

**BEFORE THE BOARD OF ARBITRATION  
NEUTRAL CHAIR STEVEN M. BIERIG**

<b>AMALGAMATED TRANSIT UNION LOCALS 241 AND 308</b>	<b>GRIEVANT: CLASS ACTION</b>
<b>AND</b>	<b>GRIEVANCE NOS. 21-0451 0921-01</b>
<b>CHICAGO TRANSIT AUTHORITY</b>	<b>ISSUE: CTA COVID VACCINATION POLICY</b>
	<b>ARB. NO. 21-132</b>

**PARTY ARBITRATORS:**

**ATU Local 308:**

**Anita Tanay  
General Counsel, ATU Local 308**

**ATU Local 241:**

**Ronald Willis  
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich**

**CTA:**

**Brad Jansen  
CTA Deputy General Counsel – Labor and Employment**

**James Thomas  
Jackson Lewis**

**Location of Hearing:**

**Jackson Lewis  
150 N. Michigan Ave. Suite 2400  
Chicago, Illinois**

**Date of Hearing:**

**September 9, 2021**

**Date of Award:**

**September 10, 2021**

## I. INTRODUCTION

The Chicago Transit Authority (“CTA”) and Local 241 and Local 308 of the Amalgamated Transit Union (“Local Unions”) are parties to a Collective Bargaining Agreement (“Wage and Working Conditions Agreement” or “WWCA”) effective for the term January 1, 2016, through December 31, 2019. The parties are in negotiations for a successor Collective Bargaining Agreement, and the current WWCA remains in effect.

On or about August 26, 2021, the CTA informed the Local Unions it intended to institute a mandatory vaccination policy for employees and sent a draft of its Mandatory Vaccination Policy for All CTA Employees (the “Policy”) to the Local Unions. The Local Unions demanded bargaining, and on August 31, 2021, the parties met regarding the Policy. The parties failed to agree upon the terms of the Policy, and the CTA thereafter informed the Local Unions it intended to issue the Policy on September 3, 2021.

The Local Unions took the position that the Policy was unreasonable, and as such, violated the WWCA. The Local Unions therefore filed the Grievances, demanded Arbitration, and further demanded that the Policy not be enforced pending the issuance of an Arbitration Award. The CTA denied the Grievances. In the interest of avoiding litigation, and of providing clarity to all concerned regarding the Policy, the CTA and the Local Unions have agreed to refer the Grievances over the Policy to a tri-partite panel for a final and binding, but non-precedent setting decision that resolves the dispute between the Local Unions and the CTA. The parties have appointed me as the Neutral Chair of the tri-partite panel consisting of two party arbitrators each appointed by the Local Unions and the CTA. The parties have conferred upon me jurisdiction to resolve the disputes between the parties concerning the Policy as well as the authority to award a remedy or remedies, if appropriate.

A Hearing was held on September 9, 2021. At that time, the parties were given the full opportunity to present evidence and arguments. Due to the urgent time constraints, briefs were not to

be filed, and the parties requested that I issue an Award no later than the close of business on Friday September 10, 2021. This Award is being issued in accordance with those requirements.

**II. STIPULATED ISSUE**

The parties stipulated to the following issue:

Does the CTA's Mandatory Vaccination Policy as issued on September 3, 2021, violate the parties' Collective Bargaining Agreement?

If so, what shall the remedy be?

**III. STATEMENT OF FACTS/POSITIONS OF THE PARTIES**

The facts are not in dispute. Since the Policy is part of the record, it is summarized here, rather than reproduced in its entirety. The Policy requires that all CTA employees be fully vaccinated against COVID-19 by October 25, 2021. In the Policy, the CTA explains its reason for adopting the Policy as follows:

The COVID-19 virus represents a threat to the health and safety of CTA employees. The available vaccines have proven to be safe and effective. It is everyone's shared responsibility to help end the COVID -19 pandemic and protect the health of our workers and our families by taking the effective step of getting vaccinated. Unvaccinated people account for 99% of hospitalizations and deaths now occurring from COVID-19. Currently COVID-19 is the third leading cause of death in the United States.

