IN THE MATTER OF AN ARBITRATION

B E T W E E N:

UNIFOR Local 973

("the Union")

- and -

COCA-COLA CANADA BOTTLING LIMITED

("the Company" or "the Employer")

AWARD

Before: **Mark Wright, Arbitrator**

Re: Brampton Vaccination Policy Grievance - Grievance No. 33841

Appearances

For the Employer:

Henry Dinsdale, Counsel
Darryl Serafini, Senior Labour Relations Manager Canada
Jose Alonso, Director Labour Relations

For the Union:

Chris Perri, Counsel
Mike Egan, Local President
Ryan Parson, Union Representative

Hearing Date: March 9, 2022

Introduction

1. Unifor Local 973 ("the Union") filed a policy grievance on November 18th, 2021, alleging that a mandatory vaccination policy announced by the Employer was unreasonable and hence breached the collective agreement.

2. The Employer, Coca-Cola Canada Bottling Limited ("the Company" or "the Employer"), is a bottler of a variety of beverages and soft drinks. It is under contract to, but independent of, Coca-Cola Limited.

3. The Company's Brampton facility is the largest bottler of Coca-Cola products in Canada and the second largest in North America.

4. The Brampton bargaining unit consists of approximately 700 employees represented by the Union.

5. All employees in the Union's bargaining unit must attend the workplace to perform their work. The vast majority of employees work in close quarters with fellow employees. Drivers in the bargaining unit regularly interact in close contact with dock workers and customers. Some drivers assist customer employees in setting up displays to "merchandize" the product at retail outlets. Most of the customers have their own vaccination policies, many of which require that anyone who attends their premises be vaccinated.

6. The underlying facts in this case are not in dispute. The parties provided me with a number of documents upon which they made extensive submissions at a videoconference on March 9th, 2022. The factual findings set out below are based on those documents and submissions.

The Vaccination Policy

7. On October 26th, 2021, the Company announced a nationwide COVID-19 Vaccination Policy ("the Policy"). Existing employees were advised that they needed to be fully vaccinated with two doses of an approved vaccine by January 1st, 2022, or face workplace consequences which might include disciplinary consequences, including termination. The Policy provided for

accommodation consistent with human rights legislation for those employees not able to take a COVID-19 vaccine based on a protected ground. It also noted that the Company would maintain a record of the second dose of an employee's vaccination in accordance with privacy legislation. The Policy was designed to be "evergreen" as a review was scheduled for April 1st, 2022, and then again, if not revoked, at least once every three months thereafter.

8. The Policy was announced to all employees by email on October 27th, 2021, and a letter was also sent to each employee's home. The Policy is a national policy covering all union and non-union employees across the country. The announcement reviewed the dangers posed by COVID-19, especially by the then new Delta variant, it outlined the effectiveness of vaccines in terms of reducing transmission of the virus and lowering the risk of serious illness or hospitalization, and it reviewed the impact the pandemic had had on the Company. The same information was also communicated to employees at "Crew Talks"—workplace huddles run by supervisors at the outset of a shift—beginning on October 26th, 2021, and extending into November and December.

9. Prior to the publication of the Policy, the Company asked employees to volunteer information about their vaccination status. Those employees who indicated that they were fully vaccinated were required to show proof of vaccination prior to November 15th, 2021. Those who did not provide proof of vaccination were assumed to be unvaccinated. At the time the Policy was published, 75% of the workforce had indicated that they were fully vaccinated.

10. Any employee who did not provide proof of vaccination was directed to participate in an educational program about COVID-19 vaccination.

11. As of October 26th, 2021, all new hires were required to be fully vaccinated.

12. In addition to the Policy, a number of initiatives were introduced at the Brampton facility to reduce the threat of transmission of the virus at the workplace. These measures included a COVID-19 screening app for employees; screening for all visitors, contractors, and 3rd party drivers; reduced capacity in lunchrooms, and segregated lunchrooms for different departments; hand sanitizers throughout the facility; disinfectant wipes for all employees; the provision of

cloth, medical, and N95 masks to employees; physical barriers, such as plexiglass, where physical distancing could not be maintained; remote punch-in for shifts to avoid line ups at the punch clock; and COVID-19 posters throughout the facility reiterating all the protocols in place to keep employees safe.

