

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**CANADIAN UNION OF POSTAL WORKERS**

**Grievor**

**and**

**CANADA POST CORPORATION**

**Employer**

**APPLICATION FOR INTERLOCUTORY CEASE AND DESIST ORDER  
In relation to CUPW Grievance No. N00-20-00008  
Pursuant to Article 9.87 of the Collective Agreement  
(Urban Postal Operations)**

The Canadian Union of Postal Workers (“CUPW”) will make an application to the National List Arbitrator who has the earliest available hearing date but no sooner than five working days following presentation of this application.

**The application is for:**

1. Pursuant to Article 9.87 of the Collective Agreement, an interlocutory order varying the Corporation’s “Mandatory Vaccination Policy” such that the Corporation shall, for a period of 20 (twenty) working days, offer CUPW member categorized as “Unwilling to be Fully Vaccinated” the alternative of frequent COVID-19 testing in order to continue their paid employment, with Canada Post complying with any and all privacy laws concerning personal health information;
2. Renewals of this order as required until such time as the arbitration of this grievance has been heard;
3. Whether an interlocutory order is made, that the arbitration of the grievance be heard by way of priority to be heard by the arbitrator hearing this application or referred to the arbitrator on the national list arbitrator who is available to hear the parties at the earliest possible time. If necessary, a hearing date already reserved for another grievance may be ordered to be set aside and assigned to a later date;
4. Such other order as counsel may advise and the Arbitrator deem just.

**The grounds for the application are:**

### **A. Federal Government Announces Plans to Require a Mandatory Vaccination Policy**

1. On August 13, 2021, the Canadian government announced its intent to require COVID-19 vaccination of federal public servants and an expectation that federal Crown Corporations (which includes Canada Post Corporation (“Canada Post”)) would also require vaccination of their employees. The announced plan included consultation with bargaining agents. The desired deadline for implementation was the end of October 2021.
2. Canada Post initiated consultations with CUPW and shared various drafts of a Mandatory Vaccination Practice.

### **B. Canada Post’s Initial Version of the Mandatory Vaccination Practice: A “Vaccinate or Test” Policy**

3. The initial iteration of Canada Post’s Vaccination Practice was a “vaccinate or test” policy. Employees would have the option to attest to being fully vaccinated or participate in twice weekly rapid antigen testing. Employees who did not comply would be placed on an unpaid leave.
4. Discussions with CUPW continued, with the Union advocating, amongst other things, that necessary protocols be in place to protect the private health information of workers and that Canada Post would comply with its legal obligation to provide human rights accommodations on a case-by-case basis.
5. As Canada Post indicated that the draft policy was close to final and that it intended to announce the policy shortly, CUPW issued a bulletin to its members on October 7, 2021 advising in general terms of the anticipated “vaccinate or test” policy.

### **C. The Federal Government Announces a Mandatory Vaccination Policy for the Core Public Administration**

6. On October 6, 2021, the federal government announced that it was implementing a mandatory vaccination policy for the Core Public Administration.
7. Pursuant to this policy, employees in the federal public service had until October 29, 2021 to attest to their vaccination status. Employees unwilling to be fully vaccinated or disclose their vaccination status were required to attend an online training session within two weeks of the attestation deadline. As of November 15, 2021, employees unwilling to be fully vaccinated or disclose their vaccination status would be restricted from accessing the workplace and would be placed on Leave Without Pay.
8. COVID-19 testing would not be available as an alternative for those who do not wish to vaccinate.
9. CUPW members are not employees in the Core Public Administration and the federal employment policy does not apply to them.

10. However, in a “Backgrounder” from the Treasury Board Secretariat, Crown Agencies (such as the Canada Post) were “asked” to “implement vaccine policies mirroring the requirements announced on October 6 for the rest of the public service.”<sup>1</sup>

#### **D. Canada Post Revises its Practice: Vaccinate or Unpaid Leave**

11. On or around October 14, 2021, Canada Post advised CUPW that it would be substantially revising its draft Mandatory Vaccination Practice to “mirror” the federal policy. Canada Post advised CUPW that it would eliminate testing as an alternative to vaccination as a result of the federal policy referred to above.

