IN THE MATTER OF AN ARBITRATION UNDER THE BRITISH COLUMBIA *LABOUR RELATIONS CODE*, R.S.B.C. 1996, C. 244

BETWEEN:

INSURANCE CORPORATION OF BRITISH COLUMBIA

(the "Employer")

-AND-

MOVEUP
(CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 378)

(the "Union")

(Vaccine Mandate Policy Grievance)

APPEARANCES:	Chris E. Leenheer and Daniel Heath, for the Employer
	Jodie Gauthier, for the Union
ARBITRATOR:	Ken Saunders
SUBMISSIONS:	August 12, September 9, 23, 2022; April 18, 25, and 28, 2023
:	
DATE OF AWARD:	August 21, 2023

I. INTRODUCTION

1 The Union grieves that the Employer acted unreasonably when administering its Covid 19 vaccination policy because: 1) it did not permit employees to continue working from home as an alternative to vaccination; and 2) it required employees who were on approved sick leave with benefits to vaccinate in advance of their return to work at the office, lest they be placed on a general leave of absence without benefits.

2 This award is based on the parties' extensive written submissions following case management initiatives to streamline the adjudication of this grievance.

3 The written submissions, including the parties' agreed statement of facts, are part of the record in this proceeding.

4 I have only referred to those aspects of the agreed statement of facts and submissions necessary to convey my judgment.

II. BACKGROUND AND POSITIONS OF THE PARTIES

5 Beginning the week of March 15, 2020, the Employer transitioned office employees to work from home in response to developing knowledge of health and safety risks posed by the COVID-19 pandemic (the "Pandemic"). This measure involved the parties' cooperation in implementing working conditions otherwise inconsistent with the Collective Agreement and past practices. For example, this initiative departed from negotiated restrictions on work-from-home arrangements under Letter of Understanding 13 ("LOU 13"). Ultimately, approximately 4000 members of the Union worked remotely from home.

6 In June 2021, the Employer unilaterally announced it would gradually transition employees back to the office beginning July 2021 until planned completion on September 7, 2021. This project was implemented under what the Employer called a flexible work plan (the "Flex Plan"). The Flex Plan allowed employees in identified positions to voluntarily work from home to varying degrees, subject to cancellation by the Employer.

7 It is important to note that some employees worked only from home under the Flex Plan.

8 As of August 2022, approximately 3000 bargaining unit employees continued to work from home under the Flex Plan.

9 On October 5, 2021, the Employer notified the Union and its members that it would implement a mandatory COVID-19 vaccination policy effective November 22, 2021 (the "Policy"). The Employer's goal was to better manage the risk of COVID-19 transmission in furtherance of workplace and public safety. The Policy was temporary and intended to operate so long as the Provincial Health Officer considered the Pandemic a public health concern and subject to change depending on changing public health circumstances. The Policy acted in tandem with a suite of safety initiatives to combat the transmission of COVID-19, including a) mandatory masking; b) implementation of safety plans; c) following public health guidelines; d) pre-screening persons attending the workplace; e) adopting social distancing protocols; and f) remote work.

10 Employees on approved leaves of absence were required to comply with the Policy upon their return to work.

11 Employees on sick leave were required to comply with the Policy and demonstrate evidence of their vaccination by November 22, 2021.

12 Key aspects of the Policy include:

> a) The stated purpose of the Policy is (at 1.2):
>
> …to ensure that ICBC provides a safe and healthy environment to its employees, contractors, visitors and customers by mandating that employees be fully vaccinated. ICBC must comply with all applicable laws, including the processes for collecting vaccination information in accordance with the Freedom of Information and Protection of Privacy Act.
>
> *b) Mandatory vaccination applied to non-ICBC premises where employees conduct ICBC business, including an ICBC employee's own residence from which they are conducting ICBC work (1.4);*
>
> *c) The Policy applies to employees on sick leave or other leaves (at 1.4);*
>
> *d) Non-compliant employees would be placed on an unpaid leave of absence effective November 23, 2021 (2.1);*
>
> e) Non-compliant employee's employment status would be reassessed on January 4, 2022, at which point they could face termination (at 2.1);
>
> *f) Non-compliant employees on sick leave would have their sick leave benefits suspended (at 2.1); and*

> g) The Policy stipulates that even in situations where an employee requires accommodation, the employee would not be accommodated by permitting them to work remotely full-time (at 2.1).