13. On December 7th, 2021, the Company advised all employees by email that additional workplace measures would apply to those employees who were not fully vaccinated by January 1st, 2022: effective January 3rd, 2022, unvaccinated employees would be required to wear face shields over their masks when on site or in the field; and effective January 17th, unvaccinated employees would have to submit to a mandatory rapid testing program on their own time but at the Company's expense. In the same email, the Company warned that further protocols might apply to unvaccinated employees:

> "Please note that ongoing failure to comply with Coke Canada's vaccination policy will have consequences such as being subject to additional protocols and rules, including Leave Without Pay, and the possibility of significant discipline up to and including the termination." [sic]

14. This same message was communicated at Crew Talks on December 7th and December 15th, 2021. In addition, the newly arrived Omicron variant was discussed, and its significantly increased transmissibility was highlighted.

15. On January 12th, 2022, the Company advised all employees by email that effective January 31st, 2022, all employees not vaccinated would be placed on indefinite unpaid leave. Partially vaccinated employees were not initially placed on indefinite unpaid leave, but were subsequently if they did not become fully vaccinated.

16. A letter was sent to the homes of all non-compliant employees delivering the same message.

The Impact of COVID-19 on the Company and its Employees

17. By the end of February, 2022, COVID-19 had had a significant impact on the Company and its employees:

- Two Company employees had died from COVID-19;
- Over 870 Company employees had tested positive for COVID-19, 224 at the Brampton facility alone (this number includes union and non-union staff);
- In January 2022 alone, 409 Company employees had tested positive for COVID-19 (approximately 13% of the workforce), significantly more than in any other month of the pandemic;
- Two Company facilities had been fully closed and two partially closed for periods of time due to COVID-19 outbreaks, with significant cost consequences to the Company;
- The hospitalization of Company employees had increased six-fold from 2020 to 2021.

18. Since the implementation of the Policy, 48 employees at the Brampton facility have been placed on unpaid leave of absence due to non-compliance, 11 of whom have yet to obtain a second dose of vaccine. To date, no bargaining unit employees have been disciplined or terminated for non-compliance with the Policy.

19. The Union has filed several individual grievances on behalf of those employees who have been placed on unpaid leaves of absence. The parties agree that the outcome of the present policy grievance will be dispositive of those individual grievances which are based on a challenge to the reasonableness of the Policy.

20. As of the date of the hearing, the percentage of Company employees who had been fully vaccinated in accordance with the Policy had increased to 96%.

Submissions of the Parties

21. Union and employer counsel agree that the framework for analysis in this case is that established in the oft-cited decision *Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co.*, 1965 CarswellOnt 618.

22. The Union challenges the reasonableness of the Policy on three grounds. First, it argues that the Policy is unreasonable because less intrusive means, such as enhanced PPE and rapid antigen testing, are sufficient to keep employees safe at work and enable the Company to meet

its statutory obligation under the *Occupational Health and Safety Act.* Second, it expresses a concern that an employee's decision to not get vaccinated is almost always based on a strongly held personal belief, that may reflect a political perspective or lifestyle choice, because no one gives up a regular salary for no reason. This, it suggests, should be considered when judging the reasonableness of the Policy. Third, it argues that the Policy puts employees in an untenable situation; they must choose between their livelihood or their bodily integrity/autonomy.

