

# Alberta Labour Relations Board Ices Union Complaint Against Vaccination Policy



**Alberta Labour Relations Board dismisses unfair labour practice complaint against vaccination policy implemented during statutory freeze period.**

In *Amalgamated Transit Union, Local No. 583 v Calgary (City)*, the Alberta Labour Relations Board (the “Board”) dismissed an unfair labour practice complaint brought by the Amalgamated Transit Union, Local No. 583 (the “Union”) against the City of Calgary (the “City”) in relation to a mandatory COVID-19 vaccination or test policy (the “Policy”). The Union unsuccessfully argued that the City violated the statutory freeze period by unilaterally introducing the Policy during collective bargaining.

## **The Facts**

The Union and City are party to a collective agreement relating to the City’s transit employees and certain employees in the City’s fleet and supply management division. The collective agreement expired January 3, 2021 and the City had provided the Union with a notice to commence bargaining on October 30, 2020.

On September 3, 2021, the City emailed all its employees, announcing it would implement a mandatory vaccination policy that would require employees to become fully vaccinated against COVID-19. The City and the Union met several times to discuss the Policy, which was ultimately finalized and distributed to employees on October 6, 2021.

The Policy required all City employees to be fully vaccinated by November 1, 2021 or participate in a rapid testing program. The Policy including the following requirements:

- unvaccinated employees would be required to attend a mandatory education program on vaccine efficacy and safety, and be required to participate in a rapid testing program up to December 1, 2021;
- any employee not fully vaccinated by December 1, 2021 would continue in the rapid testing program, but the City reserved the right to discontinue

providing free testing kits to such employees, which would then have to buy and use their own testing kits;

- any employee who failed to comply with the Policy would be placed on an unpaid leave of absence for at least 30 days or until they met the Policy's requirements;
- any employee who refused to comply with the Policy following the expiry of the unpaid leave of absence would be subject to discipline, up to and including dismissal; and
- accommodations would be made for employees on statutorily protected human rights grounds, to the point of undue hardship. Accommodated employees would be exempt from mandatory vaccination but would still be required to participate in the rapid testing program.

The Union and City both agreed that the introduction of the Policy and its implementation amounted to a change to the terms and conditions of employment to which the Union had not consented. They also agreed the introduction of the Policy occurred during the statutory freeze period imposed by Section 147 of the *Labour Relations Code* (the "Code"). The statutory freeze period is intended to prevent employers from undermining a union when it may be most vulnerable by unilaterally changing employees' terms and conditions of employment during a pending certification application or collective agreement negotiations.

The Board was asked to determine whether the introduction of the Policy during the statutory freeze was an unfair labour practice or whether one of the *Code's* exceptions applied. The Board noted it was not asked to assess the reasonableness of the Policy, which was a task to be left to an arbitrator.

## **The Decision**

The Board dismissed the complaint, finding that the introduction of the Policy was a change "in accordance with the collective agreement", such that it fell under a statutory exception to the statutory freeze. In particular, the Board noted that the collective agreement contained a clause that assigned to the employer the responsibility to take reasonable and practicable measures to protect the health and safety of its employees. Although this language reflected its obligations under the *Occupational Health and Safety Act*, the Board found that it obliged the City to take positive steps when a health and safety hazard is identified and entitled the City to act immediately in selecting and implementing a response to such hazard, without having to negotiate with the Union or rely upon its management rights.

In closing, the Board noted that the City's power to unilaterally impose measures to remedy a health and safety hazard was not unlimited and any such measures must be viewed with a "reasonableness" lens that remained subject to the grievance procedure.

## **Significance of the Decision and Takeaways for Employers**

This decision will be welcome news for employers with collective agreements that provide the employer with broad responsibility for health and safety matters. In particular, the Board has signaled that the statutory freeze during collective bargaining ' which can sometimes stretch for months, if not years ' does not prevent the employer from reacting to emerging health and safety risks with measures that are not vetted by or negotiated with the union in advance of their

implementation. However, as the Board noted, an employer's power to act must be reasonable or else they risk a grievance. Further commentary on the reasonableness of a mandatory vaccination policy can be found [here](#).

Source: Stikeman Elliot LLP

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