy must report their vaccination status through the Vaccination Portal no later than October 15, 2021. It newly proposed that employees who had not reported their vaccination status by October 15, 2021 would be placed in a non-disciplinary no-pay status until they have reported their vaccination status. However, it accepted the Charging Parties' proposal that the declaration provided by employees related to vaccination and testing need only assert that the information submitted is true and correct, and that it need not be made under penalty of perjury. The Respondent newly proposed that employees subject to regular testing who fail to report their results as required under the policy would likewise be placed in a non-disciplinary no-pay status until they reported their test results. The Respondent rejected the Charging Parties' proposal that progressive discipline apply to failure to provide COVID-19 testing results in a timely manner, and it held to its position that any violations of the policy would result in disciplinary action up to and including discharge. The Respondent newly proposed that the policy would prohibit retaliation against any employee seeking an accommodation permitted under the policy. The Respondent rejected the Charging Parties' proposed expiration date for the policy but proposed to establish a working group to discuss the results of mandatory vaccination, among other topics.

The Respondent also proposed modifications to the sick leave addendum. It rejected the Charging Parties' proposal to provide paid leave for all employees ordered to quarantine and reiterated its proposal to provide paid leave for employees who have not been fully vaccinated and were ordered by their department to quarantine due to an exposure at work. It accepted the Union's proposal related to employer mandated travel-related quarantine, that employees who have not been fully vaccinated and elect to take an unpaid leave for travel-related quarantine would not face discipline for taking such unpaid leave.

On September 28, 2021, the Respondent requested in writing that the Charging Parties respond and provide a status report regarding their position on the COVID-19 Vaccination Policy as soon as possible.

On September 30, 2021, the Respondent sent an announcement to employees titled "COVID-19 Vaccination Mandate." The announcement reminded employees of the mayor's August 25, 2021 announcement that all employees must be fully vaccinated against COVID-19 by October 15, 2021 unless they have received a medical or religious accommodation. It noted that employees would need to receive their second dose of the Moderna or Pfizer vaccines or the single dose Johnson & Johnson vaccine by October 1, 2021 to comply with the deadline. The Respondent did not give the Charging Parties advance notice of this announcement to employees, and the Charging Parties did not approve the communication with the employees.

On October 1, 2021, following internal review and conferencing among the Charging Parties concerning the Respondent's September 20, 2021 proposal, Kluger, on behalf of the Charging Parties sent to Capellupo and others for the Respondent an updated counterproposal concerning the COVID-19 Vaccination Policy and the Sick Leave Policy Addendum. The Charging Parties accepted the Respondent's deadline of October 15, 2021 for becoming fully vaccinated or beginning twice-weekly testing but rejected the Respondent's proposed sunsetting of the testing requirement. They newly proposed that employees would receive one personal day provided that they were fully vaccinated by November 15, 2021. They newly proposed that all violations of the policy be subject to progressive discipline. The Charging Parties agreed to the Respondent's proposal that employees who failed to report test results or vaccination status by October 15, 2021, pursuant to the policy's terms would be placed on a non-disciplinary no-pay status until they reported, as required. The Charging Parties withdrew their proposal that the sick leave policy addendum apply to employees who became absent as a result of vaccination. The Charging Parties made additional proposals regarding policy modification, noting that either party could reopen the agreement between November 15, and December 15, 2021, or at any time to adopt to changing circumstances and business needs.

The Charging Parties proposed specific changes to the sick leave addendum. They proposed that an employee experiencing side effects from taking the COVID-19 vaccine would receive paid time off in the same terms set forth in the OSHA rule on COVID-19 vaccine mandates. In addition, they proposed that any employee caring for a child is eligible to receive up to 80 hours

of emergency paid sick leave at a rate of two thirds of their regular rate of pay if (a) their school or childcare is closed or unavailable for a reason related to COVID-19 or (b) the child is under a school or daycare-related quarantine or isolation order.

On October 1, 2022, the Respondent's mayor tweeted the following in relevant part: "Folks, if you work for the city of @chicago, today is your last day to receive your final dose of a COVID-19 vaccine. You MUST be fully vaccinated by October 15." The Respondent did not give the Charging Parties notice of this tweet and the Charging Parties did not approve the tweet.

On October 5, 2021, on behalf of the Respondent, Cicely Porter Adams, the Chief Labor Negotiator for the City of Chicago, sent to Reiter for the Charging Parties what the Respondent described as its "last, best, and final offer on the City of Chicago COVID-19 Vaccination Policy and City of Chicago Sick Leave Policy Addendum." In the October 5, 2021, cover letter, Porter Adams wrote that the Respondent would "announce and/or distribute the final Policy to our workforce tomorrow, October 6, in order to give employees the maximum amount of notice and time to comply with the Policy's provisions."

The last, best, and final offer proposed the following in most relevant part: The policy would apply to City employees, personnel of contractors and vendors who have regular direct contact with, or regularly work in close proximity to, City employees, and volunteers. Effective October 15, 2021, employees and other individuals to whom the policy applied would be required to be fully vaccinated against COVID-19 or undergo COVID-19 testing, as a condition of employment. Employees, volunteers, and employees of contractors/vendors, who were not fully vaccinated by October 15, 2021, would need to undergo twice-weekly testing, until they obtained full vaccination. The testing option would sunset on December 31, 2021, unless the employee had received an exemption from vaccination for medical or religious reasons. Employees who were not fully vaccinated by December 31, 2021 or exempt from vaccination would be placed in a non-disciplinary no-pay status until they became fully vaccinated. Violations of the policy would result in disciplinary action up to and including discharge.

Employees who were fully vaccinated by October 15, 2021 would receive one personal day that they would need to use by June 30, 2022 but would not count toward any carryover day limit contained in a collective bargaining agreement. Employees who received vaccination would receive two hours of paid leave time for each required dose of the COVID-19 vaccine.

All individuals covered by the policy would be required to report their vaccination status through the vaccination portal by October 15, 2021, and provide proof of vaccination status, information about vaccination, and submit a declaration that the information was true and correct. Employees who did not report their vaccination status by October 15, 2021 would be placed in a non-disciplinary no-pay status until they reported their vaccination status.

Individuals subject to the testing requirements would be required to report their test results through the employee testing portal, declaring that the information provided was true and accurate. Employees who failed to report test results as required would be placed in a non-disciplinary no-pay status until they reported their test results.

The Respondent did not propose an end date for the policy but proposed that both parties could seek to modify the policy to adapt to changing circumstances and business needs. The Respondent also proposed creation of a working group that could discuss the results of the vaccination policy and developments in the pandemic, and make recommendations regarding the policy that the Respondent would consider.

The Respondent further proposed that the sick leave addendum would remain in effect until March 31, 2022. Regarding the terms of the addendum, the Respondent proposed the following in most relevant part: Employees who were absent from work due to a quarantine order from a public health agency or a medical provider would be required to either use their own benefit time to cover the quarantine period or take an unpaid leave of absence. However, employees who had not been fully vaccinated and were absent from work because they were ordered to quarantine by their Department due to an exposure at work would be provided paid leave time to cover the duration of their quarantine. Employees who traveled but were not fully vaccinated would need to comply with any mandated travel-related quarantine. They would be required to use their own vacation time to cover the quarantine period or take an unpaid leave. However, no employee would face discipline for taking an unpaid leave to cover the quarantine period. Finally, employees who cared for a child whose classroom or school was quarantined due to COVID-19 would be eligible to receive up to 40 hours of emergency paid sick leave at a rate of two thirds of their regular rate of pay if the employee was unable to telework and had already used 75% of the benefit time (sick and vacation time) that they would earn in the calendar year.

Following receipt of Respondent's October 5, 2021, "last, best, and final offer," Jon Rosenblatt, an attorney for the Charging Parties, replied to Porter Adams, in an email dated

October 5, 2021, stating that the Charging Parties were in the process of meeting to review, discuss and respond to the City's offer. He also objected to the implementation of the COVID-19 Vaccination Policy and changes to the Sick Leave Policy Addendum. He further stated "any attempt by the [Respondent] to unilaterally impose this policy and/or addendum, including any announcement or notice by the [Respondent] to its workforce, without providing us with even an opportunity to respond would constitute bad-faith bargaining on the [Respondent's] part. Indeed, given that we have not objected to the [Respondent's] commencement of the vaccine/testing regime starting October 15, there is no urgency that would justify such actions."

On October 6, 2021, on behalf of the Charging Parties, Rosenblatt, sent an email to Porter Adams for the Respondent, again objecting to the implementation of the COVID-19 Vaccination Policy and the changes to the Sick Leave Policy Addendum, and propounding multiple information requests. The requests sought the following information:

1. With respect to Section VII of the City's October 5, 2021 COVID-19 Vaccination Policy proposal:
    a) What training will be provided to City employees regarding the submission of testing results? When will such training be provided?
    b) How much time will be given to employees to submit their testing results?
    c) How will the City handle an employee whose testing results are delayed or lost through no fault of their own? Most importantly, will they be subject to discipline?
    d) What support and accommodations will be provided by the City to assist employees without access to a computer, or who are unable to navigate a computer, such that they are unable to report their test results through the portal?
2. The number of employees, broken down by bargaining unit and department, who would currently be considered (1) fully-vaccinated, (2) partially-vaccinated, (3) unvaccinated, and (4) status unreported, under the City's October 5, 2021 COVID-19 Vaccination Policy proposal.
3. The number of employees, broken down by bargaining unit and department, who are currently absent for any reason relating to COVID-19, including those absent due to (1) a positive COVID-19 test, (2) a quarantine order from any source, (3) an isolation order from any source, or (4) FMLA leave to care for a relative.
4. The number of employees, broken down by bargaining unit and department, who have: (1) tested positive for COVID-19, or (2) have been directed by the City to obtain a COVID-19 test during each calendar month since April 2021.
5. The location of free COVID-19 testing clinics sponsored by the City.
6. Confirmation that the City's health insurance will cover twice weekly COVID-19 testing as required by the City's October 5, 2021 COVID-19 Vaccination Policy proposal.

7. Any scientific studies, reports, or documents that the City relied upon in deciding to require mandatory COVID-19 vaccinations and/or testing.
8. Any statutes, ordinances, laws, regulations, or other guidance that the City relied upon or otherwise used to develop its October 5, 2021 COVID-19 Vaccination Policy and Sick Leave Addendum proposals.

On October 7, 2021, on behalf of Respondent, Porter Adams sent an email to Rosenblatt for the Charging Parties responding to the Charging Parties' October 6, 2021, information requests. The Respondent provided information in response to each enumerated information request. However, with respect to request number 2 the Respondent broke down the data only by department and not by bargaining unit. With respect to request number 3, the Respondent provided the Unions with the number of employees in each department who had used the Respondent's COVID-19 timecode. The Respondent noted that its list was broken down by bargaining unit and number of hours used. It further noted that it used the same payroll code for employees who tested positive for COVID-19 and those who were required to quarantine.

Porter Adams also acknowledged that the Respondent had not announced and communicated the policy to employees on October 6, as she had initially planned and stated. She notified the Charging Parties that the policy would instead be announced and distributed to employees on October 8, 2021 in order to give employees the maximum amount of notice concerning the Policy's terms.

On October 8, 2021, the Respondent notified employees that it was implementing the COVID-19 Vaccination Policy, effective October 8, 2021. The policy announced and implemented by the Respondent was the policy the Respondent proposed in its last best and final offer.

That day, the Respondent also implemented a new sick leave policy addendum, which stated an effective date of October 8, 2021, and an expiration date of March 31, 2022. The addendum contained the same terms as the sick leave addendum set forth in the Respondent's last best and final offer.

Before the Respondent implemented its COVID-19 Vaccination Policy, effective October 8, 2021, the Respondent did not require employees to (1) report their COVID-19 vaccination status to the Respondent, (2) undergo twice-weekly testing for COVID-19, or (3) be fully vaccinated against COVID-19.

The Respondent and the Charging Parties did not reach tentative agreements regarding the COVID-19 Vaccination Policy and the changes to the Sick Leave Policy Addendum. Neither the Respondent nor the Charging Parties declared the negotiations to be at impasse before the Respondent implemented the COVID-19 Vaccination Policy and the changes to the Sick Leave Policy Addendum.

On October 11, 2021, on behalf of the Charging Parties, Rosenblatt sent an email to Porter Adams, for the Respondent, again objecting to the Respondent's implementation of the COVID-19 Vaccination Policy and the changes to the Sick Leave Policy Addendum. He asserted that the Union objected to the Respondent's unilateral imposition of the vaccination policy and demanded that the Respondent rescind the policy until negotiations could be completed. He further stated that the Charging Parties viewed the parties' discussions to be "far from impasse," and stated that they would be in touch with the Respondent with their response.

On October 22, 2021, the Charging Parties, except for AFSCME, filed the unfair labor practice charge in Case No. L-CA-22-014, with the Local Panel of the Board. On October 29, 2021, AFSCME filed the unfair labor practice charge in Case No. L-CA-22-015, with the Local Panel of the Board.

On October 25, 2021, on behalf of the Charging Parties, Joe Healy, the Business Manager for Local 1092, sent to Porter Adams and others an email propounding information requests to the Respondent. He stated that the Charging Parties were still "waiting on policy compliance by bargaining unit, as well as compliance by contractor/vendor" and that they were also requesting "updated fully vaccinated rates, and compliance rates on the testing portal for those who must submit tests."

On October 26, 2021, on behalf of Charging Party-COUPE, Healy sent to Porter Adams and others another email propounding information requests to the Respondent. He requested "statistics on religious/medical/Health Care Conscience Act exemption applications, and how many of each of those applications have been granted and denied."

On October 28, 2021, on behalf of the Charging Parties, Rosenblatt sent to Porter Adams and others an email propounding information requests to the Respondent. This included requests for the following information:

1. A full explanation regarding the City's process for oversight and tracking of the vaccination status of contractors and vendors who have regular direct contact with, or

regularly work in close proximity to, City employees, as well as any associated documents or policies governing or explaining the same;
2. All statistics in the City's possession regarding the current number of such contractors and vendors who have reported their vaccination status to the City, as well as a breakdown of that status (i.e., vaccinated vs non-vaccinated); and
3. The number of applications that have been submitted for either religious or medical exemptions, as well as the number of such exemptions which have been granted or denied. Please break down the exemption information by exemption type, bargaining unit, and department.

On multiple dates in late October 2021, each of the Charging Parties filed grievances with the Respondent under their respective collective bargaining agreements alleging the Respondent's implementation of the COVID-19 Vaccination Policy and the changes to the Sick Leave Policy Addendum violated the agreements.

On November 4, 2021, on behalf of the Charging Parties, Healy sent to Porter Adams and others an email propounding information requests to the Respondent. Healy reiterated the Charging Parties' request for the number of applications that had been submitted for either religious or medical exemptions, and the number of such exemptions that had been granted or denied and data on vaccination policy compliance by contractors and vendors. The Charging Parties further requested an updated spreadsheet showing compliance with the vaccination policy by bargaining unit, noting that the last spreadsheet they received was from October 26, 2021.