13 The present case does not involve a claim for workplace accommodation on human rights grounds. It warrants observation that the Policy accommodates employees and contractors who cannot be vaccinated for an established health reason or another protected ground under human rights legislation. So, employees seeking such an accommodation were not kept from applying.

14 The Policy does not exempt an employee or a contractor who chooses not to receive the vaccine solely for personal reasons unrelated to an established health reason or a protected ground under human rights legislation.

15 On November 19, 2021, the Union grieved the Policy on the basis that the Employer had violated "Articles 0.12, 3, 5, 6, 17, 18, 22, 28, and all other applicable provisions of the collective agreement and has violated the applicable provisions of the *Labour Relations Code* and all applicable legislation" (the "Grievance"). The Union sought:

> … redress in full including, but not limited to, a declaration that the employer has acted improperly under the collective agreement; a cease and desist order enjoining the employer to rescind the portions of the policy or directive at issue; and an order that the union and any person adversely affected by the employer's actions be made whole under the collective agreement including, but not limited to, payment of full compensation for any and all lost income and benefits, including interest at applicable rates, to be applied on a fully retroactive basis and to be subject to payment of applicable union dues. The union also seeks any other remedy such as may be available and appropriate in the circumstances.

16 The Employer denied the Grievance based on its position that the Policy was a reasonable exercise of its management rights in response to the Pandemic, its obligation to keep its employees and customers safe, and its rights and obligations under the Collective Agreement.

17 Approximately 98.5% percent of individuals subject to the Policy complied with the Policy and provided proof of vaccination.

18 Non-compliant employees were placed on an unpaid leave of absence effective November 23, 2021.

19 Eighty-seven bargaining unit employees members did not conform to the Policy (ie, they did not disclose their vaccination status, and/or they did not receive the required

COVID-19 vaccinations) and were placed on a General Leave of Absence without pay (a "GLOA").

20 The Policy was applied uniformly to the Union's entire membership at ICBC, regardless of their circumstances. In particular:

> a) Members who could perform their work from home were not permitted to work from home as an alternative to getting vaccinated; and,
>
> b) Members who were on approved sick or other leaves at the time the Policy took effect were removed from their approved leaves and were placed on a GLOA if they did not get vaccinated.

21 In discussions with the Employer about the Policy, the Union offered to amend or waive the strict application of LOU 13 to allow its unvaccinated members to work from home. The Employer refused to allow unvaccinated Union members to work entirely from home or to amend restrictions on work-form-home arrangements in LOU 13.

22 The Union is unaware that any of its members were terminated due to a refusal to comply with the Policy.

23 The Employer suspended the Policy on October 17, 2022, and invited employees on a GLOA for noncompliance to return to work. On March 15, 2023, the employer advised that the policy was immediately rescinded.

III. RELEVANT COLLECTIVE AGREEMENT PROVISIONS

24 Article 0.10 of the Collective Agreement mandates collaboration in response to catastrophic events. It provides that the parties will cooperate in administering the agreement to enable the restoration of "normal operating conditions" disrupted by "physical catastrophe":

> 0.10 Catastrophic Event Cooperation
>
> It is recognized that a physical catastrophe (e.g. earthquake, fire) may seriously disrupt normal business operations. In this event, the parties agree to cooperate in the administration of the Collective Agreement, to enable contingencies which are directed to restoring normal operating conditions.