23. The Employer argues that the Policy is reasonable. The reasonableness of the Policy is to be judged by the balance it strikes between an employee's right to privacy, bodily integrity and autonomy, and the Employer's right and obligation to safeguard the health and safety of the workplace. In that regard, the Employer submits that it took a progressive approach to workplace consequences for non-compliance: first, enhanced PPE, followed by a rapid testing regime, before moving to impose unpaid leave on non-compliant employees. To date, no employees have been disciplined for non-compliance although that remains a possibility. It notes that pursuant to s. 25(2)(h) of the *Occupational Health and Safety Act*, an employer is required to "take every precaution reasonable in the circumstances for the protection of a worker." Given the context of the pandemic, and its statutory obligation to protect the health and safety of the workplace, the Employer submits that the Policy is a reasonable one.

24. In the course of their submissions, the parties referred me to the following cases: *Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co.*, *supra*; *Algoma Steel and USW Local 2251 RE: Grievance 22-0022 (James Collins)*, (2022) Unreported (Murray); *Algoma Steel Inc. and USW, Local 2724*, 2022 CarswellOnt 1287 (8 February 2022, Kaplan); *Chartwell Housing REIT and HOPE, Local 2220*, 2022 CanLII 6832; *Power Workers' Union v Elexicon Energy Inc.*, 2022 CanLII 7228; *Hydro One Inc. and Power Worker's Union*, (2022) Unreported (Stout); *CKF Inc. and TC, Local 213 (COVID Testing), Re*, 2022 CarswellBC 198; *Richmond (City) v International Association of Professional Firefighters, Local 1286*, 2022 CanLII 707; *Teamsters Local Union 847 v Maple Leaf Sports and Entertainment,* 2022 CanLII 544; *Bunge Hamilton Canada, Hamilton, Ontario v United Food and Commercial Workers Canada, Local 175*, 2022 CanLII 43; *Canada Post Corporation and Canadian Union of Postal Workers,* (2021) Unreported (Burkett); *Hydro One Inc. and Power*

Worker's Union, (2021) Unreported (Stout); *Ontario Power Generation and the Power Workers' Union*, (2021) Unreported (Murray); *Electrical Safety Authority v Power Workers' Union*, 2022 CanLII 343; and *United Food And Commercial Workers Union, Canada Local 333 and Paragon Protection Ltd.*, 2021 CarswellOnt 16048.

25. The parties provided me with a PDF version of the Science Brief published February 10th, 2022, in the series *Science Briefs of the Ontario COVID-19 Science Advisory Table.* I was also provided with a link to the Ontario COVID-19 Science Advisory Table Dashboard, which provides a significant number of statistics tracking the Omicron variant.

Decision

26. On the basis of the evidence before me and the submissions of the parties, I find that the Employer's mandatory vaccination Policy establishes a reasonable balance between an employee's interest to privacy and bodily integrity, and the Employer's interest in maintaining the health and safety of the workplace.

27. As Arbitrator Stout articulated in the *ESA* case, cited above, context is important when assessing the reasonableness of a workplace rule or policy that may have workplace consequences for individual employees.[1] The general context is known to everyone. The Policy is a response to a global health pandemic that has so far claimed 6 million lives worldwide. It makes mandatory the use of vaccines, that have proven to be safe and effective at combatting not only the transmission of the virus, but also at providing significantly greater protection from serious illness, hospitalization, and death for those individuals who are fully vaccinated. There is no question that it is extraordinary for an employer to enact a workplace rule or policy that impacts an employee's right to privacy and bodily integrity, but there can be no dispute that the global COVID-19 pandemic is an extraordinary health challenge. Not only are employers obliged to ensure that the health and safety of an employee is always protected, under s 25(2)(h) of the *Occupational Health and Safety Act*, employers are statutorily required to "take every precaution reasonable in the circumstances for the protection of a worker."

[1] *Electrical Safety Authority v Power Workers' Union, supra*, para. 68.

28. Moving to the specific context of this case, employees must attend the workplace to do their jobs. Most work in close quarters with fellow employees. Even the drivers in the bargaining unit regularly interact in close contact with dock workers and customers. Some drivers assist customer employees in setting up displays to "merchandize" the product at retail outlets. Most of the customers have their own vaccination policies, many of which require vaccination.