On November 8, 2021, on behalf of the Respondent, Porter Adams sent to Healy and others for the Charging Parties, a report showing the number of employees and percentage of each bargaining unit that had reported their vaccination status to the Respondent and whether the reported vaccination status was fully vaccinated or not vaccinated.

On November 16, 2021, on behalf of the Charging Parties, Healy sent to Porter Adams and others an email propounding information requests to the Respondent. Healy reiterated the Charging Parties' request for the number of applications that had been submitted for either religious or medical exemptions, and the number of such exemptions that had been granted or denied and data on vaccination policy compliance by contractors and vendors. He reiterated the Charging Parties' request for information on how the Respondent was tracking vendor/contractor compliance with the policy. In addition, he asked when employees would hear back from the Respondent on their application for religious and medical exemptions from the vaccination policy.

On November 18, 2021, an attorney for the Charging Parties, George Luscombe, sent an email to Porter Adams propounding information requests to the Respondent. He asserted that the

information requests were necessary to prepare for the parties' pending arbitration. Luscombe asserted that the Charging Parties had previously requested, but not received, much of the requested information. The information requested was as follows:

1. Copies of any and all correspondence between the City and any of the Unions concerning the City's proposal for or intent to implement a Covid-19 vaccination policy, including any and all correspondence concerning proposals or counter-proposals for a Covid-19 vaccination policy.
2. Copies of all proposals and counter-proposals exchanged between the City and the Unions regarding a Covid-19 Vaccination policy.
3. All general announcements / notifications (e.g., mass emails) sent to City employees within the Unions' bargaining units from August 1, 2021 to the present regarding a City vaccination policy or requirement to be vaccinated.
4. A breakdown of employee compliance with the City's Covid-19 Vaccination policy, by bargaining unit and department and on a week-by-week basis, including, but not limited to, (a) total number of employees, (b) number and percentage of employees reporting vaccination status, (c) number and percentage of employees reporting they are vaccinated, (d) number and percentage of employees reporting they are unvaccinated, and (e) number and percentage of unvaccinated employees reporting test results. Please provide in excel format if possible.
5. A breakdown of contractor and vendor employee compliance with the City's Covid-19 Vaccination policy, by contractor or vendor and on a week-by-week basis, including, but not limited to, (a) total number of individuals, (b) number and percentage of individuals reporting vaccination status, (c) number and percentage of individuals reporting they are vaccinated, (d) number and percentage of individuals reporting they are unvaccinated, (e) number and percentage of unvaccinated individuals reporting test results, and (f) the number of individuals prevented from working on City projects or property under the policy. If the City does not have the foregoing information, please provide all statistics in the City's possession regarding the current number of such contractors and vendors who have reported their vaccination status to the City, as well as a breakdown of that status. Please provide in excel format if possible.
6. A full explanation regarding the City's process for oversight and tracking of contractor and vendor compliance with the City's Covid-19 Vaccination Policy, any associated documents or policies governing or explaining the same, and any and all communications with vendors and contractors regarding compliance with the City's Covid-19 Vaccination Policy.
7. All documents describing or concerning the City's policy and process for reviewing, granting, or denying requests for medical or religious exemptions under the City's Covid-19 Vaccination Policy.
8. A breakdown by bargaining unit and department of the number of requests for religious exemptions under the City's Covid-19 Vaccination Policy, the number of such requests granted by the City, the number of such requests denied by the City, and the number of such requests still pending review. Please provide in excel format if possible.

9. A breakdown by bargaining unit and department of the number of requests for medical exemptions under the City's Covid-19 Vaccination Policy, the number of such requests granted by the City, the number of such requests denied by the City, and the number of such requests still pending review. Please provide in excel format if possible.
10. Copies of any and all Covid-19 health and safety policies in effect applicable to the Unions' bargaining units from March 15, 2020 to the present (e.g., policies involving or related to masking, social distancing, Covid-19 testing, employee and public screening, vaccination, remote work, contact tracing, improvements in ventilation and/or purification, isolation, or quarantining).
11. A breakdown of the numbers of Covid-19 positive cases, hospitalizations, and deaths among City of Chicago employees since March 15, 2020, broken down by month or week, and by bargaining unit and City department. Please provide in excel format if possible.
12. A breakdown of the numbers of Covid-19 positive cases, hospitalizations, and deaths within the City of Chicago generally since March 15, 2020, broken down by month or week. Please provide in excel format if possible. Copies of any analysis or studies concerning the effectiveness or comparative effectiveness of any Covid-19 mitigation efforts or alternatives, such as vaccination, testing, masking, social distancing, improvements in employee and public screening, improvements in ventilation and/or air purification, or any combination of efforts or alternatives.
13. Copies of any analysis or studies concerning the costs or benefits of any Covid-19 mitigation efforts or alternatives, such as vaccination, testing, masking, social distancing, improvements in employee and public screening, improvements in ventilation and/or air purification, or any combination of efforts or alternatives, and specifically including, but not limited to, any analysis or studies comparing a vaccination only policy to a policy with a vaccination or testing alternative.
14. Identify and provide copies of any analysis or studies concerning the effectiveness, cost, or benefits of any Covid-19 mitigation efforts or alternatives (such as vaccination, masking, social distancing, improvements in employee and public screening, improvements in ventilation and/or air purification or any combination of efforts or alternatives) relied on by the City in developing, or determining the need for, the City's Covid-19 Vaccination Policy.
15. Identify and provide copies of any analysis or studies concerning the risks of Covid-19 infection, disease, hospitalization, or death relied on by the City in developing, or determining the need for, the City's Covid-19 Vaccination Policy.
16. Identify and provide copies of any other analysis, studies, or another [sic] materials relied on by the City in developing, or determining the need for, the City's Covid-19 Vaccination Policy.
17. Documents sufficient to show or describe the City health plan's coverage of Covid-19 testing (for diagnostic or surveillance purposes) as applicable at any time from August 2021 to the present.
18. Identify and provide copies of any and all documents the City intends to use or introduce into evidence at the arbitration.
19. Identify all witnesses the City may call at arbitration.

On November 22, 2021, on behalf of the Respondent, Porter Adams provided a response and a supplemental response to the Charging Parties' November 18, 2021, information request. In her initial response, Porter Adams disputed Luscombe's characterization that the Respondents had failed to provide much of the requested information, which the Charging Parties had previously requested. She asserted that much of the information was already in the Charging Parties' possession and/or had been previously provided by the Respondent.

Porter Adams provided substantive responses to requests numbers 1, 2, 3, 4, 7, 10, 11, 12, 15, 16, and 17. The responses to these requests provided new/updated information, referred the Charging Parties to attachments[8] or links, or directed the Charging Parties to the Respondent's earlier responses to information requests made by the Charging Parties. As to request numbers 5 and 6, related to vendor compliance with the vaccine mandate, and request numbers 8 and 9, related to bargaining unit members' requests for exemptions, the Respondent informed the Charging Parties that it was still gathering information responsive to the requests and would provide additional responsive information. Regarding request number 11, pertaining to the breakdown of COVID-19 positive cases, hospitalization and deaths among City employees, the Respondent provided information on the number of deaths, but stated that it did not have records for hospitalizations. The Respondent asserted it would supplement its response to provide information on the number of positive cases and did so later that day. Regarding request number 18, which inquired about the Respondent's health plan coverage for COVID-19 testing, the Respondent asserted that it would supplement its response. Finally, regarding the information requests number 19 & 20, which related to the Respondent's presentation of its case at arbitration, the Respondent asserted that its response would vary depending on the information the Charging Parties presented during arbitration.

On December 2, 2021, on behalf of the Respondent, Porter Adams provided another supplemental response to the Charging Parties' November 18, 2021, information request. This supplemental production provided information in response to request numbers 5, 6, 8, 9, 11 and 18. Regarding request number 5, pertaining to contractor and vendor compliance with the policy, the Respondent provided data which indicated the total known number of non-employees who had reported their vaccination status in the portal, broken down by department, but that information

[8] The attachments are not included in the record, but the Charging Parties do not dispute that they received the information referenced in these attachments.

did not specify how many had reported as vaccinated versus unvaccinated. The proffered information also did not include the number or percentage of unvaccinated individuals reporting test results. Regarding request numbers 8 and 9, related to bargaining unit members' requests for religious and medical exemptions, the Respondent provided a spreadsheet, by department, of exemption requests received, approved, denied, withdrawn, and pending. It asserted that it did not maintain records of exemption requests by bargaining unit, and that providing the information in such a format would require a manual search and entry, which it asserted would be burdensome and time-consuming. The spreadsheet did not distinguish between medical and religious requests for exemptions. The Respondent did not provide any information to address the Charging Party-COUPE's inquiry about when employees would hear back on their applications for religious and medical exemptions. Regarding request number 11,[9] the Respondent referred the Charging Parties to an earlier information production that it had provided on November 22, 2021.

On December 15, 2021, Arbitrator George T. Roumell, Jr. issued an Award denying the Charging Parties' grievances. The arbitrator found that the Respondent did not violate the parties' contracts when it required employees to become vaccinated as a condition of employment and announced that employees would be placed on no-pay status if they did not comply with the vaccine mandate, as outlined in the policy.

In so holding, the arbitrator noted that the management rights clauses of the Charging Parties' contracts recognized the Respondent's inherent management rights, subject to specific provisions in the respective agreements, and that they also granted the Respondent authority to add, modify, or enforce rules and regulations.[10] He noted that the "rules of conduct" provisions in the parties' contracts did not apply because the requirement of vaccination was a qualification not a "rule of conduct."[11] He further observed that none of the Charging Parties' contracts had language prohibiting the Respondent from "mandating a pandemic COVID-19 vaccination policy based on medical advice."

[9] The number 11 appears to have been inadvertently omitted from the Respondent's response, but the language of that request is copied in the response.
[10] He cited two collective bargaining agreements (AFSCME's and Teamsters 700's) which each contained different wording but expressed similar principles.
[11] He noted, in the alternative, that even if the vaccine mandate was a rule of conduct, the Respondent discussed it with the Unions as required under the contacts' rules of conduct provisions.

The arbitrator additionally relied on arbitral precedent applicable to AFCSME and the Respondent in reaching his decision. He noted that an award by Arbitrator Feuille found that implementation of a no-smoking policy did not violate the contract. He also referenced an award by Arbitrator Goldstein, and stated that based on this precedent, there was no violation of the parties' contracts because no-pay status was non-disciplinary and arose because an employee was not fit for duty.

However, the arbitrator found that he could not make a determination regarding the vaccination policy's placement of employees on no-pay status for failure to report their vaccination status without additional briefing and a "separate detailed hearing." He directed the parties to consult with him about a hearing date and the identification of relevant witnesses.

In his award, the arbitrator extended the deadline for obtaining the first shot of a vaccine to December 31, 2021, and the second shot to January 31, 2022.[12] He stated that employees who submitted their requests for medical or religious exemption by December 8, 2021, were exempt from the vaccination requirement unless the Respondent denied their request, in which case they would have six weeks from the date of denial to obtain vaccination. He stated that employees who were unable to report to work due to an adverse reaction should not be charged with a sick leave violation and would be entitled to the same sick leave benefits as they would for any other ailment. The arbitrator also ordered the parties to engage in at least one bargaining session by December 27, 2021, to resolve and address any issues raised between the parties or as a result of his award. Finally, he directed the Respondent to notify employees of the provisions of the award.

On December 27, 2021, the parties met for a bargaining session in accordance with Arbitrator Roumell's order as set forth in his award. To date, the Charging Parties have not invoked Arbitrator Roumell's retained jurisdiction under the award.

On January 21, 2022, the Board's Executive Director issued the Complaint for Hearing in Case No. L-CA-22-014. On March 30, 2022, the Executive Director issued the Complaint for Hearing in Case No. L-CA-22-015.

In March and April 2022, the Charging Parties notified the Respondent of their intent to open their CBAs for negotiation of successor agreements, and the Charging Parties and Respondent commenced negotiations which are ongoing. To date, each of the Charging Parties'

[12] The first date applied to the one-shot Johnson & Johnson vaccine.

collective bargaining agreements with the Respondent remain in effect while the parties negotiate for successor agreements.

Following the Respondent's implementation of its vaccination policy, the Respondent has placed multiple employees within the Charging Parties' bargaining units on non-disciplinary, no-pay status for either (a) allegedly failing to report vaccination status by October 15, 2021, (b) allegedly failing to comply with the twice-weekly testing requirement, or (c) allegedly failing to be fully vaccinated against COVID-19 under the terms of the COVID-19 Vaccination Policy by December 31, 2021.

In or about August 2022, the Respondent began terminating employees in the Charging Parties' bargaining units who had previously been on a non-disciplinary, no-pay status under the COVID-19 Vaccination Policy for allegedly (a) failing to report vaccination status by October 15, 2021 or (b) failing to be fully vaccinated against COVID-19.

On or about September 1, 2022, the Respondent provided the Charging Parties prior notification that it would suspend its twice-weekly testing requirement under its COVID-19 Vaccination Policy, which had been imposed on employees who had obtained exemptions from the vaccination requirement. On September 2, 2022, the Respondent suspended its twice weekly testing requirement.

IV. DISCUSSION AND ANALYSIS

1. Amendments to the Complaints

a) The Parties' Motions and Responses

On November 10, 2022, COUPE filed a motion to amend the complaint in Case No. L-CA-22-014, and on December 21, 2022, AFSCME filed a nearly identical motion to amend the complaint in Case No. L-CA-22-015. Both motions sought the following amendments:

(1) Correct typographical errors and other general clarifications;

(2) Clarify the complaint to allege that the Respondent was obligated to bargain to impasse or agreement on both the decision to implement, and the effects of, the vaccine policy;

(3) Add the allegation that the Respondent was obligated to bargain over the decision to implement, and the effects of the Sick Leave Addendum and that the Respondent's failure to do so violated Sections 10(a)(4) and (1) of the Act;

(4) Add the allegation that the Respondent violated Sections 10(a)(4) and (1) of the Act when it announced its intent to implement the vaccine policy without first bargaining to impasse or agreement;

(5) Add the allegation that the Respondent unlawfully dealt directly with employees in violation of Sections 10(a)(4) and (1) of the Act by communicating directly with employees an allegedly inaccurate description of the Respondent's then-current bargaining position and thereby undermined the bargaining process and the Charging Parties' status as exclusive representatives;

(6) Add the allegation that the Respondent made unlawful unilateral changes to the Vaccine Policy in 2022 including by moving to terminate employees who had previously been placed in non-disciplinary, no-pay status pursuant to the Vaccine Policy and by suspending the mandatory testing requirements of the Vaccine Policy, all without prior notice, or bargaining to impasse or agreement with the Charging Parties.