25 Management rights are addressed in Article 0.11 of the Collective Agreement. This article is relevant insofar as the Employer relies on its management rights to introduce and administer the Policy and Flex Plan:

> 0.11 Management Rights
>
> All management rights heretofore exercised by the Corporation, unless expressly limited by this Agreement, are reserved to and are vested exclusively in the Corporation.

26 Article 6 of the Collective Agreement identifies benefit entitlements. This article and Article 17 are relevant to the Union's claim that the Employer acted contrary to the Collective Agreement when it applied the Policy to interfere with benefit entitlements. Article 6 records an intention to preserve such entitlements subject only to express contractual limitation. It reads in part, "Except as specifically limited in this Article, or as limited elsewhere in this Agreement, all employees shall receive all of the benefits and provisions of this Agreement."

27 Eligibility for Paid Sick Leave is set out in Article 17 of the Collective Agreement. Article 17.01 records a commitment to provide paid sick leave in accordance with its terms:

> 17.01 Eligibility
>
> All eligible employees who incur illness or injury are entitled to and shall receive paid sick leave in accordance with this Article.

28 Entitlement to Welfare Benefit Plans is set out in Article 18 of the Collective Agreement. Article 18.3 defines the circumstances in which employees on leave may arrange to continue identified benefit plan coverage:

> 18.03 Coverage while on Leave Without Pay
>
> (a) Employees who are on leave of absence without pay (excluding maternity leave) in excess of one (1) calendar month are required to reimburse the Corporation for the total premium cost of all welfare plans on a month-to-month basis in advance. Employees who fail to reimburse the Corporation pursuant to this provision may have their coverage terminated by the Corporation.
>
> (b) Employees who commence maternity leave will have their coverage continued for medical, dental, extended health, and basic group life benefits at no cost to the employees. Such employees will be required to reimburse the Corporation for premium costs associated with voluntary group life and accidental death and

> dismemberment (if enrolled in these plans), and long term disability. In addition, employees may continue to make regular pension plan contributions (if enrolled).

29 Article 20.01 of the Collective Agreement provides that every employee will have an established headquarters and "by mutual agreement between an employee and their manager, an employee may attend alternate headquarters *for the purpose of performing their job*" (emphasis added). The Union says Article 20.01 gives management the discretion to allow vaccine refusers to continue working from home.

30 Article 20.01 reads as follows:

> ARTICLE 20 MOVING, TRAVELLING, SPECIAL ENTITLEMENTS
>
> 20.01 Headquarters
>
> Each employee will have an established headquarters which will be the location where the employee normally works, reports for work, or the location to which they return between jobs. In certain instances an employee's job may require them to regularly work out of one (1) or more alternate headquarters within a local region. In addition, by mutual agreement between an employee and their manager, an employee may attend an alternate headquarters for the purpose of performing their job.
>
> Under this clause, the homes of resident adjusters will be considered the established headquarters for those employees and classifications in the absence of a permanent Corporation office.
>
> For the purposes of this Article, local region will be defined as the area within twenty (20) kilometres of the employee's established headquarters.

31 LOU 13 figures prominently into the Employer's contention that it is contractually entitled to insist on restrictions to work-from-home arrangements.

32 LOU 13 requires management approval to work from home. Work from home is voluntary, such arrangements may be cancelled at any time by the manager or the employee with two (2) weeks' notice, and no employee is entitled to work from home for more than six (6) days in a two-week period. LOU 13 locates the authority to allow work from alternate locations by mutual agreement under Article 20.01. Further, the parties recorded that the Collective Agreement—including Article 20.01—applies in all respects, except as expressly amended by the terms of LOU 13.