29. COVID-19 has had a significant impact on the Company nationally and at the Brampton facility: two employees died from the disease; 870 employees have tested positive for COVID-19 since the beginning of the pandemic, 224 of those cases coming from union and non-union staff at the Brampton facility; two Company facilities have been fully closed and two partially closed at various times costing the Company millions of dollars in lost production. The impact of the virus got worse over time with the advent of the Delta and then the Omicron variants: there was a six-fold increase in the number of hospitalizations of Company employees from 2020 to 2021; in January of 2022 alone, 409 Company employees tested positive for COVID-19 (approximately 13% of the workforce), the most by far of any month in the pandemic.

30. On October 26th, 2021, the Company announced a nationwide COVID-19 vaccination Policy that advised employees that they needed to be fully vaccinated by January 1st, 2022, or face workplace consequences. Prior to the implementation of the Policy, employees had been asked to voluntarily advise of their vaccination status, and those employees who did not provide proof of vaccination were required to participate in an education program about COVID-19 vaccination. The Policy was clearly communicated to employees in direct correspondence and in "Crew Talks." The workplace consequences of not being vaccinated by January 1st, 2022, were progressive. On December 7th, 2021, employees were advised that as of January 3rd, 2022, unvaccinated employees would have to wear face shields over their masks, and as of January 17th, 2022, a mandatory rapid testing program would be implemented. Employees were advised at the time that unvaccinated employees may also be subject to additional protocols including leave without pay, and possibly discipline including termination. This message was reiterated in Crew Talks beginning December 7th, 2021. On January 12th, 2022, in an email to all employees, the Company advised that unvaccinated employees would be placed on an unpaid administrative

leave of absence effective January 31st, 2022. Non-compliant employees each received a letter at their homes advising them of the same and reiterating that they were potentially subject to further consequences including the possibility of significant discipline and/or termination if they remained non-compliant.

31. To date, 48 employees at the Brampton facility have been placed on unpaid administrative leave. No employee has yet been subject to discipline.

32. The Union argues that the Policy is unreasonable because less intrusive means such as enhanced PPE, and rapid antigen testing are sufficient to keep employees safe at work and enable the Company to meet its statutory obligation under the *Occupational Health and Safety Act*. The Union relies in this regard on Arbitrator Stout's decision in *ESA*, cited above, which found, amongst other things, that in some workplaces, like the ESA, a mandatory vaccination policy may be unreasonable where a combination vaccination and testing regime may be adequate to address the health and safety risks associated with COVID-19:

> "[71] In workplace settings where the risks are high and there are vulnerable populations (people who are sick or the elderly or children who cannot be vaccinated), then mandatory vaccination policies may not only be reasonable but may also be necessary and required to protect those vulnerable populations.
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> [72] However, in other workplace settings where employees can work remotely and there is no specific problem or significant risk related to an outbreak, infections, or significant interference with the employer's operations, then a reasonable less intrusive alternative, such as the VVD/T Policy employed prior to October 5, 2021, may be adequate to address the risks."

33. I find, however, that Arbitrator Stout's decision in *ESA* is distinguishable from the present case for three reasons. First, a significant majority of ESA employees had been working remotely and had a right to continue to work remotely under the collective agreement.[2] In the present case, none of the employees can work remotely and the majority work in close contact with one another or with customers or members of the public. Second, Arbitrator Stout notes that the ESA did not lead any evidence to suggest that the combined vaccination testing regime was

[2] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 82.