On November 23, 2022, the Respondent stated via email that it did not object to the motion, filed by COUPE, to amend the complaint in Case No. L-CA-22-014. To date, the Respondent has not filed any response or objection to the motion, filed by AFSCME, to amend the complaint in Case No. L-CA-22-015. The Respondent's post-hearing brief does not include any arguments in opposition to this latter motion to amend the complaint.

b) Ruling on the Amendment

The Charging Parties' unopposed motions to amend the complaints are granted.

The Act gives the administrative law judge discretion to amend the complaint. Section 11(a) of the Act provides, in relevant part: "Any such complaint may be amended by the member or hearing officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon." 5 ILCS 315/11(a) (2018). Section 1220.50(f) of the Board's Rules likewise provides that "[t]he Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform it to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order." 80 Ill. Admin. Code § 1220.50(f). In interpreting these provisions, the Board has held that it is appropriate to amend a complaint in the following circumstances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge,

or grew out of the same subject matter during the pendency of the case. Forest Preserve Dist. of Cook Cnty. v. Ill. Labor Relations Bd., 369 Ill. App. 3d 733, 746-7 (1st Dist. 2006); Chi. Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); Cnty. of Cook, 5 PERI ¶ 3002 (IL LLRB 1988). The Board may properly decide allegations which have been litigated by the parties, even if those allegations were never specifically pleaded, as long as the respondent has had notice and an adequate opportunity to prepare and present a defense. County of Cook and Sheriff of Cook County, 37 PERI ¶ 43 (IL LRB-LP 2020); Forest Preserve Dist. of Cook Cnty., 5 PERI ¶ 3002.

The amendments outlined above are appropriately granted because they conform the pleadings to the evidence presented in the parties' stipulated record and no party is prejudiced by them. The Respondent expressly stated it had no objection to COUPE's motion to amend, and it declined to make any objection to AFSCME's nearly identical motion. Furthermore, the Respondent had the opportunity to present evidence and argument in support of these new and clarified allegations on brief, and largely did so.

In sum, the Charging Parties' motions to amend the complaints are granted.

2. Vaccination Policy & Sick Leave Addendum

The Respondent violated Sections 10(a)(4) and (1) of the Act by implementing its vaccination policy without first bargaining over its effects to impasse or agreement. The Respondent likewise violated Sections 10(a)(4) and (1) of the Act by implementing changes to the sick leave addendum without bargaining to impasse or agreement. However, the Respondent did not violate Sections 10(a)(4) and (1) of the Act by refusing to bargain over its decision to impose a vaccination mandate and a reporting requirement.

There is little dispute that the Respondent implemented its vaccination policy and sick leave addendum on October 8, 2021. Accordingly, the sole issues addressed below are the Respondent's bargaining obligations under the Central City test, the nature and scope of the Respondent's effects bargaining obligations, and the Respondent's defenses including the existence of an impasse, exigent circumstances, and waiver.

a) Central City Test - Vaccine Mandate and Reporting Requirement

The Respondent did not violate Sections 10(a)(4) and (1) of the Act by refusing to bargain over its decision to implement a vaccine mandate and reporting requirement because these matters

are permissive subjects of bargaining under the Central City test.

An employer violates Sections 10(a)(4) and (1) of the Act if it makes a unilateral change in a mandatory subject of bargaining without granting prior notice to, and an opportunity to bargain with, the exclusive bargaining representative of its employees. Amalgamated Transit Union v. Illinois Labor Relations Bd., 2017 IL App (1st) 160999, ¶ 35; Chicago Transit Auth., 14 PERI ¶ 3002 (IL LLRB 1997) aff'd Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1st Dist. 1998); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987).

In Central City, the court set forth a three-part test to determine whether a matter is a mandatory subject of bargaining. The first question is whether the matter is one of wages, hours and terms and conditions of employment. Cent. City Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd. ("Central City"), 149 Ill. 2d 496, 523 (1992). If the answer to that question is no, the inquiry ends, and the employer is under no duty to bargain. Central City, 149 Ill. 2d at 523. If the answer is yes, then the second question under the Central City test is whether the matter is also one of inherent managerial authority. Id. If the answer is no, then the analysis stops, and the matter is a mandatory subject of bargaining. Id. If the answer is yes, the Board will balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the employer's authority. Id.

Viewed on the whole, the vaccination policy is a matter of employees' terms and conditions of employment because it imposes a new condition of employment and subjects employees to potential discipline or loss of pay for violating it. A policy that imposes a new requirement and subjects unit employees to potential discipline and/or discharge affects their terms and conditions of employment. Cnty. of Cook v. Illinois Lab. Rels. Bd. Loc. Panel, 347 Ill. App. 3d 538, 552 (2004); Int'l Bhd. of Teamsters, Loc. 700 v. Illinois Lab. Rels. Bd., Loc. Panel, Cnty. of Cook, 2017 IL App (1st) 152993, ¶ 36; County of Cook (Juvenile Temporary Detention Ctr.), 14 PERI ¶ 3008 (IL LLRB 1998); Ill. Sec'y of State, 24 PERI ¶ 22 (IL LRB-SP 2008). Similarly, employer action that impacts employees' wages affects employees' terms and conditions of employment. Chicago Park Dist. v. Illinois Lab. Rels. Bd., Loc. Panel, 354 Ill. App. 3d 595, 602 (1st Dist. 2004) (reduction in hours); Village of Franklin Park, 8 PERI ¶2039 (IL SLRB 1992) (change to promotional criteria) aff'd Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994)..

Here, the Respondent's policy newly required employees to obtain a COVID-19 vaccine by December 31, 2021, or obtain a religions or medical exemption, and stated that this obligation was a condition of their employment. The policy further provided that employees would be placed on non-disciplinary no-pay status if they did not obtain vaccination or an exemption by the stated deadline. The policy additionally required employees to report their vaccination status and provided that employees would be placed on no-pay status if they failed to report by October 15, 2021. The policy further specified that violations of the policy could result in discipline up to and including discharge. Such new requirements, coupled with disciplinary and pay-related consequences, render the vaccination policy a matter of employees' terms and conditions of employment. See supra.

In addition, the policy concerns employees' terms and conditions of employment because it affects employee health and safety. Rules that impact employee safety are matters of employees' terms and conditions of employment. Chicago Board of Education, 39 PERI ¶ 95 (ILELRB 2023) (mask-optional policy affected terms and conditions of employment); City of Chicago (Department of Police), 38 PERI ¶ 20 (IL LRB-LP 2021) (safety concerns arising from introduction of body worn cameras affected terms and conditions of employment); NLRB v. Gulf Power Co., 384 F.2d 822, 824 (5th Cir. 1967) (safety rules and practices are conditions of employment). Here, the policy, by its terms, was intended in part to "safeguard the health and well-being of employees." Its specifications regarding COVID-19 vaccination and twice-weekly testing underscore the fact that the policy concerns employees' health and safety on the job.

However, key parts of the vaccination policy, specifically, the vaccine mandate and the reporting requirement, are also matters of inherent managerial authority because they are closely connected to the Respondent's core functions and its standards of service. Decisions concerning the functions of the employer, its standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques, and direction of employees are matters of inherent managerial authority. 5 ILCS 315/4 (2012); Cnty. of Perry and Sheriff of Perry Cnty., 19 PERI ¶ 124 (IL LRB-SP 2003). This statutory list is not exhaustive, but it establishes the characteristics of managerial rights that are not subject to mandatory bargaining. Fraternal Order of Police, Chicago Lodge No. 7 v. Illinois Labor Relations Bd., Local Panel, 2011 IL App (1st) 103215, ¶ 23.

Here, the Respondent sought to impose a vaccine mandate to ensure public safety and maintain the provision of public services during a national public health emergency caused by the COVID-19 pandemic. Both federal and state leaders identified the pandemic as a severe public health crisis. On March 9, 2020, Governor J.B. Pritzker issued a gubernatorial disaster proclamation regarding the COVID-19 pandemic.[13] On March 13, 2020, the President of the United States declared a nationwide emergency covering all states, including Illinois.[14] In Illinois, as of September 2021, COVID-19 had caused a cumulative total of over 1.5 million cases and over 24,000 deaths.[15] The Centers for Disease Control and Prevention provided public health guidance that vaccination was effective at preventing the spread of COVID-19, and the record reflects that the Respondent relied on such guidance in deciding to impose the mandate.[16]

Under these circumstances, the Respondent's mandate that employees obtain vaccination was integral to its ability to maintain a functional workforce that was capable of carrying out public services during a global pandemic. The Respondent's vaccination mandate had a similarly close connection to the Respondent's standards of service by ensuring that the Respondent's employees, who may have contact with members of the public, did not spread a deadly virus.

Similarly, the reporting requirement is a matter of inherent managerial authority because it is inextricably tied to the vaccine mandate. The Respondent's interest in tracking compliance with the mandate is indistinguishable from its interest in imposing the mandate in the first place. Without a tracking mechanism, the Respondent would be unable to determine whether employees were abiding by the mandate.

Contrary to the Charging Parties' suggestion, the vaccination policy was not "purely a labor policy" because it was not limited to ensuring the health of employees. Rather, it had the additional purpose of "safeguard[ing] the health and well-being of…the residents that spend time in City facilities or interact" with City employees as they receive City services.

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[13] https://www.illinois.gov/content/dam/soi/en/web/coronavirus/documents/coronavirus-disaster-proc-03-12-2020.pdf

[14] https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/

[15] https://dph.illinois.gov/covid19/data.html

[16] The Respondent's October 7, 2021 response to the Unions' October 6, 2021 information request lists a wide variety of sources, including CDC guidance, upon which the Respondent relied when reaching the decision to impose a vaccine mandate.

Turning to the balancing test, the balance favors unilateral decision-making regarding the mandate and the reporting requirement. The balance favors bargaining where the issues are amenable to resolution through the negotiating process, i.e., where the union is capable of offering proposals that are an adequate response to the employer's concerns. Cnty. of St. Clair and the Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011), aff'd by unpub. ord., 2012 IL App (5th) 110317-U (union need not present evidence of its actual proposals). For example, there are significant benefits to bargaining where the employer's decision is economically motivated because the union can provide helpful suggestions to reduce labor costs. Vill. of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010); Vill. of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003) (considering economics); City of Peoria, 3 PERI ¶ 2025. By contrast, the balance favors unilateral decision-making where the employer's decision concerns policy matters that are intimately connected to its governmental mission or where bargaining would diminish its ability to effectively perform the services it is obligated to provide. Vill. of Franklin Park, 8 PERI ¶2039 ("the scope of bargaining in the public sector must be determined with regard to the employer's statutory mission and the nature of the public service it provides") aff'd Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994); State of Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections, 5 PERI ¶ 2001, aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989).

The Illinois Labor Relations Board has not previously applied the Central City test to assess a public employer's obligation to bargain over a vaccine mandate or vaccination reporting obligations. However, other public sector jurisdictions have considered and addressed an employer's obligation to bargain vaccine mandates. These decisions provide guidance here because they arise from public sector labor disputes, weigh similar factors, and consider the public employer's bargaining obligation within the context of the COVID-19 pandemic. They support the conclusion reached in this case, that in the context of the COVID-19 global pandemic, the Respondent was not obligated to bargain over the vaccine mandate and the reporting requirement.

For example, in City of Newark, police and fire unions filed unfair labor practice charges and applications for interim relief from the city's vaccine mandate, which required employees to obtain vaccination or face discipline up to and including termination. The Public Employment Relations Commission (PERC) designee denied interim relief regarding the mandate, reasoning that "it appear[ed] to be an exercise of the City's managerial prerogative," but granted interim relief

related to the mandate's impacts. City of Newark, 48 NJPER ¶ 30 (NJ PERC 2021). On appeal, and in most relevant part to the Central City analysis, the Court affirmed the designee's holding that the city had a managerial prerogative to promulgate the vaccine mandate.[17] City of Newark, 469 N.J. Super. 366 (App. Div. 2021). The court reasoned that the city's right to promulgate a vaccination mandate was supported by its well-recognized right to hire or direct its workforce, coupled with the "clear national and state public policy to combat the health threats posed by COVID-19." Id.

Likewise, in Regents of the University of California, the California Public Employment Relations Board (PERB) held that the university's 2020 influenza vaccination mandate, initiated before the introduction of COVID-19 vaccines, was non-negotiable. Regents of the University of California, 46 PERC ¶ 38 (CA PERB 2021). The PERB held that the university's decision was not amenable to bargaining because it was a response to a public health hazard that affected not just employees but the general population. Regents of the University of California, 46 PERC ¶ 38. Furthermore, it was a direct response to concerns by experts, including the CDC, that simultaneous outbreaks of COVID-19 would overwhelm its healthcare facilities. Id. The PERB concluded that under the "unprecedented circumstances" presented, requiring the employer to bargain would "abridge its right to determine public health policy." Id.

Similarly, in Commonwealth of Mass., the Massachusetts Department of Labor Relations acknowledged that it was "well within the Commonwealth's core managerial authority" to require COVID-19 vaccination for all executive department employees, and it relied on this principle when analyzing effects bargaining issues raised in the charge. Commonwealth of Mass. and State Police Ass'n of Mass., SUP-21-8836 (Commwlth. ERB 2022).[18] It reasoned that vaccination was a means of safeguarding employees and allowing union members to interact with the public, without putting them in danger, and that alternatives to vaccination were therefore not appropriate subjects for impact bargaining.

The cases discussed above emphasize that, in the public sector, requiring an employer to bargain over a COVID-19 vaccine mandate, would place unacceptable burdens on the employer's inherent managerial authority to maintain standards of service and public health during the

[17] The Court also reversed the designees partial grant of interim relief, finding no obligation to bargain over the mandate's effects. City of Newark, 469 N.J. Super. 366 (App. Div. 2021).
[18] https://www.mass.gov/doc/sup-21-8836-cerb-decision/download

pendency of a global pandemic that claimed an overwhelming number of lives and sickened many more. Moreover, since the obligation to report vaccination status is the means by which the Respondent determines compliance, the balancing test warrants the same outcome as the mandate itself.

This conclusion is strengthened in this case where the Charging Parties have failed to identify any overriding benefits that bargaining would confer on the decision-making process regarding the mandate and the reporting requirement. Although employee interests are a factor in the balancing test, the employee interests at issue here, involving discipline, consequences for failure to report vaccination status, time-off provided for vaccination, sick leave for vaccine side effects, and similar matters are more accurately deemed effects of the underlying managerial decision. County of Cook, 2017 IL App (1st) 153015, ¶ 60 (addressing employee interests); Int'l Bhd. of Teamsters, Local 700, 2017 IL App (1st) 152993, ¶ 39 (same); Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 268-9 (1st Dist. 1989) (addressing disciplinary effect of drug testing).