12. While CUPW supports voluntary COVID-19 vaccination as a significant contribution to health and safety in the workforce, the Union raised concern that the new draft policy went further than was required. Frequent rapid testing is a less intrusive option for achieving the same goal without using the threat of economic duress to coerce members to vaccinate against their will.

13. Canada Post advised CUPW that it was operating under a directive from the federal government and could not offer a testing as alternative, as that approach would not “mirror” the federal policy.

14. CUPW asked for information about the federal “directive”. Canada Post shared a letter from then-Minister of Public Services and Procurement Anita Anand, dated October 25, 2021.

15. The letter noted that the Government of Canada “expects” Crown corporation to align with the federal vaccination policy and thanked Canada Post for developing a policy that mirrors requirements announced for the federal public service. The Minister also noted that the Treasury Board expected Crown corporation vaccination requirements would be fully aligned by November 30, 2021.

16. Canada Post finalized a “Mandatory Vaccination Practice” on October 22, 2021 with the following features:

- a. The Practice comes into effect on October 29, 2021 and will remain in effect until it is no longer required for health and safety purposes.
- b. The Practice applies to all employees who are “active at work”, including those working remotely or on many types of leaves.
- c. All employees must attest to their vaccination status by November 12, 2021: Fully Vaccinated; Partially Vaccinated and Intends to Become Fully Vaccinated; Unable to be Vaccinated; or, Unwilling to be Fully Vaccinated.

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<sup>1</sup> Treasury Board Secretariat (October 6, 2021), “Backgrounder: COVID-19 vaccine requirement for the federal workforce” (<https://www.canada.ca/en/treasury-board-secretariat/news/2021/10/backgrounder-covid-19-vaccine-requirement-for-the-federal-workforce.html>).

- d. “Unwilling to be Fully Vaccinated” includes those refusing to complete the attestation, those denied an accommodation who refuse to vaccinate, those partially vaccinated but unwilling to be fully vaccinated, and those who have attested that they are not vaccinated.
  - e. As of November 26, 2021, employees who are Unwilling to be Vaccinated will be restricted from attending at work, including remotely, and placed on Leave Without Pay. These workers can return to work with twice weekly testing if they become Partially Vaccinated and intend to become Fully Vaccinated.
  - f. Employees who do not provide their attestation by the deadline will be considered “Unwilling to be Fully Vaccinated” and will be placed on Leave without Pay.
  - g. Employees who attest to being Partially Vaccinated (and intending to become Fully Vaccinated) are required to conduct twice-weekly testing until such time as they are Fully Vaccinated or are placed on Leave Without Pay.
  - h. There is a human rights accommodation process in place for those who attest that they are Unable to be Fully Vaccinated. Employees who are seeking an accommodation must conduct twice weekly rapid antigen testing.
17. Canada Post’s Mandatory Vaccination Practice closely aligns with but is not identical to the federal policy. For example, Canada Post has not implemented an educational requirement for employees who are Unwilling to be Fully Vaccinated.
18. The Mandatory Vaccination Practice is now in effect. While the vast majority of CUPW members have been vaccinated, there is a minority of workers who do not consent to vaccination and/or providing information about their vaccination status. This minority of members is faced with losing their income for a lengthy and indefinite period unless they are vaccinated contrary to their will.

#### **E. COVID-19 at Canada Post**

19. Over the course of the pandemic, Canada Post has closely monitored cases of COVID-19 amongst its employees. Canada Post has implemented measures, often at CUPW’s urging, to reduce the risk of COVID-19 transmission in the workplace. These measures include self-screening, masking requirements, enhanced cleaning, physical distancing, on-site vaccination clinics, and outbreak protocols. Rapid testing was used in several facilities to respond to outbreaks.
20. Canada Post also introduced several types of COVID-19-related leaves, including leaves for quarantine, childcare, parental care, and for those at “high-risk” from COVID-19.
21. Through these measures, along with increased vaccination and declining cases in the community, there has been a dramatic decline in the number of COVID-19 cases

amongst Canada Post employees across Canada. The risk of transmission in Canada Post facilities is far lower than it was through the “third wave.”