unable to keep the workplace safe.[3] In the present case, there is evidence to suggest that a combined vaccination and testing regime failed to keep the workplace safe: based on national data 409 employees tested positive for COVID-19 in January of 2022 (approximately 13% of the workforce), the highest number of employees infected in any month of the pandemic, at a time when the Company had introduced enhanced PPE for unvaccinated employees on January 3rd, 2022, and then moved to a rapid testing regime for unvaccinated employees on January 17th, 2022. Third, Arbitrator Stout's analysis in *ESA* predates the advent of the far more contagious Omicron variant of the virus. As the Ontario COVID-19 Science Table notes in its Brief published on February 10th, 2022, "Rapid antigen tests are less sensitive for the Omicron variant compared to the Delta variant in nasal samples, especially in the first 1-2 days after infection,…,(A) single negative rapid antigen test result cannot reliably rule out infection; a single negative test result is not conclusive and should not be used as a green light for abandoning or reducing precautions." In *Elexicon Energies Inc.*, a case in which the reasonableness of a mandatory vaccination policy was challenged, Arbitrator Mitchell also distinguishes the *ESA* case on the basis that the effectiveness and reliability of rapid antigen testing has changed since the advent of the Omicron variant.[4] Arbitrator Stout himself recognizes in the *ESA* award that the situation is dynamic: "The one thing we have all learned about this pandemic is that the situation is fluid and continuing to evolve. What may have been unreasonable at one point in time is no longer unreasonable at a later point in time and vice versa."[5]

34. In addition to the enhanced PPE and the mandatory testing regime that the Company introduced for non-vaccinated employees in January of 2022, it is worth noting that there are a host of other COVID-19 protocols in place at the Brampton facility designed to reduce the threat posed by the virus. These include a COVID-19 screening app for employees; screening for all visitors, contractors, and 3rd party drivers; reduced capacity in lunchrooms, and segregated lunchrooms for different departments; hand sanitizers throughout the facility; disinfectant wipes

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[3] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 79.
[4] *Power Workers' Union v Elexicon Energy Inc.*, *supra*, para. 108. At paragraph 109 Arbitrator Mitchell also distinguishes the *ESA* case on the basis that most of the employees in that case were able to work remotely whereas the same was not true in *Elexicon*.
[5] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 73.

for all employees; the provision of cloth, medical, and N95 masks to employees; physical barriers, such as plexiglass, where physical distancing cannot be maintained; remote punch-in for shifts to avoid line ups at the punch clock; and COVID-19 posters throughout the facility reiterating all the protocols in place to keep employees safe. Notwithstanding all these measures, on a national basis 13% of the workforce tested positive for COVID-19 in January 2022, which was significantly more infections than had occurred in any other month of the pandemic. In my view, it was not at all unreasonable for the Company to approach its response to a world-wide pandemic on the basis of a national policy, taking into consideration the national impact of the pandemic on the Company and its employees as well as the unique circumstances of each workplace.

35. Given the context, I find that the Company acted reasonably when it added the further protocol that unvaccinated employees be put on an unpaid leave of absence effective January 31st, 2022.

36. The Union also expresses concern that an employee's decision to not get vaccinated is not made lightly; nobody gives up their regular salary unless they have a strongly held view about COVID-19 vaccines that may reflect political perspectives or lifestyle choices. There is no doubt that this is true, but it cannot, in my view, undermine the reasonableness of the Policy. Under the terms of this Policy, employees who can establish that they are unable to take any of the COVID-19 vaccines for a reason protected by the Ontario *Human Rights Code*, including on the basis of creed, are entitled to seek individual accommodation. Short of that, an employee's personal belief—however strongly held—must give way to the health and safety concerns that animate the Policy. COVID-19 can lead to serious illness and death. Two employees at the Company died from the disease. In that context, an employee's personal beliefs cannot override the Employer's interest in doing everything possible to maintain the health and safety of the workplace.