Finally, the authority relied upon by the Charging Parties from the private sector is distinguishable and does not support a different conclusion on the balancing test. As a threshold matter, the NLRA does not contain similar language to that contained in Section 4 of the IPLRA. In addition, the cited case, Virginia Mason Hospital, did not involve a vaccine mandate imposed during the grip of a global pandemic that spurred a declaration of a national health emergency and a gubernatorial disaster proclamation. Cf. In Re Virginia Mason Hosp., 357 NLRB 564, 566-8 (2011) (requiring face masks and antivirals for nurses if they declined influenza immunization). Furthermore, the NLRB in Virginia Mason did not weigh the employer's public safety justifications for the influenza policy against the benefits of bargaining over it, which is the type of analysis required in this case. Cf. In Re Virginia Mason Hosp., 357 NLRB at 568.

Similarly, the memorandum issued by the NLRB's office of the general counsel regarding the Department of Labor's (DOL) COVID-19 protocols is not instructive. See infra. The memorandum provides guidance that covered employers have decisional bargaining obligations regarding the choice between imposing a vaccine mandate versus a testing/masking alternative. Cf. Memorandum OM 22-03 (NLRB, Off. of the Gen. Counsel, Nov. 10, 2021). However, the memorandum does not address the considerations that arise in the public sector, where the employer's primary function is the delivery of public services; nor does it purport to apply any

kind of balancing test that gives weight to the public employer's statutory mission. Such differences in analytical approach have justified the Board in declining to adopt similar guidance in other cases when determining the scope of a public sector employer's bargaining obligation. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001 ("the NLRB's General Counsel's Memorandum does not reflect the same employer interests and purposes that exist in the public sector and we therefore distinguish its applicability.") aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989).

Thus, the Respondent's decisions to promulgate a vaccine mandate and impose a reporting requirement are permissive subjects of bargaining over which the Respondent is not required to bargain.

b) Central City Test - Sick Leave Addendum

The sick leave addendum is a mandatory subject of bargaining under the Central City test, and absent a viable defense, the Respondent's alleged unilateral changes to the sick leave addendum will violate Sections 10(a)(4) and (1) of the Act.[19]

The sick leave addendum is a matter of employees' terms and conditions of employment. A matter concerns wages, hours, and terms and conditions of employment if it (1) involves a departure from previously established operating practices, (2) effects a change in the conditions of employment, or (3) results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the Union. Int'l Bhd. of Teamsters, Loc. 700, 2017 IL App (1st) 152993, ¶ 33; see also National Labor Relations Board v. Katz, 369 U.S. 736, 744 (1962) (a change in sick leave is a matter affecting hours and other terms and conditions of employment).

[19] The Central City test applies here because the parties' proposals on the sick leave addendum were not limited to the impacts of the Respondent's vaccine mandate. Had the parties' proposals addressed solely the effects of the vaccine mandate, the effects would be mandatorily negotiable without application of the Central City test. 5 ILCS 315/4; Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934, 943 (1998) (Board did not err by failing to apply the Central City test to effects bargaining issues); see also Decatur Bd. of Educ., Dist. No. 61 v. Illinois Educ. Lab. Rels. Bd., 180 Ill. App. 3d 770, 781 (1989) (court "withdr[e]w [its] statement as to the use of the balance test in regarding to determining whether [an] impact is subject to bargaining").

Here, the new sick leave addendum affects employees' terms and conditions of employment in three ways: First, it reduces the sick leave benefits the Respondent previously granted employees, arising from a quarantine order. Under the old policy, the Respondent granted additional paid time off to all employees who were directed/ordered to quarantine due to COVID-19 exposure, irrespective of how they had been exposed, provided that it was not feasible for them to telework. Under the amended policy, the Respondent newly required employees to use their own benefit time or take an unpaid leave for such quarantine unless they were not fully vaccinated and had been ordered by the Respondent to quarantine due to an exposure at work.

Second, the Respondent eliminated the potential for employees to receive additional paid time off for an employer-mandated travel-related quarantine. Under the old policy, the Respondent's decisionmakers could exercise discretion in determining whether to provide additional paid time off for employer-mandated travel-related quarantine, but there is no such option under the new policy. Instead, employees who must adhere to employer-mandated travel-related quarantine must, without exception, use their own vacation time or take an unpaid leave to cover the quarantine period.

Third, the policy grants new sick leave benefits to employees who are absent due to an ordered school closure. It newly provides that employees are eligible for emergency paid sick leave if they are caring for minor children under 18 whose classrooms or schools are quarantined due to COVID-19. They are eligible to receive a total of 40 hours of paid sick leave at a rate of two-thirds their regular rate of pay if they are unable to telework and have already used 75% of the benefit time they will earn in the calendar year. The old sick leave policy contains no such provision and instead provides that employees may use their own benefit time to cover the quarantine period and, if they have run out, can obtain an advance of their benefit days, at their department head's discretion. Town of Londonderry, 2022 WL 16029964 (NH PELRB) (new COVID-19 paid leave benefit was a mandatory subject of bargaining).

The Respondent has failed to present any argument in support of the claim that the new sick leave addendum is a matter of inherent managerial authority. Any implied claim that the addendum must be treated as one with the vaccination policy for purposes of the Central City test must be rejected. The original sick leave addendum existed in March of 2020, long before the Respondent formulated its vaccination policy. Furthermore, the parties did not begin to bargain

over the sick leave addendum until the Charging Parties raised the issue in negotiations as part of their counterproposal regarding the vaccination policy and its effects.

Finally, there is no need to apply the balancing test to the sick leave addendum where the duty to bargain is clearly established and where the employer offers no evidence of any legitimate reason to avoid bargaining. Pace, Northwest Division, 12 PERI ¶ 2010 (IL SLRB 1996)(no balancing test applied to duty to bargain over work rules pertaining to absenteeism and tardiness); Village of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988) (no balancing test applied to the duty to bargain over hours).

Accordingly, the Respondent's changes to the sick leave addendum are a mandatory subject of bargaining, and the Respondent's changes to it are unlawful absent a defense such as impasse, agreement, or waiver, discussed more fully below.

c) Effects of Vaccine Policy

The Respondent is obligated to bargain over the effects of its decision to implement a vaccine mandate and reporting requirement, absent a valid defense, because the vaccine mandate and reporting requirement have bargainable effects.

Even where an employer's decision to implement a management policy is not subject to negotiations, the Act requires good-faith collective bargaining over the effects of that policy decision on the terms and conditions of employment of bargaining unit employees. 5 ILCS 315/4; Am. Fed'n of State, County & Mun. Employees, AFL-CIO, 190 Ill. App. 3d at 268; City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013); County of Cook (Juvenile Detention Center), 14 PERI ¶ 3008. And as a general matter, impact bargaining, just like bargaining over a negotiable management policy decision itself, must take place at a meaningful time before the contemplated action is taken, in other words, prior to implementation. County of Cook (Juvenile Detention Center), 14 PERI ¶ 3008; Chicago Transit Authority, 14 PERI ¶ 3002 aff'd by Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1998); cf. Illini Bluffs Community Unit District No. 327, 14 PERI ¶ 1038 n. 24 (ILELRB 1998) ("Generally, bargaining over effects must occur before the decision is implemented.").

However, not every impact of a managerial prerogative decision requires bargaining. Chief Judge of the Circuit Court of Cook County, 31 PERI ¶ 114 (IL LRB-SP 2014). Instead, an employer "must bargain only where the effects are not an inevitable consequence of the decision

itself." Policemen's Benevolent & Protective Ass'n, Unit #5, 36 PERI ¶ 113 (IL LRB-SP 2020) aff'd by City of Springfield v. Policemen's Benevolent & Protective Ass'n , Unit #5, 2021 IL App (4th) 200164; Chief Judge of the Circuit Court of Cook County, 31 PERI ¶ 114; Community College District 508 (City Colleges of Chicago), 13 PERI ¶ 1045 (IL ELRB 1997). To demonstrate that a change is an inevitable consequence of the underlying decision, the employer must show "not only that the change resulted directly from that decision, but also that there was no possibility of an alternative change in terms of employment that would have warranted bargaining." The Fresno Bee, 339 NLRB 1214, 1214-1215 (2003).

Applying these principles, the Respondent's decision to impose a vaccine mandate and reporting requirement had the following bargainable effects: disciplinary sanctions, the no-pay consequence for failure to report and/or vaccinate, the implementation date, allotted time for receiving vaccination and whether it is compensable, sick leave availability for employees suffering vaccine side effects, and safety concerns arising from the scope of the employer's vaccine mandate, specifically, its non-applicability to contractors working in close proximity to unit employees. Each is discussed in turn below.

Disciplinary sanctions arising from an employer's policy are a mandatory subject of bargaining, and thus a proper subject for effects bargaining. Am. Fed'n of State, County & Mun. Employees, AFL-CIO, 190 Ill. App. 3d at 268-9 aff'ing Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001 (disciplinary effect of drug testing); City of Chicago (Department of Police), 38 PERI ¶ 20 (disciplinary effect of body-worn cameras); see also East St. Louis, 3 PERI ¶ 2011 (IL SLRB 1987) (where secondary employment policy imposed disciplinary sanctions, it was a mandatory subject of bargaining).

This RDO does not apply the analysis set forth by a New Jersey court,[20] cited by the Respondent in support of a contrary approach, because the Illinois Labor Relations Board has a long and consistent history of requiring employers to negotiate over discipline. See cases supra. Notably, the approach taken by the New Jersey court is also an outlier with respect to the effects bargaining issue. The California PERB imposed an effects bargaining obligation with respect to a university's influenza mandate, implemented during the COVID-19 pandemic and before COVID-19 vaccines were available. Regents of the University of California, 46 PERC ¶ 38. The New Mexico PERB likewise recognized an employer's obligation to bargain over the disciplinary

[20] Cf. City of Newark, 469 N.J. Super. 366 (App. Div. 2021).

effects of a COVID-19 vaccine mandate, absent a finding of waiver. Santa Fe County, 2022 WL 2192230 (NM PERB 2022). Similarly, the Massachusetts Department of Labor Relations acknowledged that the employer's vaccine mandate had bargainable effects, though it dismissed the charge alleging that the employer had refused to bargain them. Commonwealth of Mass. and State Police Ass'n of Mass., SUP-21-8836.[21]

The imposition of no-pay status for failure to report vaccination status or failure to obtain vaccination by a fixed deadline, absent an exemption, is likewise a proper subject for effects bargaining. It is not an inevitable consequence of the vaccine mandate or reporting requirement because no-pay status is not the sole means by which the Respondent could have enforced its policy. For example, the Respondent could have proposed the imposition of disciplinary sanctions in lieu of withholding pay, and in fact did so earlier in the parties' negotiations. The Respondent's original draft vaccination policy, submitted to the Charging Parties on August 21, 2021, made no mention of no-pay status as a consequence for failure to report or vaccinate and instead proposed solely discipline for policy violations. Community College District 508 (City Colleges of Chicago), 13 PERI ¶ 1045 (layoff and reductions in hours were not inevitable consequence of campus closures where employer could have reassigned employees at remaining sites); Illini Bluffs Community Unit District No. 327, 14 PERI ¶ 1038 (effects of subcontracting were not inevitable consequence of decision where parties could have bargained compensation for drivers who were bumped to lower paid routes or lost a route).

The implementation date is also severable from the underlying decision. As a general matter and absent exigent circumstances[22] effects bargaining must take place at a meaningful time, such that parties must bargain effects to impasse or agreement prior to implementation. See cases supra. It is inconsistent with this principle to allow an employer to implement its policy on a unilaterally-established timeline, irrespective of the status of the parties' negotiations on effects issues.

There are select cases where the Board has found that an employer's implementation date is not negotiable, but the Board's conclusions were premised on a finding that the unions contractually waived the right to bargain. See infra. Here by contrast, and as discussed later in this decision, the contracts preclude a finding that the Charging Parties' clearly and unmistakably

[21] https://www.mass.gov/doc/sup-21-8836-cerb-decision/download
[22] The question of exigent circumstances is addressed later in this decision.

waived their right to bargain the effects of the Respondent's vaccination mandate and reporting requirement.[23] Cf. County of Cook and Sheriff of Cook County, 36 PERI ¶ 54 (IL LRB-LP 2019) (contract granted employer authority to conduct layoffs and waived the very effects the unions sought to bargain) aff'd by 2021 IL App (1st) 192209; cf. City of Chicago, 18 PERI ¶ 3025 (contracts granted Respondent authority to impose mandatory retirement age, without restriction, and unions waived the right to bargain its probable effects).

As to the latter three subjects, it is clear that the Respondent could negotiate them without disturbing the underlying decision to impose a vaccine mandate and a reporting requirement. For example, the amount of time allotted to employees and whether it is compensable has no bearing on any core requirement of the vaccination policy. Negotiation over the availability of sick leave for vaccine side effects likewise fails to impact the underlying decision. Similarly, negotiation over safety issues arising from potential contact between bargaining unit employees and non-vaccinated contractors does not undermine the Respondent's decision to require vaccination of its employees nor does it impact the requirement that employees report their vaccination status.

Contrary to the Respondent's contention, the Charging Parties in fact sought to negotiate the effects bargaining issues, described above, and presented proposals addressing each one. While the Respondent suggests that the Charging Parties did not identify effects bargaining issues with any clear distinction, the effects issues were clearly encompassed in each of the Charging Parties' proposals. For example, the Charging Parties proposed the following separate and clearly identifiable effects proposals: (1) they proposed to apply progressive discipline to all violations of the policy; (2) they proposed to increase the benefit time granted to employees to obtain the vaccination doses, (3) they proposed to eliminate the requirement that employees report testing information "under penalty of perjury"; (4) they proposed that the Respondent apply the sick leave addendum to employees who became ill as a result of vaccination or alternatively, that employees experiencing side effects would receive paid time off in the same terms set forth in the OSHA rule on COVID-19 vaccine mandates; (5) they proposed to negotiate the timeframe for use of the vaccination benefit offered by the Respondent; and (6) they proposed to expand the Respondent's policy to apply to contractors and vendors who regularly work in close proximity to city

[23] While other jurisdictions such as California have established legal frameworks for determining whether an employer may implement a decision on a non-mandatory subject prior to exhausting its effects bargaining obligation, absent a finding of waiver or exigent circumstances, the Illinois Board has not done so.

employees. Cf. State, Dep't of Cent. Mgmt. Servs. v. State, Illinois Lab. Rels. Bd., 384 Ill. App. 3d 342, 348 (4th Dist. 2008) (union made no proposals aimed at effects and the issues it raised were already settled by the contract such that neither party had an obligation to bargain further).

In sum, the Respondent's vaccine mandate and reporting requirement have bargainable. effects, which the Charging Parties sought to bargain.

d) Question of Impasse – Sick Leave Addendum & Effects of Vaccine Mandate/Reporting Requirement

The parties did not reach impasse in their negotiations over effects bargaining issues and on changes to the sick leave addendum.