The CTA made a number of arguments as to why it was necessary to institute the Policy at this time in order to address health and safety issues arising out of the COVID-19 pandemic. The CTA argues that numerous other public and private institutions have mandated COVID-19 vaccination for employees. By way of example, the CTA points to the vaccine mandates for federal employees, federal contractors, and members of the military. The CTA also points to Governor Pritzker's recent Executive Order 2021-20 that mandates vaccination for healthcare workers, K-12 school personnel, and higher education personnel. In addition to these federal and state mandated vaccine requirements, the CTA offered President Biden's August 23, 2021 statement calling on employers to require their employees to be vaccinated: "If you're

a business leader, a nonprofit leader, a state or local leader, who has been waiting for full FDA approval to require vaccinations, I call on you now to do that — require it. It only makes sense to require a vaccine to stop the spread of Covid-19.”

The CTA also described the extensive efforts it had made to support and encourage voluntary vaccination, including offering the employees the opportunity to be vaccinated at the workplace. Nonetheless, a substantial number of CTA employees remain unvaccinated.

In light of the scientific evidence of the public health threat posed by COVID-19, and the demonstrated risk of mutations, such as the Delta variant, arising when a significant percentage of the population is unvaccinated, the CTA contended that mandatory vaccination was necessary to promote a safe working environment for CTA employees and to regain the confidence of the riding public in order to restore ridership. The CTA maintained that to wait any longer in the face of the current pandemic situation is to invite disaster and subject the majority of its workforce to unacceptable health and safety risks. Finally, the CTA states that it is instituting the Policy fairly. The CTA did not offer a monetary incentive to any employees who voluntarily chose to be vaccinated, and the CTA is instituting the Policy for all employees, whether represented by a bargaining representative or not.

The Policy requires that all employees submit proof that they are fully vaccinated for COVID-19 no later than Monday, October 25, 2021. Employees have the option of the Moderna and Pfizer vaccines, which require two shots, 28 days apart in the case of Moderna, and 21 days apart in the case of Pfizer, or the Johnson and Johnson vaccine, which only requires one shot. Employees are not considered fully vaccinated until two weeks after the last shot. This means that employees who are not currently fully vaccinated and who opt for the Moderna vaccine must schedule their first shot at least six weeks in advance of the deadline, i.e., Monday, September 13. In addition, as the Center for Disease Control (CDC) updates its guidance to include booster shots, employees will be required to provide proof that they have received the recommended boosters. The Policy provides information on where vaccines are available to

the public. It also states that CTA hourly employees who obtain their vaccine doses during non-working time will receive additional compensation of four hours per dose at their regular rate of pay upon showing proof they received a vaccine dose. With advance notice to and approval by the manager, employees may obtain their vaccines during their regular work schedule without loss of pay for the actual time it took them to receive a vaccine dose not to exceed four hours away from work, again upon showing proof they received a vaccine dose.

The Policy requires that the employees use the Employee Self-Service Portal to submit proof of vaccination by uploading a valid COVID-19 Vaccination Record Card or other valid proof of vaccination form from a health care provider.

The Policy provides that in “certain limited circumstances” an employee may be excused from the Policy, and that the CTA will consider requests for accommodation supported by a doctor’s certification that an employee is medically unable to receive the COVID-19 vaccine or documentation of a sincerely held religious belief or observance which prevents them from receiving the vaccine. The Policy provides that requests for accommodation and all supporting documents are due on or before Friday, September 24, 2021.

The Policy states that employees who fail to comply with the Policy by becoming fully vaccinated and providing documentation by October 25, 2021 will be placed on unpaid leave immediately. Employees found to have violated the Policy will be referred to their General Manager for discipline consideration up to and including discharge.

The Local Unions argued that the policy was unreasonable and was deficient for the following reasons:

1. Testing alternative: The Local Unions maintain that employees should be given the option of being tested weekly for COVID-19 as an alternative to taking the shots.