37. The Union also expresses a related concern that employees who have made the decision not to get vaccinated are placed in the untenable position of having to choose between their livelihood or their bodily integrity/autonomy. No one can deny it is an exceptionally hard choice for some employees to face, and one that would only be justified as a mandatory company

requirement in the kind of extraordinary circumstances presented by the pandemic. In *Elexicon Energy Inc.*, cited above, Arbitrator Mitchell suggests the difficulty of this choice is a relevant consideration for arbitrators balancing the employee interest to privacy, bodily integrity and autonomy, against the employer interest in maintaining the health and safety of the workplace in determining the reasonableness of a mandatory vaccination policy:

> "92. . . . In my view, arbitrators should take into account in the balancing exercise the deep dilemma of employees who strongly do not wish to be vaccinated whatever their motives, and who may have few or no other realistic choices to work elsewhere or who will have to give up a significant amount of earned benefits and stability if they choose not to get vaccinated. Just because there are hard choices, as opposed to no choice at all, does not make the policy not coercive, or render it more reasonable. Of course, the policy may be reasonable notwithstanding the potential consequences to the individual employees, but in my view, there is little legitimacy in a decision that finds the policy to be reasonable while denying the lived reality of employees faced with the coercive impact of these policies."

38. In my view, this is a fair observation; it is consistent with Arbitrator Stout's characterization in *ESA* of the employee's interest in privacy and bodily integrity as being "fundamental".[6] Nevertheless, Arbitrator Mitchell ultimately decides that the employer's interest in protecting the health and safety of other employees is "sufficiently important to justify the policy",[7] although he does find the policy to be unreasonable in respect of three unvaccinated employees working from home, and those employees who work entirely outside.[8] In the present case, none of the employees in the bargaining unit work remotely and none work entirely outside. Consistent with Arbitrator Mitchell's conclusion, the Employer's interest in this case in maintaining the health and safety of the workplace—in taking "every precaution reasonable for the protection of a worker"—justifies the Policy notwithstanding the difficulty of the choice for some employees.

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[6] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 70.
[7] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 94.
[8] *Electrical Safety Authority v Power Workers' Union*, *supra*, para. 114.

39. To date, no employees have been disciplined or discharged for failing to comply with the Policy, although employees were clearly notified of this possibility in the communication from December 7th, 2021:

> "Please note that ongoing failure to comply with Coke Canada's vaccination policy will have consequences such as being subject to additional protocols and rules, including Leave Without Pay, and the possibility of significant discipline up to and including the termination."

This message was repeated in Crew Talks and subsequent communications.

40. In *Bunge Hamilton*, cited above, Arbitrator Herman dismissed a union policy grievance challenging the reasonableness of a COVID-19 vaccination policy on a variety of grounds, including that it contemplated the possibility of employees being disciplined or terminated if they failed to comply with the policy. In this regard, Arbitrator Herman held as follows:

> "30. With respect to the references in the Vaccine Policy to discipline and termination, as the Vaccine Policy states, at this stage discipline or termination are only possibilities. It is reasonable, if not required, for an employer to put employees on notice of potential consequences of non-compliance with a rule or policy, and the Vaccine Policy does this. When or if discipline is meted out or an employee is discharged, a grievance can be filed. Any resulting arbitration would provide opportunity to consider whether the Employer can establish just cause for the suspension or termination, as the case may be, and that determination is likely to involve consideration of the circumstances at hand at the time of the suspension or termination, circumstances that cannot be known at the present time.
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> 31. It is therefore reasonable for the Vaccine Policy to include a statement that employees who are not fully vaccinated by January 24, 2022 'will not be allowed on the site and put on unpaid leave pending a final determination on their employment status (up to and including termination of employment)'."

41. The facts in *Bunge Hamilton* are somewhat different from the present case, as Bunge was required to enact a vaccination policy to comply with lease requirements established by its landlord, the Hamilton Oshawa Port Authority. However, in my view that factual difference does not take away from the generality of Arbitrator Herman's analysis with respect to whether a vaccination policy is unreasonable if it contemplates the possibility of discipline or termination

for non-compliant employees. I agree with Arbitrator Herman, and find his analysis is directly applicable to the present case where discipline or termination is a possible but not inevitable outcome of non-compliance. To the extent that any employee is disciplined or discharged under the terms of the present Policy, that outcome can be challenged with an individual grievance requiring the Company to establish just cause for its decision. A just cause analysis is broader and more rigorous than is the determination of whether a workplace policy is reasonable. Moreover, as Arbitrator Herman points out, an individual grievance alleging that an employer's decision to discipline or terminate "is likely to involve consideration of the circumstances at hand at the time of the suspension or termination, circumstances that cannot be known at the present time."[9]