The Board has adopted the analysis used by the National Labor Relations Board (NLRB) for judging whether an impasse exists. County of Jackson, 9 PERI ¶ 2040 (IL SLRB 1993); Illinois Departments of Central Management Services and Corrections (Corrections), 5 PERI ¶ 2001 (citing, Taft Broadcasting Co., 163 NLRB 475 (1967), aff'd 395 F.2d 622 (D.C. Cir. 1968)) aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). The relevant factors for determining whether the parties' bargaining has reached an impasse include the following: the bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, and the contemporaneous understanding of the parties as to the state of negotiations. County of Jackson, 9 PERI ¶ 2040; Illinois Departments of Central Management Services and Corrections (Corrections), 5 PERI ¶ 2001. The Respondent has the burden of proof of establishing that a bona fide impasse existed on the date it unilaterally implemented its last best and final offer. County of Jackson, 9 PERI ¶ 2040 n. 15 (IL SLRB 1993).

Here, the contemporaneous understanding of the parties shows that they were not at impasse. For a finding of impasse, it is not sufficient for one party to simply announce that his position is "henceforth fixed and no further concessions can be expected (final offer.)'" Dep't of Cent. Mgmt. Servs. v. Illinois Lab. Rels. Bd., 2018 IL App (4th) 160827, ¶ 30 quoting, Circuit-Wise, Inc., 309 N.L.R.B. 905, 919 (1992)). Rather, both parties must believe that they are at the "end of their rope." Carey Salt Co., 358 NLRB 1142, 1153 (2012), enfd in relevant part, 736 F.3d 405 (5th Cir. 2013). In addition, "'the failure of a party to communicate to the other party the paramount importance of the proposals presented at the bargaining table or to explain that a failure

to achieve concessions would result in a bargaining deadlock evidences the absence of a valid impasse.'" Dep't of Cent. Mgmt. Servs., 2018 IL App (4th) 160827, ¶ 31 (quoting Virginia Holding Corp., 293 NLRB 182, 183 (1989)).

In this case, the Respondent never declared impasse when tendering its final offer, and to the extent that such a declaration was implied, the Charging Parties disputed it. On October 5, 2021, Rosenblatt informed the Respondent that the Charging Parties intended to respond, stating, "we are in the process of setting up a meeting with our committee so that we may review, discuss, and respond to this proposal." After implementation, on October 11, 2021, the Charging Parties expressed their assertion that the parties were "far from impasse," demanded rescission of the policy, and informed the Respondent that they would be following up with a response. The fact that the Respondent characterized its offer as final does not, standing alone, warrant the conclusion that the parties were at impasse. Dep't of Cent. Mgmt. Servs., 2018 IL App (4th) 160827, ¶ 31; New Seasons, Inc., 346 NLRB 610, 622 (2006); Grinnell Fire Protection Systems Co., 328 NLRB 585, 585 (1999). Furthermore, there is no indication that the Respondent informed the Charging Parties that its failure to achieve concessions on certain effects bargaining subjects would result in a deadlock. While the Respondent expressed its belief that it lacked the obligation to bargain over decisional matters, nothing in this stipulated record shows that the Respondent, in tendering its final offer, identified any effects bargaining issues to be of paramount importance.

In addition, the parties' steady progress in bargaining the policy's effects, and concessions made by both parties up to and including the Respondent's final offer, undermines any claim that the parties were at impasse as of October 8, 2021. Progress in negotiations, even if at a slow rate militates against a finding of impasse. Corp. for Gen. Trade (Wkjg-Tv33), 330 NLRB 617, 617 (2000); D.C. Liquor Wholesalers, 292 NLRB 1234, 1235 (1989). The Charging Parties, in their last proposal, tendered on October 1, 2021, moved towards the Respondent. They agreed that employees who failed to report test results or vaccination status would be placed on no-pay status until they reported. They also withdrew their proposal that the sick leave addendum apply to illness arising from vaccination and instead proposed that employees experiencing side effects would receive paid time off in the same terms set forth in the OSHA rule on COVID-19

mandates.[24] The Respondent, in its final offer, likewise moved towards the Charging Parties. It accepted the Charging Parties' proposals that the personal day benefit would not count towards the carryover day limit contained in any collective bargaining agreement, that employees would receive two hours of paid leave time for each required dose of the COVID-19 vaccine, that the vaccination policy would apply to contractors, and that employees' declarations regarding vaccination need not be made under penalty of perjury. The Respondent also moved toward the Charging Parties on the sick leave addendum by including a proposal for additional parental leave in cases where a child's school or classroom was quarantined. Such progress demonstrates that further bargaining would not be futile, and this remains true even though the parties may have had ideological differences about whether the underlying policy was a mandatory subject of bargaining. State of Ill. Dep'ts of Cent. Mgmt. Serv. and Corr., 5 PERI ¶ 2001 aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989).

Furthermore, the Respondent's addition of a significant new proposal in its last best final offer likewise weighs against a finding of impasse. An employer's introduction of significant new proposals at a late stage in negotiations undermines its claim that the parties reached impasse. Virginia Holding Corp., 293 NLRB 182, 183 (1989); see also Castle Hill Health Care Ctr., 355 NLRB 1156, 1189 (2010). Here, the Respondent newly proposed a sick leave benefit for employees with children whose schools or classrooms had been quarantined due to COVID-19 and countered the Unions' initial proposal on the subject with significant modifications. The Charging Parties had proposed that eligible employees would receive up to 80 hours of emergency paid sick leave at a rate of two thirds of their regular rate. The Respondent countered that employees would receive sick leave up to 40 hours but with the caveats that employees must have used 75% of their yearly benefit time to obtain the benefit and that the benefit would not apply if the employees were eligible to telework. Such a significant new proposal weighs against a finding of impasse overall, particularly where the Respondent presented it as part of its final offer.

In addition, the small number of meetings combined with the complexity of the issues and their novelty likewise support a finding that the parties did not reach impasse. Here, the parties

[24] The Union further notes that it adopted the respondent's "condition of employment language," but the magnitude of this movement is diminished by the fact that the remainder of its proposal made clear that vaccination would be optional, and that testing could be an alternative.

met only four times, though the issues attendant to a COVID-19 vaccination policy are new and multifaceted. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001 aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). They included such matters as (1) safety issues posed to employees arising from the Respondent's initial plan to exempt certain non-employees from the policy's coverage though they may work in close proximity to City employees; (2) the availability and extent of sick leave afforded to those who become sick as a result of vaccination; (3) the amount of benefit time allotted to employees to obtain vaccination; (4) the disciplinary sanction for employees who fail to report accurate information about their vaccination status, i.e., "penalty of perjury" or some lesser standard; (5) the disciplinary sanctions imposed for non-compliance with the policy overall; and (6) specific consequences for employees who entirely fail to report and/or have not received an exemption but fail to vaccinate, e.g. no-pay status. In addition, the parties' attempt to negotiate changes to the sick leave addendum, in tandem with the vaccine policy's effects, lends further complication to the negotiations. Id. (four meetings to be a small number of meetings to negotiate a complex and novel drug testing plan).

The Respondent's claim that the parties were at impasse as of October 8, 2021 warrants particular scrutiny where the Respondent repeatedly announced to its employees, in the preceding weeks and months, that they would need to be vaccinated by October 15, 2021. Under these circumstances and in the absence of other indicia of impasse, it is reasonable to infer that the Respondent abandoned bargaining in favor of its predetermined course of action to implement a formal policy before the vaccination deadline it had announced to employees. Newcor Bay City, 345 NLRB 1229, 1238 (2005) (respondent's assertion of impasse was motivated by its determination to implement reductions upon expiration of the contract regardless of the state of negotiations).

Contrary to the Respondent's assertion, the Charging Parties' conduct did not prevent the parties from reaching agreement or impasse, and the Respondent cannot justify unilateral implementation of its final offer on such grounds. In Village of Bellwood, the Board recognized that an employer's implementation of a managerial decision without completing effects bargaining is not unlawful where the union prevents agreement or impasse by engaging in delaying tactics and conditional bargaining. Village of Bellwood, 25 PERI ¶95 (ILRB SP 2009) (union conditioned effects bargaining on receipt of information concerning the underlying decision,

which was a permissive subject). That did not occur here. The Charging Parties did not engage in delaying tactics to avoid bargaining and, unlike the union in Bellwood, exchanged three substantive proposals with the Respondent before the Respondent tendered its final offer. The Respondent notes that the Charging Parties took over a week to respond to the Respondent's September 20, 2021 proposal, however, this is similar to the amount of time it took the Respondent to respond to the Charging Parties' September 11, 2021 proposal. Furthermore, any delay in the Charging Parties' response can be explained by the fact that they were engaged in internal review and conferencing during that time over a proposal that moved towards their position in some respects but also added a significant new term, the imposition of no-pay status for failure to report vaccination status or failure to vaccinate absent an exemption, along with other proposed modifications.

Nor can it be said that the Charging Parties conditioned bargaining over the effects of the vaccination policy on negotiation over the policy's permissive aspects, including the reporting requirement and the vaccine mandate. In cases involving novel and complex subjects of bargaining, where the parties' bargaining obligations are not clearly defined, a union's attempt to negotiate over both decisional and effects matters together does not inescapably warrant the conclusion that the *union* stymied agreement or legitimate impasse. Ill. Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2001 aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Relations Bd., 190 Ill. App. 3d 259, 268-9 (1st Dist. 1989). The Board appreciates that there are some cases in which parties develop "very strong and polarized positions on [their] bargaining obligations" concerning policies that address such novel and complex issues. Id. (drug testing policy, issue of first impression). And once the parties are advised of their legal obligations under the Act, they can "proceed with negotiations without the burdensome cloak of rhetoric and speculation." Id. This rationale holds particularly true in this case, where the Board has never addressed the subject of vaccine mandates and where the parties' contracts do not clearly settle questions concerning the parties' bargaining obligations on the vaccine mandate and reporting requirement, or its effects. Id.; cf. County of Cook and Sheriff of Cook Cnty., 36 PERI ¶ 54 (contract expressly granted employer authority to conduct layoffs; the contract addressed issues of reassignment, impact of seniority, and accrual of compensatory time), aff'd by 2021 IL App (1st) 192209 and cf. State, Dep't of Cent. Mgmt. Servs., 384 Ill. App. 3d at 349 (contract gave employer authority to conduct layoff, union failed to make impact-related proposals).

In sum, the parties did not reach impasse on the effects of the Respondent's vaccine mandate, reporting requirement, and sick leave addendum.

e) Exigent circumstances

There are no exigent circumstances that excused the Respondent's implementation of its vaccination policy and sick leave addendum before completing effects bargaining on the policy and decisional bargaining on the addendum.

An employer may implement its decision, absent agreement or impasse, if it can establish exigent circumstances, also known as an emergency defense or a defense of necessity. Kewanee Community Unit School District No. 229, 4 PERI ¶ 1136 (ILELRB 1998). An emergency defense to a unilateral change exists only in "extremely limited" circumstances. Id. It requires a showing of "an actual emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before the action is taken." Kewanee Community Unit School District No. 229, 4 PERI ¶ 1136. Where exigent circumstances are caused by a party's own delay, a "necessity" defense does not excuse unilateral action. Western Illinois University, 35 PERI ¶ 60 (IL ELRB 2018); Wilmette School District No. 39, 4 PERI 1038 (IL ELRB 1988).

Here, neither the COVID-19 pandemic nor the emergence of vaccines qualified as exigent circumstances under Illinois labor law that justified the Respondent's implementation of its vaccination policy on October 8, 2021. By that date, the pandemic had been in existence for well over a year and a vaccine had been available to the public for over ten months under Emergency Use Authorization.[25]

Furthermore, the Respondent's delay in broaching the issue of vaccine mandates with the Charging Parties precludes application of the emergency defense. See Wilmette School District No. 39, 4 PERI 1038. The Respondent knew or should have known of the availability of vaccines as an effective tool to combat COVID-19 many months before it announced its intent to institute a mandate in August 2021. Had the Respondent announced its intent earlier to institute a vaccine mandate, the parties could have had sufficient time to engage in, and complete, effects bargaining. Id.

[25] https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19

The Respondent may note that the FDA did not approve the Pfizer vaccine until August 23, 2021, but this timing does not justify the Respondent's delay where such approval had been anticipated for months in both scientific circles and publicly. In December 2020, a scientific journal, cited by the Respondent in support of its mandate, stated that FDA approval of the vaccine was likely in the coming months.[26] And major news outlets reported that Pfizer was actively seeking FDA approval for its vaccine.[27] Even the Respondent's decisionmakers did not wait until approval to contemplate a mandate and mentioned the issue publicly as early as July 2021.

The case law relied upon by the Respondent from Massachusetts in support of its exigency defense does not support a different outcome because the Massachusetts labor board (CERB) applies a different test for the assessment of exigent circumstances than does Illinois. Commonwealth of Mass. and State Police Ass'n of Mass., SUP-21-8836.[28]

The analysis set forth above applies with even greater force to the sick leave addendum. The original sick leave addendum had existed since March of 2020, and the Respondent has offered no explanation on brief as to why it needed to implement modifications to the sick leave addendum on October 8, 2021, at the same time it implemented the vaccination policy.

In the alternative, even if the Board were to find that exigent circumstances privileged the Respondent's unilateral implementation of its vaccination policy prior to completing effects bargaining, this would not eliminate the Respondent's bargaining obligation. A showing of an emergency does not eliminate the employer's obligation to bargain over the effects of its decision; it merely shifts the timing of when such bargaining must be completed. Illini Bluffs Community Unit District No. 327, 14 PERI ¶ 1038. Where an emergency justifies an employer in acting immediately and unilaterally, the employer must give the union "reasonable notice and an opportunity to bargain over effects within a reasonable time following the decision." Illini Bluffs Community Unit District No. 327, 14 PERI ¶ 1038. Here, however, there is no evidence that the Respondent gave the Charging Parties such notice and opportunity. Nor is there evidence that the parties subsequently finished effects bargaining by reaching an agreement or an impasse. The absence of such evidence is construed against the Respondent because the existence of agreement

[26] "Mandating Covid-19 Vaccines," *JAMA*. 2021;325(6):532-533. doi:10.1001/jama.2020.26553 https://jamanetwork.com/journals/jama/fullarticle/2774712
[27] https://www.cnn.com/2021/05/07/health/pfizer-biontech-fda-approval-bla-vaccine/index.html
[28] https://www.mass.gov/doc/sup-21-8836-cerb-decision/download

or impasse is an affirmative defense. Cnty. Jackson, 34 PERI 1 n. 16 (party asserting impasse as a defense to unilateral changes bears burden of proof).