#### **F. There are Grounds for an Interlocutory Cease and Desist Order**

22. On November 15, 2021, CUPW presented a national grievance (N00-20-00008) alleging that Canada Post’s Mandatory Vaccination Practice violates the Collective Agreement, the Canadian Charter of Rights and Freedoms and the general law

23. There are grounds for issuing an interlocutory order to Cease and Desist, including:

- a. Canada Post’s unilaterally imposed “vaccinate or unpaid leave” policy is *prima facie* unlawful because:
  - i. The mandatory vaccination requirement is a unilateral management policy that fundamentally changes the conditions of employment.
  - ii. The threat of economic duress for a prolonged and indefinite period is so severe that it vitiates consent to medical treatment, contrary to the general law and section 7 of the *Canadian Charter of Rights and Freedoms*.
  - iii. Less intrusive means are available to achieve Canada Post’s health and safety objective. Frequent rapid antigen testing is a reasonable and simple alternative to vaccination that has been widely and successfully adopted in Canada, including in Ontario’s education sector (a sector that includes a large population of unvaccinated and vulnerable children and hundreds of thousands of education workers).
- b. The situation is urgent: Employees who are Unwilling to be Fully Vaccinated will soon be faced with the decision to be vaccinated or be placed on indeterminate unpaid leaves on November 26, 2021.
- c. The balance of convenience favours the granting of such order: The balance is between an employee’s right to bodily autonomy, privacy and integrity and the employer’s health and safety obligations in the workplace. Frequent rapid antigen testing will allow both the interest of employees to bodily autonomy and integrity and the employer’s interest to provide and healthy and safe workplace while the grievance is being determined.
- d. Without such an order, the consequences of the contravention would be severe and could not be eventually corrected or compensated adequately: Should the order not be granted, the economic duress caused by an indeterminate unpaid leave will coerce some unvaccinated CUPW members to vaccinate against their will. Once vaccinated, it is not possible to become unvaccinated.
- e. There is no other useful recourse: In light of Canada Post’s position that the federal government directs it to implement the Mandatory Vaccination Practice,

attempts to negotiate a resolution have failed and CUPW has no other useful recourse. The grievance procedure cannot achieve a resolution prior to implementation of the policy.

Dated this 15<sup>th</sup> day of November 2021



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Carl Girouard  
National Grievance Officer, CUPW

## **Appendix: Relevant Provisions of the Collective Agreement**

### **2.01 Management Rights – Rights**

It is recognized that the Corporation exercises rights and responsibilities as management, which are subject to the terms of this collective agreement.

### **4.02 Consultation and Discussion**

In view of this recognition and in accordance with structures provided for in this collective agreement, the parties agree to discuss and consult each other on all matters pertaining to their working relationship.

### **5.01 Discrimination**

There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or stronger disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national origin, political or religious affiliation, sex, physical or emotional handicap, sexual orientation, gender expression, gender identity, marital status, family status, genetic characteristics, conviction for an offence for which a pardon has been received, or membership or activity in the Union.

## **Article 8 – Labour-Management Meetings**

### **8.01 Principle**

The Corporation and the Union recognize that constructive and meaningful consultation is necessary in order to reach agreement on all the subjects mentioned in this article.

However, nothing in this article precludes meetings for discussion and consultation which may be held outside the process of labour-management consultation on any matter of mutual interest.

**(a)** The above principle shall encompass the exchange of information and the seeking and considering of the advice and views of each party, with full opportunity for discussion and appropriate comments.

**(b)** The above principle does not imply unanimous or majority agreement, nor does it interfere with management or Union rights arising out of the collective agreement.

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### **8.03 Level of Consultation**

The consultations shall be held at the local or national level or at any other level agreed to between the parties affected by the matters to be discussed.

All levels of both Union and management shall be informed of the understandings reached and the decisions made at any particular level.