42. In the *Chartwell Housing Reit* award, Arbitrator Misra concluded, among other things, that a mandatory vaccination policy was unreasonable because she found a breach of the policy resulted in automatic discharge. She made clear that it was only that aspect of the policy that was unreasonable:

> "243. Despite my findings above, it is important to state that this decision should not be taken by those employees who choose not to get fully vaccinated as indicating that the Employer would never be able to terminate their employment for noncompliance with the policy in question, or indeed any reasonable policy. It is only the automatic application of this policy as it respects discharge that has been found to be unreasonable."

43. The Policy before me contemplates discipline or termination as being a possibility, rather than being an inevitable consequence of a failure to comply with its terms, and so is distinguishable from the *Chartwell Housing Reit* award. After a careful review of the caselaw, Arbitrator Misra herself concludes that arbitrators are likely to find vaccination policies like the one before me to be reasonable:

> "212. What is clear from a review of these decisions is that arbitrators have accepted that a mandatory vaccination policy will likely be found to be reasonable in the current COVID-19 context and having regard to employers' responsibilities to maintain a safe and healthy

[9] *Bunge Hamilton Canada, Hamilton, Ontario v United Food and Commercial Workers Canada, Local 175*, *supra,* para. 30.

> workplace for all employees. They have also found reasonable those policies that included putting employees on notice that if they remain unvaccinated (or those who fail to disclose their vaccination status or don't have a medical exemption) they will be subject to being placed on an unpaid leave of absence, and may be subject to termination of employment. What these decisions have not stated is that termination is an automatic outcome for failure to get vaccinated, and in none of the cases had the Employer in fact enacted any terminations of employment."

44. For all the foregoing reasons, I find the Company's mandatory vaccination Policy to be reasonable. It strikes a reasonable balance between an employee's right to privacy and to bodily integrity and the Employer's right and statutory obligation to protect the health and safety of the workforce. It was therefore reasonable for the Company to put non-compliant employees on unpaid administrative leave effective January 31st, 2022. As the parties have agreed, this finding is dispositive of the individual grievances filed in connection with the unpaid leave. To date, no employee has been disciplined or terminated for failing to comply with the Policy, although that possibility has been clearly articulated to employees. Any employee who is disciplined or terminated for non-compliance with the Policy can file a grievance to challenge that outcome on a just cause basis.

45. I have found that the Policy and the placing of non-compliant employees on leave without pay to be reasonable and not contrary to the collective agreement. I note that notice has been one of the hallmarks of the Company's implementation of this Policy. Consistent with this approach, I believe it appropriate that non-compliant employees be provided with an opportunity to commence the vaccination process before facing the potential for discipline. In light of this, in the course of submissions I was asked by the parties for my opinion of what a reasonable period of time would be before the potential for discipline should arise. In my view it would be appropriate for non-compliant employees to be given to at least April 4th, 2022 to commence the vaccination process before facing the potential for discipline.

Conclusions

46. To summarize my findings:

(i) I find the Policy to be reasonable and enforceable and hence not in violation of the collective agreement;

(ii) I find the placement of non-compliant employees on leave of absence without pay is reasonable in the circumstances and not in breach of the collective agreement;

(iii) To ensure that bargaining unit employees have an unquestionable opportunity to bring themselves into compliance with the Policy, and at the invitation of the parties, I am of the view that no discipline should be issued for failing to become vaccinated before April 4th, 2022;

(iv) To the extent that discipline is issued, each case will be assessed and judged on its own merits as against the "just cause" standard.

47. The Union's policy grievance is dismissed.

Dated at Toronto this 17th day of March, 2022.

Mark Wright

Mark Wright--Arbitrator