33 LOU 13 reads in part as follows:

> RE: WORKING FROM HOME
>
> (REPLACES EXISTING LETTER OF UNDERSTANDING #13 – TELECOMMUTING)
>
> For the purposes of this Letter of Understanding, “working from home” is defined as performing work from an employee’s residence.
>
> The Collective Agreement applies in all respects except as specifically amended by this letter.
>
> The Parties agree that authority for working from alternate locations by mutual agreement is granted by virtue of Article 20.01.
>
> (a) **Approval to Work from Home**
>
> (i) Subject to the terms of this LOU, an employee may, with the agreement of their manager, work from an employee’s home residence. The Corporation will take the following factors into consideration when exercising their discretion to approve or deny an employee’s request to work from home:
>
> (1) whether the work-from-home arrangement would maintain or improve service or productivity;
>
> (2) the nature of the position, the job duties, and the impact on colleagues and customers;
>
> (3) the employee’s suitability, taking into consideration performance and work style/independence;
>
> (4) the availability of equipment and internet service as outlined in this LOU, specifically 3. Equipment and Expenses; and
>
> (5) the manner and frequency of contact between manager and employee.

> (ii) No employee shall work from home more than six (6) days in a two-week period.
>
> (iii) Working from home is voluntary. Each working from home arrangement will be confirmed in a letter which lays out the details of the arrangement. The letter will contain a start and end date. A copy of the letter will be sent to the Union in each instance.
>
> (iv) Work from home arrangements may be cancelled at any time by either the employee or their manager by giving two (2) week's notice.

34 There is no requirement in the Collective Agreement that members be vaccinated against any communicable illnesses. Nor is there a historical practice of requiring employees to be vaccinated.

IV. POSITIONS OF THE PARTIES

35 The Union's position proceeds from two closely related legal propositions. First, it points to the well-established principle that the unilateral introduction of workplace rules, pursuant to an employer's right to manage, is subject to arbitral review for compliance with the collective agreement, the general law and a standard of reasonableness, among other requirements: *KVP Co. v. Lumber & Sawmill Workers' Union of Canada, Local 2537 (Veronneau Grievance)*, [1965] OLAA No. 2 (Robinson) ("*KVP*") and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, [2013] 2 SCR 458 at paras. 27-29. The second proposition is that management rules impinging on employee privacy must submit to available, less intrusive means to achieve the same legitimate workplace objective.

36 The Union points to arbitration awards concluding that the universal application of mandatory vaccination may be unreasonable in a workplace where some members can safely continue to complete their work in isolation at home or at remote sites. In these cases, arbitrators have directed employers to "carve out" the application of a broad vaccination requirement to employees who can effectively work at home. See, for example, *B.C. Hydro and Power Authority v. International Brotherhood of Electrical Workers, Local 258 (Mandatory Vaccination Grievance),* [2022] B.C.C.A.A.A. No. 26 (Somjen) ("IBEW"); *BC Hydro and Power Authority and Powertech Labs Inc v. MoveUP (Canadian Office and Professional Employees' Union, Local 378)* (unreported, June 30, 2022) ("MoveUP"); *Power Workers' Union v. Elexicon Energy Inc. (COVID-19 Vaccination Policy Grievance)*, [2022] O.L.A.A. No. 48 (Mitchell) ("Elexicon"); and *Electrical Safety Authority v. Power Workers'*

Union (COVID-19 Vaccination Policy Grievance), [2022] O.L.A.A. No. 22 (Stout) ("ESA").

37 The Union emphasizes that bargaining unit employees have worked from home effectively. Despite this, the Policy requires all employees to be vaccinated, whether they have and can continue to work from home. It submits that working from home is a reasonable, less invasive way to ensure that members who do not wish to be vaccinated can continue employment without compromising the Employer's interest in maintaining a safe workplace. The Union submits that the Collective Agreement provides flexibility to permit this outcome either by a cooperative initiative further to Article 0.10, or by designating an employee's home an "alternative headquarters" pursuant to Article 20.01. The Union adds that the parties may agree to amend restrictions under LOU 13.