In sum, no exigent circumstances excused the Respondent's unilateral implementation of the vaccination policy or its modifications to the sick leave addendum.

f) Waiver

The Charging Parties did not waive their right to bargain over changes to the sick leave addendum. Nor did they waive the right to bargain the effects of the Respondent's decision to impose a vaccine mandate and a reporting requirement.

Where a subject is fully negotiated and covered by a collective bargaining agreement, no further obligation to bargain arises with respect to the subject during the term of the agreement, and the contract is deemed to be a waiver of the right to bargain. Ill. Sec. of State, 24 PERI ¶ 22; Chicago Transit Authority, 14 PERI ¶ 3002 aff'd Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1st Dist. 1998). However, evidence supporting a claim of waiver must be "clear and unmistakable." Forest Pres. Dist. of Cook Cnty., 369 Ill. App. 3d at 754; Am. Fed'n of State, Cnty. & Mun. Emps., 190 Ill. App. 3d at 269. To find a waiver, the contractual language must evince an unequivocal intent to relinquish such rights. Forest Pres. Dist. of Cook Cnty., 369 Ill. App. 3d at 754. "The language sustaining the waiver must be specific; waiver is never presumed." Forest Pres. Dist. of Cook Cnty., 369 Ill. App. 3d at 754; Am. Fed'n of State Cnty. & Mun. Emps., 274 Ill. App. 3d 327, 334 (1st Dist. 1995).

The burden is on the employer to show the existence of a waiver. State of Ill., Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000). The question of whether rights have been clearly and unmistakably waived depends crucially upon context and the specific circumstances of each case. Id. Thus, express contractual language, the parties' bargaining history, and the circumstances under which contracts are negotiated are all critical in determining whether a waiver was clear and unmistakable. Id. The Board has stated that "while contractual language is significant—and may, in fact, be determinative in the absence of record evidence regarding the parties' bargaining history—a valid waiver will not be found where the circumstances surrounding the contract's negotiation do not support the finding of an intentional waiver." Id.

Here, the Respondent has failed to advance any argument that the Charging Parties waived the right to bargain over changes to the sick leave addendum, as distinct from the vaccination

policy. Indeed, the Respondent references the sick leave addendum only once on brief, and only in its recitation of facts, acknowledging that the addendum was distinct from the policy itself. City of Chicago (Department of Police), 21 PERI ¶ 83 (IL LRB-LP ALJ 2005) (ALJ considered argument waived where respondent's post-hearing brief did not offer any argument on the matter).

Next, none of the contract clauses cited by the Respondent, whether viewed individually or together, waives the Charging Parties' right to bargain the effects of the Respondent's decision to impose a vaccine mandate and a reporting requirement. First, the management rights clauses do not waive the Charging Parties' right to bargain the effects of the vaccine mandate and reporting requirements. The Board has historically been reluctant to find waiver based on a contractual management rights clause where the language of the clause does not specifically set forth the right to make the unilateral change alleged in the complaint. Chicago Transit Authority, 15 PERI ¶3018 n. 10 (IL LLRB 1999); Chicago Transit Authority, 14 PERI ¶ 3002 aff'd by Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1998); Village of Westchester, 16 PERI ¶2034 (IL SLRB 2000); City of Quincy, 6 PERI ¶2003 (IL SLRB 1989).

Here, the management rights provisions grant the Respondent authority to "make and enforce reasonable rules and regulations," but they do not express the Charging Parties' intent to relinquish the right to bargain over the rules' effects. The management rights clause also allows the Respondent to "discipline…for just cause" but similarly fails to evidence the Charging Parties' intent to waive negotiations over the disciplinary sanctions arising from new policies, let alone the non-disciplinary effects that the Charging Parties also sought to bargain here. Village of Westchester, 16 PERI ¶2034 (employer's contractual right to make reasonable work rules did not waive union's right to bargain over disciplinary consequences proceeding therefrom); Windstream Corp., 352 NLRB 44, 49 (2008) (employer's right to establish reasonable rules and regulations combined with just cause provision did not waive union's right to bargain over zero tolerance policy for violations of integrity guidelines).

Similarly, the rules-of-conduct provisions in the Charging Parties' contracts do not support the Respondent's claim that the Charging Parties waived their right to bargain the effects of the vaccine mandate. The rules-of-conduct provisions address the process by which the Respondent may initiate changes to its rules where the proposed changes could subject employees to discipline, and they require the Respondent to give the Charging Parties an opportunity to discuss the Respondent's rule prior to implementation. However, these provisions say nothing about the

Charging Parties' statutory right to bargain the effects of a new rule. At best, they touch upon the scope of decisional bargaining regarding the substance of the rule, not at issue here. Chicago Transit Authority, 14 PERI ¶ 3002 (where a contract is silent on the subject matter in dispute, a finding of waiver by contract is absolutely precluded) aff'd by Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1998).

The Respondent cites to County of Cook and Sheriff of Cook Cnty., in support of its assertion that the contracts' disciplinary provisions, together with prior arbitrators' awards, waived the Charging Parties' right to bargain disciplinary effects of the Respondent's vaccination policy. See infra. However, County of Cook is distinguishable on the grounds that the parties there negotiated effects-related terms while anticipating the prospect of potential layoffs. The parties there expressly agreed to grant the respondent the right to conduct layoffs unilaterally and, at the same time, bargained terms that specifically addressed their potential effects. County of Cook and Sheriff of Cook Cnty., 36 PERI ¶ 54, aff'd by 2021 IL App (1st) 192209. Here, by contrast, the parties could not have anticipated the COVID-19 pandemic, or its far-reaching effects, and terms they negotiated could not have knowingly waived the Charging Parties' right to engage in effects bargaining over the vaccine mandate and reporting requirement.

Contrary to the Respondent's suggestion on brief, the NLRB's reasoning in Virginia Mason Hospital is also not instructive here regarding the Respondent's claim that the Charging Parties waived the right to bargain the vaccination mandate's effects. The NLRB in that case addressed a different question, whether the hospital had an obligation to bargain the underlying decision to promulgate an influenza policy requiring unvaccinated nurses to either wear facemasks or take antivirals. Virginia Mason Hospital, 358 NLRB 531, 531 (2012). The NLRB did not substantively address the question of effects bargaining, at issue here; rather, it affirmed the ALJ's dismissal of the effects bargaining claim on the grounds that the issue was neither alleged nor litigated. Virginia Mason Hospital, 358 NLRB at 531.

Finally, the zipper clauses do not waive the Charging Parties' right to bargain over the effects of the vaccine mandate and the reporting requirement. The purpose of a zipper clause is to protect an employer against a union's demands to bargain midterm over matters settled by the contract; it does not grant an employer the right to unilaterally change employees' terms and conditions of employment. For this reason, generally worded zipper clauses have not been construed as waivers of statutory bargaining rights. Village of Bensenville, 19 PERI ¶ 119 (IL

LRB-SP 2003); City of Blue Island, 7 PERI ¶2038 (IL SLRB 1991). "Where an employer relies on a zipper clause to establish its freedom to unilaterally change, or institute new, terms and conditions of employment not contained in the contract, there must be evidence that the particular matter at issue was fully discussed or consciously explored during bargaining, and that the union knowingly yielded and unmistakably waived its interest in that matter." Village of Bensenville, 19 PERI ¶ 119. Here, the parties did not fully discuss or consciously explore the effects of the vaccine mandate and reporting requirement because those matters were not, and could not have been, contemplated when the parties executed their agreements, years prior to the COVID-19 pandemic.

Accordingly, this case is distinguishable from the Board's decision in City of Chicago, cited by the Respondent, where the Board found that the union waived the right to bargain over both the Respondent's decision to impose a mandatory retirement age, and the effects of that decision. City of Chicago, 18 PERI ¶3025 (IL LRB LP 2002). There, the contract expressly granted the respondent the right to institute a mandatory retirement age, and it also included language showing that the parties negotiated over at least one of its probable effects, specifically, the absence of medical coverage between the age of 63 and the date of Medicare eligibility. City of Chicago, 18 PERI ¶3025. The Board concluded that the zipper clause waived the union's right to bargain additional benefits arising from a newly imposed mandatory retirement age. Id. ("the question is whether there is a duty to bargain the effects of an issue that is specifically referenced in the contract"). Here, by contrast, there is no contract language that expressly speaks to the Respondent's authority to impose a vaccination mandate or a reporting requirement. Moreover, the parties did not and could not have bargained over the effects of these new provisions because they entered into their agreements well before the pandemic.

The Respondent's reliance on an ALJ decision from the NLRB applying the contract coverage test is misplaced because Illinois labor boards do not apply that test and instead apply the "clear and unmistakable" standard for waiver. Cent. City Educ. Ass'n, IEA/NEA, 149 Ill. 2d at 530; Chi. Park Dist., 354 Ill. App. 3d at 606-8; Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. State Lab. Rels. Bd., 190 Ill. App. 3d at 269. Thus, the contract provisions addressing the just cause standard for discipline do not demonstrate that the Charging Parties waived their right to bargain over the effects of the vaccine mandate and reporting requirement.

Finally, Arbitrator Roumell's award on the Respondent's vaccination policy does not warrant a contrary result. His award was limited to determining whether the Respondent's vaccination policy violated the parties' contracts. He did not consider the effects bargaining question as a general matter nor did he address each alleged effect of the policy with respect to applicable contract language. City of Chicago (Department of Police), 38 PERI ¶ 20 (award did not excuse the Respondent's obligation to engage in effects bargaining where arbitrator did not consider that issue). The arbitrator's general conclusion, that the contract did not prohibit the Respondent from promulgating the vaccination policy, is not conclusive of the statutory effects bargaining issue. Armour & Co., 280 NLRB 824, 824 n. 2 (1986). Furthermore, while the policy itself encompasses some terms that are properly viewed as effects of the vaccine mandate, in key respects the arbitrator did not consider them separately in light of the contracts' language. Most notably, the award does not address the Respondent's contractual authority to impose no-pay status for an employee's failure to report vaccination status. And although the arbitrator found that the imposition of no-pay status for failure to vaccinate did not violate the contract based on an earlier arbitration award, his analysis does not establish that the Charging Parties clearly and unmistakably waived their right to bargain that potential consequence. The arbitrator merely referenced an earlier award concerning only one of the more than 20 unions at issue in the case and did not identify the contract language on which that decision was based.

Thus, the Charging Parties did not clearly and unmistakably waive the right to bargain the effects of the Respondent's vaccine mandate and reporting requirement.

3. Alleged Direct Dealing

The Respondent did not engage in direct dealing in violation of Sections 10(a)(4) and (1) of the Act.

Section 10(a)(4) makes it an unfair labor practice for a public employer to refuse to bargain collectively in good faith with a labor organization designated as the exclusive representative of a bargaining unit. 5 ILCS 315/10(a)(4). It is well established that inherent in the obligation to bargain collectively is the requirement that the employer recognize that the exclusive representative is the one with whom the employer must deal in conducting bargaining negotiations, and that it can no longer bargain directly or indirectly with its employees. Clerk of the Circuit Court of Cook County, 7 PERI ¶ 2019 (IL SLRB 1991). A public employer violates its duty to

bargain in good faith when it engages in direct dealing with bargaining unit employees. Clerk of the Circuit Court of Cook County, 7 PERI ¶ 2019. However, in and of itself, direct communication by the employer with individual employees does not violate Section 10(a)(4) of the Act because Section 10(c) of the Act expressly protects an employer's statements to employees as long as they contain no threat of reprisal or force or promises of benefit. Village of Bensenville, 19 PERI ¶ 119; City of Chicago (Department of Health), 10 PERI ¶ 3031 (IL LLRB 1994). Accordingly, the fact that an employer informs employees of the status of negotiations, of proposals previously made to the union, or of the employer's version of a breakdown in negotiations, does not alone establish a failure to bargain in good faith. Village of Bensenville, 19 PERI ¶ 119.

Rather, an employer's direct communication with employees during bargaining violates Section 10(a)(4) of the Act when "such communications expressly or in context, rather than informing employees, have the effect of coercing them in the exercise of their right to freely select and bargain through a representative of their own choosing." Village of Bensenville, 19 PERI ¶ 119; City of Chicago (Department of Health), 10 PERI ¶ 3031; see also County of Cook and Sheriff of Cook County, 37 PERI ¶ 67 (IL LRB-SP 2020). Examples of improper direct dealing include "efforts at reaching a separate agreement with employees; enlisting support of employees through threats of reprisal or promises of benefit and; [sic] inducing employees to withdraw from the union." Dep't of Cent. Mgmt. Servs., 2018 IL App (4th) 160827, ¶ 43, quoting Tri-State Professional Firefighters, 32 PERI ¶ 153 (IL LRB-SP 2016).

Neither the Respondent's email of September 30, 2021, nor the mayor's tweet of October 1, 2021, constitute direct dealing, as the Charging Parties allege in their amended complaint. Rather, they merely announce the Respondent's impending vaccine mandate. The September 30, 2021 communication referenced the vaccine mandate, stated a deadline of October 15, 2021 for vaccination, and set forth the process that employees should use to obtain an exemption from the vaccination requirement. The October 1, 2021 tweet by the mayor likewise merely reiterated the Respondent's requirement that employees must become fully vaccinated by October 15, 2021. Significantly, the Respondent's communications do not represent the employer's effort to reach a separate agreement with employees, do not seek employees' input, and indeed, do not even mention the Charging Parties. These communications also lacked any threat of reprisal or force, or any promises of benefit that could have had the effect of coercing employees in the exercise of their right to freely select and bargain through a representative of their own choosing. See City of

Chicago (Department of Health), 10 PERI ¶ 3031. Even if the Respondent's announcements were construed as the Respondent's unilateral implementation of its vaccine policy with implied disciplinary consequences, as the Charging Parties contend, the Respondent's statements fall short of direct dealing, which is a separate violation. Cf. Allied Signal, Inc., 307 NLRB 752, 754 (1992)("Direct dealing with employees goes beyond mere unilateral employer action"; addressing waiver).

Contrary to the Charging Parties' contention, the communications did not contain misinformation about the status of the parties' negotiations; they mentioned nothing at all about the status of the parties' bargaining. The communications were merely informational notices about the chief terms of the Respondent's planned vaccination mandate, which never claimed to represent the Charging Parties' position in negotiations. The Respondent's announcement may not have precisely matched the more generous proposals it presented to the Charging Parties,[29] but the Charging Parties have failed to cite any Board precedent to suggest that such an incongruity, standing alone and without reference to bargaining, would constitute coercion or direct dealing.