### **8.08 Violations**

If the Corporation, in the opinion of the arbitrator, has failed to hold constructive and meaningful consultations in an effort to reach agreement on a matter requiring such consultation by virtue of this article, the arbitrator shall require the Corporation to rescind the disputed decision, restore the situation prevailing prior to the disputed decision or action, and make restitution where appropriate, in addition to any other corrective action he or she may impose.

### **8.10 Reference of Disagreement**

Where the parties cannot reach agreement on an issue submitted to consultation according to the terms of clause 8.04, that issue shall be referred for arbitration to an arbitrator listed in the current collective agreement.

The arbitrator's decision shall be binding on the parties.

## **Article 9 – Grievance and Arbitration Procedure**

**9.09** An authorized representative of the Union or a national representative of the Corporation may present a policy grievance in order to obtain a declaratory decision. A policy grievance may be presented in the following cases:

...

(b) where the Union is of the opinion that a policy, directive, regulation, instruction or communication of the Corporation has or will have the effect of contravening any provision of the collective agreement, or causing prejudice to employees or the Union or of being unjust or unfair to them.

### **9.87 Cease and Desist Order**

The Union or the Corporation may apply to an arbitrator of the national list for the issuance of an interlocutory order to cease and desist in the nature of an interlocutory injunction in accordance with the procedure set out below.

**9.88** A grievance claiming a contravention of the collective agreement and seeking the issuance of such an interlocutory order shall be presented at the national level in accordance with clause 9.17 in the case of a Union grievance or



by letter addressed to the National President of the Union in the case of grievance by the Corporation.

**9.89** The application shall be sufficiently detailed as to the circumstances relied upon and as to the order sought. The application shall be signed by a national representative of the Union who is a member of the National Executive Committee in Ottawa or, as the case may be, by an officer of the Corporation or its National Corporate Manager, Labour Relations in Ottawa.

**9.90** The application for an interlocutory order shall be referred to the national list arbitrator to whom the next grievance should be referred according to the rotation rules.

**9.91** A period of at least five (5) working days must occur between the date of the presentation of the application and the date of its hearing by the arbitrator.

**9.92** The arbitrator to whom the application is referred must hear the parties as soon as is possible. If necessary, he or she may use a date of hearing already reserved for another grievance and displace same to a later date.

**9.93** The arbitrator hearing the application may issue an interlocutory order to cease and desist if he or she sees fit and if satisfied in particular of the following:

- (a) that the evidence discloses a "*prima facie*" case of the existence of a contravention of the collective agreement or that such a contravention is about to occur;
- (b) the situation is urgent;
- (c) the balance of inconvenience favours the granting of such order;
- (d) that without such order, the consequences of the contravention would be severe and could not be eventually corrected or compensated adequately;
- (e) that there is no other useful recourse.

**9.94** The arbitrator may subject the issuance of an interlocutory order to any condition(s) that he or she deems equitable.

**9.95** Such interlocutory order shall not be in effect for more than twenty (20) calendar days. However, the order may be renewed as often as the arbitrator finds necessary until the decision disposing of the merit of the grievance, if the circumstances and conditions identified at clauses 9.93 and 9.94 are still in existence and are still met.

**9.96** Where such an interlocutory order is issued, the grievance must be heard by way of priority. The arbitrator who heard the application must see to it that the hearing of the grievance is referred to the national list arbitrator that is susceptible to hear the parties at the earliest possible time. If necessary, the

arbitrator may order that a hearing date already reserved for another grievance be set aside and that the other grievance be displaced to a later date.

However, the parties may agree to select the arbitrator who heard the application for the purpose of hearing the grievance himself or herself.

**9.97** Even where an application for such an order is dismissed, the arbitrator may, if he or she deems it justified, order that the grievance be heard by way of priority in the same manner as described in clause 9.96. In other instances, the grievance is referred to a national list arbitrator in accordance with clauses 9.77 to 9.80.

**9.98** If it happens that a party wishes to present an application for such an order relative to a grievance where the hearing is already in progress in front of an arbitrator of the national list, the application shall be presented to that arbitrator in accordance however, with the rules and conditions contained in clauses 9.87 to 9.97.