38 The Employer submits that permitting work-from-home and its Flex Plan work model were developed as temporary measures in response to the Pandemic. The Employer argues it was entitled to insist that employees return to the expectation of office employment that prevailed before the Pandemic. It emphasizes that it never established an entitlement to work from home that departs from the terms of the Collective Agreement and that many jobs require attendance at the office in its business judgment. The Employer submits that the Policy requirement for COVID-19 vaccination was a justified and minimally intrusive health and safety measure given both its interest in managing absenteeism and the fact that employees who worked at home were also required to attend the office from time to time. Further, the Policy did not strictly require vaccination as a condition of employment because employees who did not comply were placed on a general leave of absence. See *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2021 ONSC 7658, at paras. 52, 74 and 90; and *Interior Health Authority and BCNU,* [2006] B.C.C.A.A.A. No. 167, at para. 102 (Burke). The Employer adds that it retains the prerogative to direct that employees return to the office under its right to manage the business in a manner that it finds effective and efficient: *Alectra Utilities Corporation and Power Workers' Union*, 2022 CanLII 50548 (Stewart). Accordingly, the impugned initiatives are subject to review against a standard of reasonableness, recognizing the Employer was entitled to err on the side of caution to meet workplace objectives, not by a correctness standard. The Employer points to several awards where arbitrators concluded that an Employer's interest in maintaining a safe workplace in the face of the Pandemic outweighs the privacy and financial interests of employees who refuse to be vaccinated: *Elexicon*, supra.; and *Unifor Local 973 v Coca-Cola Canada Bottling Limited*, 2022 CanLII 25769 (ON LA) (Wright)*; Maple Leaf Foods Inc., Brantford Facility and UFCW, Local 174* (2022), 2022 CanLII 28285 (ON LA).

39 The Employer argues that the Union's proposed carve-out is unreasonable, particularly given that employees were gradually reintroduced to the office. The Collective Agreement does not contemplate that employees will permanently work

100% remotely or from home. The Employer argues that the analysis and result in *MoveUp* and *IBEW* are distinguishable, as the carve-out only applied to employees who were not required to work in an office and those who worked outside and did not have contact with others. See, for example, *CUPE, Local 1866 and WorkSafe New Brunswick (Smith*), 2023 CarswellNB 1. Further, the Employer submits that *MoveUp* was decided against the backdrop of a collective agreement that did not restrict work-from-home arrangements. See by analogy *NAP Windows & Doors Ltd. V. Iron Workers, Local 712*, 2012 CarswellBC 2264 (Pekeles) at paras. 34, 35 and 37.

40 The Employer argues that moving employees from sick leave to a leave of absence was a reasonable initiative for the following reasons:

> 112. As Sick Leave is a paid entitlement under the Collective Agreement, the Policy requires employees on Sick Leave to comply with the Policy.
>
> 113. As such, given Sick Leave is a paid entitlement, it is reasonable to require employees on Sick Leave to comply with the Policy, subject to the same medical and human rights exceptions all other employees are afforded.

41 The Employer explains that only those employees designated as “active”—those away from active employment for a brief, temporary period—were required to become vaccinated. Inactive employees—those not expected to return to work in the foreseeable future— were not required to become vaccinated until they returned to active employment. Active employees include those on sick leave per Article 17 of the Collective Agreement. Sick leave entitlement is limited to 400 hours. Thus, the Employer expected employees on sick leave to return to work in short order. In contrast, employees on long-term disability leave and other indefinite leaves of absence are considered inactive and are not expected to return to work soon.

42 The Employer submits that the distinction between active and inactive employees was reasonable given the expectation that active employees would return to work in a reasonably short period. It adds that requiring employees on sick leave to submit proof of vaccination upon return to the office was unworkable, given that employees on sick leave would need to receive the COVID-19 vaccine while on sick leave to meet the waiting periods between vaccine doses.