Finally, the Respondent's conduct in tweeting information about its vaccine mandate to its employees is patently different from the conduct that supported a finding of direct dealing in In Re Miller Waste Mills, Inc., cited by the Union. In Re Miller Waste Mills, Inc., 334 NLRB 466 (2001). There, the respondent sent employees letters informing them of improved wages and benefits, stating that it would "do what [employees] asked" and grant a wage increase "[r]egardless of" the Union. In Re Miller Waste Mills, Inc., 334 NLRB 466, 467. The respondent in that case also misrepresented the union's bargaining position and blamed the union for preventing employees from receiving their customary annual wage increase. Miller Waste Mills, Inc., 334 NLRB at 467–68. Here, by contrast, the Respondent did not issue its communication in response to any employee request, did not confer any benefit, did not make statements conveying the futility of union representation, and did not misrepresent the Charging Parties' position at the bargaining table.

Thus, the Respondent did not engage in direct dealing when making its communications to

[29] The Charging Parties observe that the Respondent's communications did not mention that the Respondent's most recent proposal to the Charging Parties included a safe harbor provision for those employees who had not become vaccinated by the October 15 deadline, and that it had extended the vaccination deadline for such employees to December 31, 2021 with a testing option permitted in the interim.

employees about the vaccine mandate on September 30 and October 1, 2021.

4. Announcement of the Change as Separate Violation

It is unnecessary to determine whether the Respondent's repeated announcements of the vaccination mandate and deadline (October 15) to employees in August, September, and October, prior to formal implementation of the vaccination policy on October 8, 2021, qualified as separate unlawful unilateral changes. The parties stipulated that the Respondent implemented its vaccine policy on October 8, 2021, and in cases where actual implementation is clear, the NLRB has declined to assess whether the earlier announcements constitute unilateral changes in and of themselves. Page Litho, Inc., 311 NLRB 881, 883 & n. 5 (1993) (finding it unnecessary to determine whether the respondent's announced intent to implement amounted to unilateral implementation where respondent actually implemented its proposal). The same approach is appropriate here. However, as discussed above, the Respondent's repeated announcements are relevant to the question of whether the parties reached a bona fide impasse over the policy's effects on October 8, 2021, or whether the Respondent abandoned bargaining to implement its policy close to the vaccination deadline it had repeatedly announced to employees earlier.

5. Alleged Refusal to Provide Information

The Respondent violated Sections 10(a)(4) and (1) of the Act by refusing to provide the Charging Parties with information necessary and relevant to their collective bargaining obligations and by delaying the provision of necessary and relevant information.

Section 10(a)(4) of the Act provides that it is an unfair labor practice "for an employer or its agents . . . to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." 5 ILCS 315/10(a)(4). The duty to bargain collectively in good faith requires public employers to provide information within their control to exclusive bargaining representatives where the information is relevant and necessary for the exclusive representative to properly discharge its statutory duty. State of Illinois, Department of Central Management Services, 35 PERI ¶ 100 (IL LRB-SP 2018); County of Champaign, 19 PERI ¶ 73 (IL LRB-SP 2003); State of Illinois, Department of Central Management Services, 9

PERI ¶ 2032 (IL SLRB 1993); cf. Vill. of Franklin Park, 8 PERI ¶2039, aff'd Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994).

The Board will find a violation of Sections 10(a)(4) and (1) of the Act arising from an employer's refusal to furnish a union with requested information where "(1) the employer has failed to act in good faith or (2) the employer's failure to produce the requested information has meaningfully interfered with the union's ability to fulfill its representative's role." City of Bloomington, 19 PERI ¶ 11 (IL LRB-SP 2003) (stating principle; finding no violation). "In making this determination, the relevant question is whether the demanded information is relevant; however, certain affirmative defenses for not producing the requested information, such as the confidentiality of the requested information or a claim of employee privacy, are taken into consideration." City of Bloomington, 19 PERI ¶ 11. The standard for judging whether a particular request is relevant and necessary is whether, based on a liberal discovery-type standard, the requested information is related to the union's function as the employees' bargaining representative and the information appears to be reasonably necessary for the performance of this function. County of Champaign, 19 PERI ¶ 73; State of Ill., Department of Cent. Mgmt. Services, 9 PERI ¶ 2032; City of Chicago (Chicago Fire Dep't), 12 PERI ¶3015 (IL LLRB 1996).

Information relating to unit employees, including all terms and conditions of employment, is deemed presumptively relevant, and the employer has the initial burden to rebut that presumption. City of Chicago (Chicago Fire Dep't), 12 PERI ¶3015 citing, Chicago Transit Authority, 4 PERI ¶ 3013 (IL LLRB 1988). When a union requests information from an employer that does not fall within the presumptively relevant category, the union has the initial burden to show relevancy. City of Chicago (Chicago Fire Dep't), 12 PERI ¶3015.

Here, the Respondent failed to provide information in response to the Charging Parties' November 16, 2021 request concerning the timeline by which the Respondent would respond to employees' requested exemptions from the policy. Such information is presumptively relevant to the Charging Parties' role as bargaining representative because it concerns unit employees' terms and conditions of employment. The Respondent's vaccination policy sets forth a deadline for vaccination with no exceptions for those who have submitted an exemption request but have yet received no response from the Respondent. As a result, an employee waiting on the Respondent's response to a bona fide request for a medical or religious exemption could be forced into no pay status under the policy's terms for failing to obtain a vaccination by the stated deadline.

Next, the Respondent failed to provide information concerning the breakdown of employee requests for exemptions from the policy's vaccination requirement, separated by exemption type, requested by the Charging Parties on October 26 and 28, and November 18, 2021. This requested information is likewise presumptively relevant because it concerns unit employees. However, the exemption-related information provided by the Respondent included only the total exemption requests, pending requests, and denied requests, by department. The Respondent failed to distinguish between medical and religious exemption requests and failed to explain why such information could not be provided. Although the Respondent specified that it could not provide exemption request data by bargaining unit, as that would require a burdensome manual search, it did not specify why it failed to provide exemption request data by exemption type, as repeatedly requested by the Charging Parties. On brief, the Respondent does not acknowledge or explain this omission.

The Respondent also failed to provide information concerning the number or rate of unvaccinated employees who were reporting test results, requested by the Charging Parties on October 25 and November 18, 2021. Such information is presumptively relevant to the Charging Parties' role as bargaining representative because it concerns information about the employees it represents and also relates to employees' health and safety on the job. However, the Respondent failed to explain why such information could not be provided and does not acknowledge or explain this omission on brief.

In addition, the Respondent failed to provide complete information responsive to the Charging Parties' requests for information pertaining to vendor and contractor compliance with the Respondent's vaccination policy. The sole information provided by the Respondent regarding vendor and contractor compliance was the number of vendors/contractors who had reported their status in the portal. However, the Respondent omitted requested information on whether the vendors had reported as vaccinated versus unvaccinated, information on vendor/contractor compliance with the testing requirements, and the total number of vendors/contractors, which would have allowed the Charging Parties to determine the rate of vendor compliance with the

vaccination reporting requirement. The Respondent also failed to explain why such data could not be provided.[30]

Furthermore, the information concerning contractor/vendor compliance with the vaccination policy is necessary and relevant to the Charging Parties duties as bargaining representative, to ensure the safety of their members. "Information regarding the health and safety of employees is both necessary and relevant to a union's role as collective-bargaining representative because 'the environment of the workplace and its effect on the health and well-being of employees is fundamentally related to conditions of employment.'" Honda of Hayward, 314 NLRB 443, 453 (1994). Here, one purpose of the Respondent's vaccination policy is to safeguard the health and well-being of employees. In furtherance of that goal, the policy also applies to "personnel of contractors and vendors who have regular direct contact with, or regularly work in close proximity to City employees." Accordingly, the rate of vendor and contractor compliance with the vaccination and testing requirements directly pertains to the health and safety of the employees who work in close contact with them, and the Respondent's failure to provide such information interfered with the Charging Parties' ability to ensure its members' health and safety. Honda of Hayward, 314 NLRB at 453 (information concerning chemicals and compounds used, stored or sold at respondent's facility was necessary and relevant); Crittenton Hosp. & Loc. 40, 342 NLRB 686, 694 (2004) (safety committee minutes were necessary and relevant where information was used to monitor the safety of the workplace environment).

The Respondent additionally violated Sections 10(a)(4) and (1) of the Act by unduly delaying in its response to the Charging Parties' information requests, specifically those pertaining to contractor/vendor oversight and compliance with the vaccination policy. An unreasonable delay by an employer in providing a union with requested, necessary and relevant information violates the Act. State of Illinois, Department of Central Management Services, 35 PERI ¶ 100. It is appropriate to consider the totality of the circumstances surrounding the incident when

[30] The Respondent may contend that the Charging Parties, on November 18, 2021, allowed the Respondent an alternative, to provide "all statistics in the City's possession regarding the current number of such contractors and vendors who have reported their vaccination status, as well as the breakdown of that status" in lieu of the more granular information also requested. However, this proposed alternative does not provide the Respondent safe harbor where the Respondent never denied that it was unable to provide the more detailed information and could not even muster a complete response to the alternative request.

determining whether an employer has unlawfully delayed responding to an information request. City Colleges of Chicago, Dist. 508, 38 PERI ¶ 37 (ILELRB 2021). Relevant considerations include the nature of the information sought, the difficulty in obtaining it, the amount of time the employer takes to provide it, the reasons for the delay, and whether the party contemporaneously communicates these reasons to the requesting party. Safeway, Inc., 369 NLRB No. 30 (2020). Absent evidence justifying the delay, even a delay of several weeks may constitute a violation. St. Francis Reg'l Med. Ctr., 363 NLRB 608, 629 (2015) (collecting cases).

Here, the Respondent, for four weeks, effectively ignored the Charging Parties' requests for information pertaining to contractor/vendor compliance with the vaccination policy, thereby requiring the Charging Parties to repeat their request for this information four times. Only on December 2, 2022, did the Respondent provide a substantive response to the Charging Parties' request, and even then, it was incomplete, as discussed above. The Respondent may note that it informed the Charging Parties on November 22, 2021, that it was still investigating and gathering information responsive to the issue of contractor compliance. However, this request for additional time does not mitigate the already four-week delay where the Respondent did not previously acknowledge the earlier requests for contractor data or inform the Charging Parties of any reasons that would delay its production. Ingredion, Inc, 366 NLRB No. 74 (2018) (respondent's failure to explain delay supported finding of violation, despite the fact that the respondent had responded to other pending information requests).

The Respondent has not provided an adequate defense to these claims. Indeed, it does not acknowledge the delays in producing the requested contractor related compliance information or the omissions in its responses to the Charging Parties' information requests, discussed above. Instead, it erroneously claims to be in full compliance with its statutory obligations.

In sum, the Respondent violated Sections 10(a)(4) and (1) of the Act by failing to provide the Charging Parties with information relevant and necessary to their functions as collective bargaining representatives and for unduly delaying the furnishing of some such information to the Charging Parties.

6. Changes to Vaccination Policy in 2022

The Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally changing the status quo of employees' terms and conditions of employment in 2022, when it eliminated the

testing requirement for unvaccinated employees and terminated employees who were previously on no-pay status under its vaccination policy.

As a general matter, a public employer violates its obligation to bargain in good faith under Section 10(a)(4) and (1) of the Act "when it makes a unilateral change in a mandatory subject of bargaining without granting notice and an opportunity to bargain with its employees' exclusive bargaining representative." Policemen's Benevolent Lab. Comm. v. Illinois Lab. Rels. Bd., Loc. Panel, 2021 IL App (1st) 192209, ¶ 42 (stating principle); City of Aurora, 24 PERI ¶ 25 (IL LRB-SP 2008); Illinois Secretary of State, 24 PERI ¶ 22; Cnty. of Cook, 23 PERI ¶ 147 (IL LRB-LP 2007); County of Cook (Cermak Health Services), 10 PERI ¶ 3009 (IL LLRB 1994), affirmed, 284 Ill. App. 3d 145 (1st Dist. 1996).

Furthermore, an employer violates the obligation to bargain in good faith when it "unilaterally alters any of the prevailing terms and conditions of employment while the parties are negotiating the terms of a CBA." Am. Fed'n of State, Cnty., & Mun. Emps., Council 31 v. Illinois Lab. Rels. Bd., 2017 IL App (5th) 160229, ¶ 38 (internal quotes omitted). An employer must maintain the status quo until the parties agree to new terms and conditions of employment through collective bargaining. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 2017 IL App (5th) 160229, ¶ 38. This principle applies here to alleged changes made by the Respondent in September and October 2022 because the parties' negotiations for a successor agreement are ongoing.

As a threshold matter, the Respondent's elimination of the COVID-19 twice-weekly testing requirement for non-vaccinated employees is a mandatory subject of bargaining under the Central City test. It is a matter of employees' terms and conditions of employment because it relates directly to the health and safety of bargaining unit members. Chicago Board of Education, 39 PERI ¶ 95 and cases supra. Elimination of the testing obligation for non-vaccinated employees raises the real possibility that those individuals, who are more susceptible to COVID-19, may unknowingly come to work sick with the virus and infect others.

Next, rescission of the testing requirement is not a matter of inherent managerial authority because the Respondent has provided no argument to that effect. While the imposition of a vaccination requirement has been found in this decision to be a matter of inherent managerial authority related to the Respondent's standards of service, there is no comparable managerial consideration that necessitates the elimination of safety precautions.

Finally, the Respondent has not presented any defense to this change. Although the parties stipulated that their contracts remain in effect while the parties negotiate for a successor agreement, the Respondent has not presented any waiver-by-contract arguments with respect to its elimination of the testing requirement. The Respondent has not contended that the parties bargained this matter, let alone reached overall impasse in their negotiations for a successor agreement. The Respondent has also failed to present evidence that any exigency required it to eliminate the testing requirement. Finally, the Respondent has not contended that the Charging Parties acquiesced to this change. A union does not waive its right to negotiate over a mandatory subject of bargaining unless it delays making known its desire to negotiate for such a period of time as, under the circumstances, reasonably suggests it has acquiesced in the matter. County of Cook, 4 PERI ¶ 3012 (IL LLRB 1988). Here, the Respondent gave the Charging Parties only one day's notice of its decision, which is inadequate to trigger their obligation to demand bargaining. Laro Maintenance Corp., 333 NLRB 958, 959 (2001) (employer's notification to the union of proposed change one day before its implementation "amounted to the announcement of a fait accompli").

Similarly, the Respondent changed employees' terms and conditions of employment when it began terminating employees, in or about August 2022, for failing to report their vaccination status by October 15, 2021, or for failure to obtain vaccination against COVID-19. As discussed above, disciplinary sanctions are a mandatory subject of bargaining. Furthermore, a change from lax enforcement of a policy to more stringent enforcement is a matter that must be bargained over. Vanguard Fire & Security Systems, 345 NLRB 1016, 1017 (2005), enfd. 468 F.3d 952 (6th Cir. 2006). In addition, an employer's regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment and cannot be changed without offering the unit employees' collective bargaining representative notice and an opportunity to bargain. Usc Univ. Hosp. & Nat'l Union of Healthcare Workers, 358 NLRB 1205, 1212 (2012).