2. Timeline objections: The Local Unions assert that the Policy is unreasonable in requiring that employees be fully vaccinated by October 25, 2021 and sought additional time for employees to comply.
3. Compensation objections: The Local Unions assert the four-hour limit per dose on compensation for time required to be vaccinated is unreasonable. The Local Unions demanded that the employees receive at least eight hours compensation per dose. The Local Unions also maintain that there should be retroactive payment of the compensation for the employees who were voluntarily vaccinated prior to the issuance of the policy.
4. Proof of Vaccination Procedure objections: The Local Unions noted that many employees have difficulty in accessing the employee Self-Service Portal. The Local Unions assert that the CTA should make alternative, privacy secured methods for reporting compliance with the Policy available at employee work locations.
5. Accommodation procedure objections: The Local Unions demanded that in cases where the CTA denies requests for accommodations, employees be given adequate time after receiving the denial to become vaccinated without suffering any adverse consequences. In addition, in cases where the CTA has not acted on the accommodation request in a timely fashion, employees should not be penalized.
6. Failure to comply: The Local Unions maintained that employees who do not comply with the Policy should not be disciplined or subject to discharge.

#### **IV. DISCUSSION AND FINDINGS**

The issue of health and safety of employees in the workplace is significant, and policies relating to mandatory vaccination of employees must be examined from both the perspective of the employees and the employer. Mandatory vaccine policies have been upheld for over a hundred years; however, it has also been recognized that such policies have a dramatic impact on employees that must also be

considered. The current situation presents every employer and every worker with a unique and dangerous, emotional and polarized situation, influenced by outside factors and, unfortunately, subject to much inaccurate information. Each case is unique, and there is no single solution to address this issue. There is no crystal ball to determine what will occur in the future as this pandemic situation evolves, and there is no right answer that would apply in all circumstances.

There is no uniform policy that every employer and every worker will agree is the answer to the current situation or provides a solution to problems that the COVID-19 pandemic has created in the workplace and among the work force. Although some employees may object to mandated vaccination, many other employees will equally object to placing the safety of themselves and their families at risk by working near an unvaccinated individual. However, there is one universal truth applicable to all such policies. An employer's mandatory vaccination policy must be administered with fairness and must address both the needs and rights of the individual employees as well as the unique circumstances of each individual employer.

Due to the exigent circumstances and the urgency in issuing this Award, the parties have waived the tripartite panel solely for the purposes of issuing this final Award and have authorized the Neutral Chair to issue this Award on his own authority. I have carefully reviewed the record and have considered the evidence and arguments of counsel presented at the Hearing as well as the input from the Party Arbitrators. I have carefully weighed the CTA's arguments regarding the necessity for the Policy, and I have also carefully weighed each of the Local Unions' objections to the Policy.

**V. AWARD**

Pursuant to the authority delegated to me to resolve the disputes arising out of the Local Unions' challenges to the Policy and to issue an appropriate Award and remedy, based upon the evidence presented, arguments of the parties, and special circumstances unique to this case, I find that, in the

interest of the health and safety of the employees and of the riding public, the CTA has the right to issue and enforce a mandatory vaccination policy; however, to be consistent with the parties' Collective Bargaining Agreement, I am ordering certain modifications be made to the Policy. The CTA may proceed to enforce the Policy without violating the Collective Bargaining Agreement, subject to the modifications/conditions set forth below:

1. The date by which the employees must submit proof that they are fully vaccinated is extended to November 1, 2021. Employees must have received their first dose of a two-dose vaccine or their single dose Johnson and Johnson vaccine in a time frame that will allow the employee to be considered fully vaccinated under the policy by November 1, 2021. This means that the employees vaccinated with Moderna or Pfizer vaccines must receive their second dose no later than October 18, 2021 and employees vaccinated with the Johnson and Johnson vaccine must receive it no later than October 18, 2021.
2. Employees must submit requests for religious or medical/disability accommodation no later than October 1, 2021. If the CTA grants a request for an accommodation, it shall advise the employee of the accommodation and the conditions applicable thereto. If an employee timely submits a request for an accommodation under the Policy and the CTA denies an employee's request, the CTA shall provide the employee with no less than five weeks' notice to become fully vaccinated so that the employee may have adequate time to receive the Johnson and Johnson, Moderna or Pfizer vaccine.
3. Employees shall be afforded a reasonable opportunity to obtain their vaccines during the regularly scheduled workday, and the CTA shall make necessary adjustments to ensure that the employees are afforded that reasonable opportunity. The CTA shall notify the Local Unions on a weekly basis of the number of requests made for time off during the workday to obtain vaccinations, and the number of requests granted and denied. The parties shall confer and attempt to resolve any disputes that may arise as to whether the employees are being afforded the reasonable opportunity to obtain vaccines during their regularly scheduled workday.