43 The Employer adds that the Union’s proposed carveout incentivizes employees to refuse vaccination or to refuse to submit proof of vaccination only as a means to achieve the benefit of working from home. This outcome provides an unintended workaround of the parties’ intention under LOU 13 to manage and restrict work-from-home arrangements so long as mutually agreed.

44 The Employer emphasizes that although the Policy applied to employees on sick leave, it still permitted a human rights accommodation for those with a protected characteristic preventing them from receiving the vaccine.

V. ANALYSIS AND DECISION

45 This award concerns two threshold issues which may narrow the scope of evidence needed to determine the Grievance:

> a) The extent to which the Employer is required to balance its management rights with the privacy rights of members by allowing members who did not comply with the Policy to work from home to the extent they were able to do so; and,
>
> b) The Employer's right to require vaccination for members who work from home and/or are not required to be present in the workplace (including in particular for those members on medical or other leaves at the time the Policy was introduced).

A. Did the Employer unreasonably insist that employees who refused to vaccinate return to work at the office vaccinated, without regard to whether continuing to work from home was a viable and less intrusive means to achieve legitimate workplace objectives?

46 I conclude that the answer to the above question is "No."

47 It is well established that employees do not abdicate their privacy rights by entering an employment relationship. Management rules that intrude on an employee's privacy rights must be justified. The standard of arbitral review of such intrusions is one of reasonableness. This review involves the evaluation and balancing of competing employer and employee interests. Relevant considerations include the nature and effect of the impugned intrusion, the purpose of the rule, the extent to which the rule achieves a legitimate workplace purpose, and whether there are less intrusive means available to achieve that purpose, among other relevant contextual facts.

48 In the present case, there is no dispute that vaccination involves an intrusion on one's bodily integrity. This intrusion lies at the core of one's right to privacy. However, the Employer had a legitimate interest in requiring vaccination to help protect the safety of its office employees and customers in response to the evolving knowledge of risks posed by the Pandemic. The legitimacy of this interest is not directly at issue. And as with many other arbitration boards in the numerous awards cited before me, I acknowledge this health and safety interest was sufficient to justify a vaccination requirement to work at the office at the relevant time. Nonetheless,

an employer is not the custodian of an employee's character or private responsibilities as a citizen. Thus, I accept the Union's submission that the Employer's right to manage does not justify a requirement to vaccinate for the benefit of the broader community. As a general proposition, management initiatives that intrude on an individual's private life must be justified by a nexus to a sufficient countervailing interest within the ambit of the employment relationship. I find the Employer's interest in requiring vaccination was not sufficiently engaged while employees only worked from home.

49 In Brown and Beatty, *Canadian Labour Arbitration*, 5th Edition (at 4:15), the authors sum up the state of the law as follows:

> In applying the standard of reasonableness, arbitrators assess the extent to which the rule is necessary to protect the employer's interests in operating the plant, in preserving its property, and generally in carrying out its operations in a reasonably safe, efficient and orderly manner. At the same time, the impact of the rule upon the employees' interests must be assessed and a balance struck that gives an appropriate effect or proportional regard to each interest. Thus, where a rule purports to regulate or concern itself with the employees' private lives, to be reasonable the employer must establish a substantial connection with its legitimate interest.

50 I conclude that the central answer to the Union's position under this heading is that the range of reasonable, less intrusive measures available to the Employer in administering the Policy must have conformed with the Collective Agreement. Unlike a human rights accommodation requiring a tripartite inquiry into whether it is viable to relax or suspend the operation of the Collective Agreement without undue hardship, the Employer was entitled to insist on its Collective Agreement entitlements in managing a return to normal operations. In the present case, LOU 13 records a bargain to place a hard cap on work-from-home arrangements of no more than six days in a two-week period. That agreement must be given effect as a hard constraint on the Employer's discretion to permanently introduce 100 percent work-from-home arrangements and as a complete answer to employee demands that the Employer continue to provide the benefits of permanently working from home. In my view, this consideration sets the present case apart from awards cited by the Union, where arbitrators reviewed work-from-home as an option entirely within the scope of management discretion to introduce workplace rules.