Here, the Respondent changed the method by which it enforced its vaccination policy against those who failed to report vaccination status by October 15, 2021 and those who failed to obtain vaccination. From October 15, 2021 to August 2022, the sole penalty imposed by the Respondent for an employee's failure to report vaccination status by October 15 was placement of the employee on non-disciplinary no-pay status. Similarly, from December 31, 2021 to August 2022, the sole penalty imposed by the Respondent for an employee's failure to vaccinate was placement of the employee on non-disciplinary no-pay status. Yet, after approximately 8 to 10

months of this approach, the Respondent changed its treatment of those same employees by terminating their employment. The Respondent thereby elected to pursue a far harsher approach than it had taken before against violators of its vaccination policy.

Notably, the language of the policy does not support the Respondent's anticipated claim that it maintained the status quo. Although the policy on its face states that any violations of the policy could result in discipline up to and including termination, the Respondents established a past practice of treating violations more leniently. For 10 months after the Respondent implemented its vaccination policy, the Respondent maintained employees on no-pay status for failure to report vaccination status by October 15, 2021. And for approximately 8 months, the Respondent maintained employees on no-pay status for failure to vaccinate.[31] Employees who had remained on no-pay status for 8 to 10 months thereby obtained a reasonable expectation that no further action would be taken against them for the same violation that resulted in their placement on no-pay status. Garden Grove Hospital & Medical Center, 357 NLRB 653, 658 (2011) (employer created a past practice where its clerical error allowed certain sick leave benefits to accrue for 9 months); see also Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 2017 IL App (5th) 160229, ¶ 41 (considering employees' reasonable expectations in status quo analysis).

Finally, the Respondent has not presented any defense to this change. The Respondent has not advanced any waiver-by-contract arguments with respect to its imposition of termination following a long duration of maintaining employees on no-pay status for failure to report or vaccinate. It has not contended that the parties bargained this matter, let alone reached overall impasse in their negotiations for a successor agreement. The Respondent has also failed to present evidence that any exigency required it to terminate employees who had been on non-disciplinary no-pay status for up to 10 months. Furthermore, there is no evidence that the Charging Parties waived their right to bargain this change to the method of enforcement because the record fails to establish that the Respondent communicated its intent to terminate employees instead of maintaining them on no-pay status, as it had done for many months. See County of Cook, 4 PERI ¶ 3012. There is also no evidence that the Charging Parties sat on their rights. While the original complaint had already proceeded before an ALJ at the time of the employer's termination of

[31] Those who reported by October 15, 2021 but did not vaccinate would have been placed on no-pay status as of December 31, 2021 pursuant to the policy. While the Roumell arbitration award extended the deadline for receipt of the second shot of a two-shot vaccine to January 31, 2022, employees were still required to obtain their first shot by December 31, 2021 and were considered unvaccinated if they had not done so.

employees who failed to vaccinate or report vaccination status, the Charging Parties each formally moved to amend their complaints to include this new allegation.

In sum, the Respondent violated Sections 10(a)(4) and (1) of the Act in August and September of 2022 when it rescinded the twice-weekly COVID-19 testing requirement for non-vaccinated employees and terminated employees who had previously been placed on non-disciplinary no-pay status.

7. Motion to Defer

The Respondent's motion to defer certain of the unfair labor practice allegations to the Roumell award is denied. Under Section 11(i) of the Act, the Board has discretionary authority to defer unfair labor practice charges to the parties' grievance arbitration procedure. Section 11(i) of the Act provides: "If an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement." One of the purposes of deferral is administrative efficiency, and the Board has declined to defer in cases such as this, where the parties have already conducted a full evidentiary hearing and submitted post-hearing briefs. City of Park Ridge, 39 PERI ¶ 64 (IL LRB-SP 2022); Vill. of Oak Park, 18 PERI ¶ 2019 (IL LRB-SP 2002). Accordingly, the Respondent's motion to defer is denied.

8. Remedy

In addition to a notice posting,[32] a cease-and-desist order, and an order that the Respondent provide the requested information that it failed to previously provide, the following remedies are appropriate:

The appropriate remedy for the Respondent's refusal to bargain over the effects of its vaccine mandate and reporting requirement is to rescind the vaccination policy, make employees

[32] A standard notice posting is ordered here. Although the Charging Parties have additionally requested that the notice be emailed to employees, the Board has never previously ordered such a posting. On one occasion, the Board ordered an employer to post a notice on its intranet site used by employees because the employees lacked a centralized workplace, but even there, the Board expressly declined to order the respondent to email employees the notice. State of Illinois, Department of Central Management Service (Human Services), 35 PERI ¶ 183 (IL LRB-SP 2019). Notably, the Charging Parties in this case have not contended that the standard notice posting would be deficient due to the nature of the workplace.

whole for any losses suffered as a result of the unilateral change, and upon request, bargain with the Charging Parties over the effects of the vaccine mandate and reporting requirement. Chicago Transit Authority, 14 PERI ¶ 3002 aff'd Chicago Transit Auth. v. Amalgamated Transit Union, Loc. 241, 299 Ill. App. 3d 934 (1st Dist. 1998); State of Illinois, Department of Central Management Services (Department of Agriculture), 13 PERI ¶ 2014 (IL SLRB 1997).

The make-whole order is narrowed only to the extent that the Charging Parties may wish to limit the scope of rescission, to retain any grant of benefits or other terms that employees wish to keep. The Board has previously granted a more limited rescission order, at the request of the union, in cases where the employees might not wish revocation of all unilateral changes. State of Illinois, Department of Central Management Services (Department of Agriculture), 13 PERI ¶ 2014. That approach is similarly warranted here where the unilaterally implemented vaccination policy impacted employees' terms and conditions of employment in both positive and negative ways.[33] Id. (requiring rescission of State-owned vehicle policy and issuing make-whole remedy, except to the extent that the union did not seek rescission for those employees who wished to continue use of State-issued vehicles); see also Great W. Broad. Corp., 139 NLRB 93, 96 (1962) (restoration order was conditioned upon the "affirmative desire of the affected employees for such, as expressed through their collective bargaining representative").

Although the Board has granted a more limited remedy in some effects bargaining cases, declining to order rescission of the employer's underlying managerial decision, the circumstances presented here are distinguishable and such a limited remedy is therefore inappropriate. For example, in Corrections the Board issued solely a bargaining order where the parties were in agreement on many effects of the Respondent's unilaterally implemented drug testing policy, except for discipline, and where the contractual just cause provision provided employees with interim safeguards. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001, aff'd sub nom., Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. State Lab. Rels. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989) (bargaining order only for effects of drug testing policy). Similarly, the Board in City of Chicago (Department of Police) allowed the Respondent to maintain its unilaterally-imposed extension of buffering time on body worn cameras (BWC) where

[33] For example, the vaccination policy granted employees a bonus personal day if they became vaccinated by October 15, 2021, and it also imposed a protective testing requirement for non-vaccinated employees. Indeed, the Respondent's subsequent unilateral rescission of the testing requirement was a separate unfair labor practice in this case.

the RDO had already granted a make-whole remedy for the Respondent's unilateral implementation of its final offer on the BWC's effects; employees there likewise had interim statutory and contractual protections against improper discipline arising from the extended buffering time. City of Chicago (Department of Police), 38 PERI ¶ 20.[34] Finally, in Village of Glenwood, the Board declined to order rescission of promotions instituted before completion of effects bargaining where rescission might have meant the loss of promotion for deserving employees due to potential expiration of the promotion list during the pendency of the case. Village of Glenwood, 32 PERI ¶ 159 (IL LRB-SP 2016)(applying Transmarine remedy).

Here, by contrast, the outstanding effects issues involved more than simply discipline and also included potential non-disciplinary consequences for policy non-compliance and sick leave, among other matters. Cf. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001 aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). In turn, the just cause provision does not provide employees with adequate protections where the vaccination policy imposed significant non-disciplinary adverse financial consequences for policy violations, i.e., no-pay status. Cf. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001; cf. City of Chicago (Department of Police), 38 PERI ¶ 20. Furthermore, the parties here did not reach tentative agreements on any effects issues; and even if they appeared to be in accord on some effects matters, it is difficult to know whether those understandings would be reflected in a final agreement where key effects issues remained unresolved. Cf. Illinois Departments of Central Management Services and Corrections, 5 PERI ¶ 2001 aff'd sub. nom Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989). Finally, the considerations present in Village of Glenwood are absent here because a make-whole remedy as outlined above would not effectuate harm to bargaining unit members and deprive otherwise deserving employees of an earned benefit.[35] Cf. Village of Glenwood, 32 PERI ¶ 159.

[34] This citation includes two RDOs, the remedy in RDO I was limited based on an earlier agreement between the parties, and there is nothing comparable in this cases. Cf. City of Chicago (Department of Police), 38 PERI ¶ 20.

[35] Should the Board reject this recommended remedy for the effects bargaining violation, I would recommend a Transmarine remedy, as outlined by the Board in Village of Glenwood. Village of Glenwood, 32 PERI ¶ 159.

The appropriate remedy for the Respondent's refusal to bargain over the changes to the sick leave addendum is a bargaining order and an order that employees be made whole for any losses suffered as a result of the unilateral change. Rescission is not ordered here because the Charging Parties expressly requested that the changes remain in place. State of Illinois, Department of Central Management Services (Department of Agriculture), 13 PERI ¶ 2014.

Finally, the make-whole remedy set forth above renders unnecessary any separate remedy for the Respondent's 2022 changes to the policy and its means of enforcement because the remedy for these matters is encompassed by the remedy already ordered.

V. CONCLUSIONS OF LAW

1. The Charging Parties' unopposed motions to amend the complaints are granted.
2. The Respondent violated Sections 10(a)(4) and (1) of the Act by implementing its vaccination policy without first bargaining over its effects to impasse or agreement.
3. The Respondent violated Sections 10(a)(4) and (1) of the Act by implementing changes to the sick leave addendum without bargaining to impasse or agreement.
4. The Respondent did not violate Sections 10(a)(4) and (1) of the Act by refusing to bargain over its decision to impose a vaccination mandate and a reporting requirement.
5. The Respondent did not engage in direct dealing in violation of Sections 10(a)(4) and (1) of the Act.
6. It is unnecessary to determine whether the Respondent's repeated announcements of the vaccination mandate and deadline to employees in August, September, and October, prior to formal implementation of the vaccination policy on October 8, 2021, qualified as separate unlawful unilateral changes.
7. The Respondent violated Sections 10(a)(4) and (1) of the Act by refusing to provide the Charging Parties with information necessary and relevant to their collective bargaining obligations and by delaying the provision of necessary and relevant information.
8. The Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally changing the status quo of employees' terms and conditions of employment in 2022, when it eliminated the testing requirement for unvaccinated employees and terminated employees who were previously on no-pay status under its vaccination policy.

9. The Respondent's motion to defer certain of the unfair labor practice allegations to the Roumell award is denied.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, its officers and agents, shall:

1) Cease and desist from:
    a. Failing and refusing to bargain collectively in good faith with the Charging Parties over the effects of its decision to implement a COVID-19 vaccine mandate and related reporting requirements.
    b. Failing and refusing to bargain collectively in good faith with the Charging Parties over changes to the sick leave addendum.
    c. Failing and refusing to bargain collectively in good faith with the Charging Parties over its decision, made in 2022, to terminate employees who had previously been maintained on non-disciplinary no-pay status for up to 10 months.
    d. Failing and refusing to bargain collectively in good faith with the Charging Parties over its decision, made in 2022, to rescind the twice-weekly testing requirement for non-vaccinated employees under the vaccination policy.
    e. Failing and refusing to provide the Charging Parties with information that is necessary and relevant to their performance of duties as bargaining representatives.
    f. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2) Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Rescind the vaccination policy except those terms that the Charging Parties may seek to retain.
    b. Rescind any discipline that issued to employees for violations of the vaccination policy and expunge it from employees' personnel files.
    c. Reinstate any employees terminated as a result of the Respondent's unilateral application of its vaccination policy and expunge any record of the termination from their personnel files.
    d. Make employees whole for the loss of any pay or benefits resulting from the failure to negotiate over the impact of the vaccination policy on the employees' wages and

other terms and conditions of employment, with interest at seven percent per annum.

e. Make employees whole for the loss of pay or benefits, if any, resulting from the Respondent's unilateral changes to the sick leave addendum with interest at seven percent per annum.

f. Provide the Charging Parties with the information they requested but which has not yet been provided.

g. Upon request, bargain in good faith with the Charging Parties over the effects of its decision to implement a COVID-19 vaccine mandate and a requirement that employees report their vaccination status.

h. Upon request, bargain in good faith with the Charging Parties over any changes to the sick leave addendum.

i. Preserve and upon request make available to the Board or its agents all payroll and other records required to calculate the amount of back pay or other compensation to which unit employees may be entitled as set forth in this decision.

j. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

k. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions.

Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 19th day of April, 2023

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ Anna Hamburg-Gal

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case Nos. L-CA-22-014 & 015

The Illinois Labor Relations Board, Local Panel, has found that the City of Chicago has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Parties over the effects of our decision to implement a COVID-19 vaccine mandate and related reporting requirements.

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Parties over changes to the Sick Leave Addendum.

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Parties over our 2022 decision to terminate employees who had previously been maintained on non-disciplinary no-pay status for up to 10 months.

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the Charging Parties over our decision, in 2022, to rescind the twice-weekly testing requirement for non-vaccinated employees under the vaccination policy.

WE WILL cease and desist from failing and refusing to provide the Charging Parties with information that is necessary and relevant to their performance of duties as bargaining representatives.

WE WILL cease and desist from in any like or related manner, interfering with, restraining or coercing our employees in the exercise of the rights guaranteed them in the Act.

WE WILL rescind the vaccination policy except those terms that the Charging Parties may seek to retain.

WE WILL rescind any discipline that issued to employees for violations of the vaccination policy and expunge it from employees' personnel files.

WE WILL reinstate any employees terminated as a result of the Respondent's unilateral application of our vaccination policy and expunge any record of the termination from their personnel files.

WE WILL make employees whole for the loss of any pay or benefits resulting from our failure to negotiate over the impact of the vaccination policy on the employees' wages and other terms and conditions of em-

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

ployment, with interest at seven percent per annum.

WE WILL make employees whole for the loss of pay or benefits, if any, resulting from our unilateral changes to the sick leave addendum.

WE WILL provide the Charging Parties with the information they requested but which has not yet been provided.

WE WILL upon request, bargain in good faith with the Charging Parties over the effects of our decision to implement a COVID-19 vaccine mandate and the related reporting requirements.

WE WILL upon request, bargaining in good faith with the Charging Parties over any changes to the sick leave addendum.

DATE _____

_____
City of Chicago
(Employer)

ILLINOIS LABOR RELATIONS BOARD

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