

December 3, 2021

## DECISION ON CEASE AND DESIST APPLICATION

This is a follow-up from our bulletin dated November 25 announcing that our Cease and Desist application against Canada Post's mandatory vaccination practice was denied.

As per the jurisprudence, in order for a Cease and Desist to be granted, the Union must meet all of the five (5) criteria specified in clause 9.93 of the Urban collective agreement.

In a decision dated November 30, the arbitrator stated that two (2) criteria favoured the employer and denied the application.

### Irreparable Harm (9.93 d)

As opposed to CUPW's claim on irreparable harm, the arbitrator accepted the reasoning on irreparable harm contained in the Toronto Transit Commission (TTC) court case, which states that:

*"...the harm which the employees may suffer is being placed on unpaid leave...they are not being forced to get vaccinated; they are being forced to choose between getting vaccinated and continuing to have an income on the one hand, or remaining unvaccinated and losing their income on the other."*

The arbitrator further wrote:

*"...if a determination is made on the merits that the imposition of the mandatory vaccine policy constitutes an improper exercise of managerial discretion under the collective agreement, it is reparable harm."*

### Balance of Inconvenience (9.93 c)

The arbitrator decided that the criteria also favoured the Employer. He wrote:

*"...for the narrow purpose of deciding whether or not to grant the injunctive relief sought (and not for the purpose of deciding whether the alternative sufficiently satisfies the health and safety objectives...the balance of convenience must rest with the Corporation."*

As the decision on a Cease and Desist application is on a narrow scope based on five criteria contained in the collective agreement, the arbitrator was careful as not to influence the outcome of the hearing of the National Grievance on the merit. The arbitrator on the merit of the case will have to determine if Canada Post's vaccine practice constitutes an unreasonable exercise of the management rights and/or a violation of the collective agreement.

The parties are now in the process of selecting an arbitrator from the national panel of arbitrators who will hear the merits of the case. We will advise you of the hearing dates and the development of the proceedings when we know more.

Once again, I'd like to remind everyone that no matter your personal feelings about the vaccination practice, we must be respectful and tolerant of one another. This fight is with the employer and not each other.

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In Solidarity,



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