51 The Union answers the Employer's invocation of LOU 13, partly on the contention that it was open to the parties to negotiate alternative arrangements under Article 0.10. I conclude that Article 0.10 does not assist the Union's position. Article 0.10 records a general statement of intent to cooperate in the administration of the Collective Agreement to "restore normal operating conditions." I do not read that provision to dictate specific outcomes. Apart from that consideration, permanently

permitting employees to work from home does not count as a resumption of normal operating conditions.

52 The Union also says it is within the Employer's discretion, under Article 20.01, to designate an employee's home as their alternate headquarters. Such designations would relax the application of the Policy so that unvaccinated employees may continue active employment working from home. This provision records an intention to establish an employee's headquarters as where they normally work or report for work or the location to which they return between jobs. It is difficult to see how an office employee's home is where they normally work when their job was performed at the office until the Pandemic. I also note that the designation of an employee's home as established headquarters is reserved for resident adjusters and, even then, only in the absence of a permanent corporation office. Further, attendance at alternate headquarters—such as one's home in the present case—is reserved for the specific purpose of performing one's job. Finally, LOU 13 locates the source of the authority to work from alternate locations by mutual agreement under Article 20.01. LOU 13 records that the Collective Agreement—which includes Article 20.01—applies in all respects except as specifically amended by the terms of LOU 13. As noted above, LOU 13 restricts work-from-home agreements so that employees must continue to report for work at the office.

53 In summary, I find that a 100% work-from-home arrangement—apart from resident adjusters and unless tied to a specific job requirement—is not provided under the language of Article 20.01. I add that the plain meaning of the words "location where the employee normally works, reports for work, or the location to which they return between jobs." refers to the office work location(s) that prevailed before the Pandemic. The transition to work-from-home in the present case did not set a new norm. It was a temporary initiative. Finally, the canons of interpretation and the words of LOU 13 direct that any residual scope for mutual agreement under Article 20.01 fit harmoniously with the hard cap on work-from-home arrangements under LOU 13.

B. Was the Employer entitled to require vaccination for members who work from home and/or are not required to be present in the workplace, particularly those members on medical or other leaves when the Policy was introduced?

54 I conclude that the answer to the above-noted question is "No."

55 As explained above, the Policy was a management initiative subject to arbitral review for reasonableness and compliance with the Collective Agreement. As noted above, the legitimate workplace interests underpinning the Policy were to advance conditions favourable to the health and safety of its employees and office visitors. I do not find that the Employer had a legitimate interest in imposing a vaccination requirement because it generally promoted public health. Employees who were not required to work at the office or to otherwise work with coworkers or the employer's customers elsewhere did not present a risk of viral transmission that threatened the

Employer's workplace interests. Immunity by vaccination is acquired over time. However, it was open to the Employer as a reasonable, less intrusive means to allow employees who worked from home and refused vaccination to work from home until the very last day they were required to return to the office. They could be placed on a general leave of absence at that point.

56 I also find that the Employer acted contrary to the Collective Agreement when it suspended benefit entitlements owing to employees designated as "active" because they may be required to return to work within the foreseeable future. Again, allowing those who refused to vaccinate to access benefits until the day they are required to work at the office was a reasonable, less intrusive means to achieve the Employer's legitimate objectives. They could be placed on a general leave of absence at that point. Further, the suspension of benefits was contrary to the guarantee of such entitlements under Articles 17 and 18.03 of the Collective Agreement. As noted above, the Employer's administration of the Policy and the Flex Plan must conform with the Collective Agreement.

VI. CONCLUSION

57 The resolution of the two questions above should assist the parties to resolve the dispute independently.

58 I retain jurisdiction should the parties require additional guidance or rulings concerning the merits or remedial aspects of this dispute.

Ken Saunders, Arbitrator