## **Article 33 – Health and Safety**

### **33.01 Policy Statement**

The parties recognize an employee's right to working conditions which show respect for his or her health, safety and physical well-being.

The Corporation and the Union recognize that the maintenance and development of the employees' general well-being constitute a common objective. As a result, all efforts shall be deployed to prevent and correct any situation and any conduct liable to compromise the health and safety of employees or deteriorate the work environment.

### **33.02 Corporation's Obligations**

**(a)** The Corporation has the primary responsibility for ensuring that safe conditions prevail within the workplace, to take appropriate and effective measures, both preventive and corrective, to protect the health and safety of employees.

**(b)** Without limiting the generality of the foregoing, the Corporation shall:

**(i)** provide and maintain workplaces, equipment, work methods and tools that are safe and without risk to health;

**(ii)** inform its employees and their Union representative of any situation relating to their work which may endanger their health or safety, as soon as it learns of the said situation;

(iii) inform employees adequately regarding the risks relating to their work, and provide appropriate training and supervision so that the employees have the skills and knowledge necessary to safely perform the work assigned to them;

(iv) provide the equipment, clothing and devices deemed necessary to prevent injury, except where the collective agreement provides for employee allowances to cover the cost of personal protective clothing, and ensure that employees use the said equipment, clothing and devices on the job;

(v) ensure that the necessary investigations, inspections and analyses are carried out, and cooperate with any health and safety committee established in accordance with this article, when there are situations liable to endanger the health or safety of employees;

(vi) take, without delay, all the measures necessary to prevent or correct a situation liable to endanger the health and safety of employees, or liable to compromise the environment, as soon as the situation is brought to its attention.

### **33.03 Joint Health and Safety Committees**

The Corporation and the Union recognize the need for constructive and meaningful consultations on health and safety matters. Consequently, joint health and safety committees shall be established at the local and national levels in accordance with the provisions of Part II of the *Canada Labour Code*, decisions rendered or to be rendered under these provisions, as well as in accordance with the following provisions.

#### **(a) National Joint Health and Safety Committee**

A national labour-management organization known by the name of the National Joint Health and Safety Committee shall be established. It shall consist of three (3) management representatives appointed by the Corporation and three (3) Union representatives appointed by the Union.

...

(g) When a committee or the management and union health and safety representatives decide that they cannot resolve a problem, they may agree to resort to the services of an impartial outside person, whose qualifications as a safety expert are recognized, and who will be invited to

join the committee or assist the health and safety representatives to discuss the problem and propose solutions.

**(h)** For the duration of this collective agreement, the proceedings of a Local Joint Health and Safety Committee, as well as the work of the health and safety representatives shall be deemed to be consultation between Union local(s) and local management within the meaning of Article 8 which shall then fully apply.

### **33.05 Rights and Obligations of Employees**

**(a)** Employees are responsible for taking the necessary measures to ensure their health, safety and physical well-being. They must also ensure that they do not endanger the health, safety or physical well-being of other persons in or near the workplace.

**(b)** Employees must observe the rules and reasonable practices established in connection with health and safety matters as means of protecting themselves and others.

**(c)** An employee must use or wear the equipment, devices or protective clothing which is placed at his or her disposal by the Corporation or for which he or she has been paid compensation.

**(d)** During the hours of darkness, all employees who are required to work outdoors shall wear a reflective safety vest as provided by the Corporation.

**(e)** An employee must inform his or her supervisor if a protective device or apparatus is missing or defective when such a situation might endanger himself or another employee.

### **33.10 Medical Examinations**

**(a)** Where the Corporation requires an employee to undergo a medical examination by a designated qualified practitioner, chosen by the employee, the examination will be conducted at no expense to the employee. Insofar as possible, an appointment for an examination will be scheduled during the working hours of the employee, but where an appointment for an examination is scheduled during an employee's non-working hours, he or she shall be excused from duty for a period of three (3) hours on either the shift immediately prior to or the shift immediately following the examination, at the option of the employee concerned.