4. The CTA's provision for up to four hours' pay for employees vaccinated during their regular scheduled workday and for four hours of pay when not scheduled to work is consistent with and more generous than the City of Chicago ordinance and is also reasonable. The Local Unions' request for eight hours' pay, while providing an additional incentive, is not required to meet the reasonableness standard, and is denied, as is the Local Unions' request for retroactive compensation for those who were previously vaccinated.
5. The CTA shall consider making alternative arrangements by which employees may securely provide proof of vaccination as an alternative to uploading it through the Employee Self-Service Portal. Employees who experience difficulties in providing the required proof of vaccination through the Self-Service Portal should complete a Report to Manager Form, and copies of such reports shall be made available to the Unions upon request.
6. Employees who receive a vaccine and are unable to report to work due to an adverse reaction shall not be charged with a sick book entry. Employees will be entitled to the same sick leave benefits for adverse vaccine reactions as they receive for any other ailment.
7. Employees who do not submit proof that they are fully vaccinated by November 1, 2021 shall be treated as follows:
  - a. An employee who submits proof that he or she received the one dose Johnson and Johnson vaccine less than two weeks prior to November 1, 2021 shall not be taken out of service or otherwise subject to corrective action.
  - b. An employee who submits proof that he or she received both doses of the Moderna or Pfizer vaccine, but the second dose was administered less than two weeks prior to November 1, 2021, shall not be taken out of service or otherwise subject to corrective action.
  - c. An employee who submits proof on or before November 1, 2021 that he or she received the first dose of a two dose vaccine prior to November 1, 2021, and submits proof that

he or she is scheduled to receive the second dose no later than 28 days after the first dose was administered shall not be removed from service or otherwise subject to corrective action, provided that the employee provides proof that he or she received the second dose as scheduled. If the employee fails to provide proof that he or she received the second dose, the employee shall be treated as being out of compliance with the Policy.

- d. If an employee applies for an accommodation by October 1, 2021 or after October 1, 2021 due to a new condition, and complies with the CTA's requests for documentation regarding the request for an accommodation, and does not receive a determination from the CTA as to whether the request for an accommodation has been granted or denied through no fault of the employee, the employee shall not be removed from service or otherwise subject to corrective action until the CTA responds to the request for accommodation in accordance with paragraph 2. If an accommodation request remains pending as of November 1, 2021 because of an employee error or omission, the employee shall be treated as being out of compliance with the Policy.
- e. Employees shall be considered to be out of compliance with the Policy as of November 1, 2021 if (1) they have not received a dose of an approved vaccine; or (2) they are not scheduled to receive the vaccine; or (3) they have not submitted a timely application for an accommodation; or (4) they have submitted a timely application for an accommodation but have failed to comply with requests for documentation; or (5) they meet one of the conditions described above in subparagraphs (c) or (d) that results in the employee being treated as out of compliance with the Policy. The employee and the respective Local Union shall be notified that the employee is out of compliance. The employee shall be issued a Final Written Warning, with a copy provided to the respective Local Union, notifying the employee that he or she has seven days to comply with the Policy by (1) providing proof that he or she received a single dose of the vaccine within the seven day period; or (2) providing proof that he or she received the first dose of a two dose vaccine within the seven day period and has scheduled the second dose, provided that, after the employee receives the second dose, the employee must follow the procedures contained in the Policy for documenting proof of vaccination; or (3) if an application for an accommodation was previously submitted but supporting

documentation was not submitted, submitting the supporting documentation within the seven-day period. An employee who takes the above-described steps to comply within the seven-day period shall not be removed from service or subjected to additional corrective action provided the employee then takes the required steps to comply with the Policy. An employee who does not take the required steps to comply with the Policy within the seven-day period shall be removed from service and referred to the General Manager for discharge consideration.

8. Except as expressly provided above, the Grievances are denied.
9. The Arbitration Panel retains jurisdiction over any disputes arising out of this Award or the implementation and application of the Policy, and the Neutral Chair shall have authority to issue an Award arising out of such disputes.
10. This Award does not address any laws or regulations that may apply to the Policy.

*Steven Bierig*

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**Steven M. Bierig, Neutral Chair**  
**September 10, 2021**