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VIA EMAIL (rcampion@olr.nyc.gov) and BY HAND

Renee Campion, Commissioner
New York City Office of Labor Relations
22 Cortlandt Street, 15th Floor
New York, New York 10007

**Re: Detectives Endowment Association
Request to Bargain
(Vaccination and Testing Departmental Order)**

Dear Ms. Campion:

Please be advised that this office represents the Detectives Endowment Association (“Union”) in connection with the above-referenced matter.

On September 8, 2021, the New York City Police Department (“NYPD” or “Department”) issued a departmental order mandating either all Union members to be vaccinated against SARS-CoV-2 (“COVID-19”) or to undergo polymerase chain reaction (“PCR”) testing to demonstrate a negative result for COVID-19 (“Policy”). According to the Policy, unvaccinated Union members must undergo weekly PCR testing and must submit said results in “[a]cceptable forms” as determined by the Department. Additionally, the Policy requires unvaccinated Union members to submit their respective PCR test results through the Centralized Personnel Resource (“CPR”) and creates artificial deadlines for the initial implementation of the Policy, as well as when a Union member will be considered partially/fully vaccinated. Finally, according to the Policy, it states that all unvaccinated Union members must undergo PCR testing on their own time. In fact, the Policy expressly provides: “Overtime to obtain PCR testing will not be approved.”

Although the Policy is comprehensive in nature, it was made from whole cloth without any regard to the law or representations made by your office. In stark contrast with the Policy, the Union has been apprised that your office has represented that unvaccinated employees of the

Mayoral agencies, including but not limited to the NYPD, will receive on-site PCR testing. In the event that on-site PCR testing is not available for said unvaccinated employees, then off-site testing will be provided and said individuals will be permitted to either arrive late or leave early from their respective tours of duty to undergo said PCR testing. Also, your office represented that, in the event there is no on-site PCR testing and unvaccinated employees cannot adjust their respective work schedules accordingly, then said individuals will be compensated for the time taken to undergo said PCR testing while off-duty. As you can see, it clearly appears that the NYPD gave little credence to the official position emanating from your office, even though your office would be representing the NYPD in the potential legal action previewed below.

It is the position of the DEA that the unilateral institution of the Policy, as well as the practical impact the Policy has on the Union's membership violates the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), as well as the decisional law issued by the New York City Board of Collective Bargaining ("Board" or "BCB"). According to NYCCBL § 12-307(a), entities covered by the NYCCBL are required to bargain over all mandatory subjects of bargaining, which include but are not limited to wages, hours, and terms and conditions of employment. Failure by a covered employer to engage in such bargaining or unilaterally implementing a change to such a subject constitutes a violation of NYCCBL § 12-306(a)(4).

Consistent with the NYCCBL, the Board has held that the "procedures and methods" for the distribution of overtime are mandatory subjects of bargaining. *Unif. Fire Alarm Dispatchers Benevolent Assn.*, 12 OCB2d 6, at 7 (BCB 2019). Further, the Board has "recognized that an employer must bargain over changes in a schedule that affect time off" because "this issue of time off between tours is bargainable." *Patrolmen's Benevolent Assn.*, 15 OCB 5, at 17-18 (BCB 1975). In addition, an increase in the working hours required by an employee constitutes a mandatory subject of bargaining. *See Sergeants Benevolent Assn.*, 41 OCB 56, at 13-14 (BCB 1988). Also, it is well established that the cost of performing one's duties for his/her public sector employer constitutes a mandatory subject of negotiations. *See Correction Officers Benevolent Assn.*, 12 OCB2d 28, at 14 (BCB 2019). And finally, procedures that affect terms and conditions of employment are mandatorily negotiable. *See Dist. Council 37*, 4 OCB2d 19, at 22 (BCB 2011); *see also Detectives Endowment Assn.*, 2 OCB2d 9, at 8-9 (BCB 2009) (holding that procedures involving routine screenings "are a mandatory subject of collective bargaining").

Relying upon this statutory and decisional law, the DEA is confident that the Policy runs afoul of the NYCCBL and the mandates contained therein. For example:

- The Policy's strict prohibition on DEA members receiving overtime in order to undergo the requisite PCR testing contravenes the NYPD's affirmative obligation to negotiate over the procedures and methods concerning the distribution of overtime;
- The Policy does not contain any substantive designation regarding the locations of on-site and off-site testing;

- The Policy fails to account for the presumptive costs associated with receiving the requisite PCR testing, such as co-pays and laboratory costs, nor does it discuss any method of reimbursement for the same;
- The Policy does not enunciate who will have access to the confidential medical information uploaded on CPR, nor does it discuss the retention and/or security of such data;
- The Policy, in contradiction with the representations made by your office, contains no provision governing the adjustment of tours of duty to obtain said PCR testing, such as leaving early or arriving late;
- The Policy unilaterally assigns arbitrary deadlines concerning when a DEA member will be considered partially and/or fully vaccinated, as well as unilaterally imposing a seven-day window to undergo said weekly PCR testing;
- The Policy, without any input from the DEA, pre-determines acceptable forms for DEA members to submit proof of PCR testing on CPR;
- The Policy fails to set forth any applicable time frames governing DEA members who wish to avail themselves of their statutory right to seek an appropriate medical or religious exemption to the Policy; and
- The Policy does not contain an alternative dispute resolution mechanism to allow for an expedited process, in the event that a dispute arises concerning a DEA member's compliance with the Policy.¹

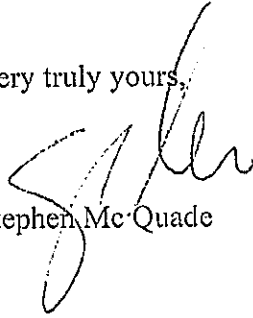
Accordingly, it is the position of the DEA that the issues and topics raised herein must be negotiated with the Union to fruition or impasse. Accordingly, please consider this letter a demand on behalf of the Union for bargaining.

I am requesting that you respond to this demand to collectively bargain the topics and issues raised herein, by the close of business on September 10, 2021. If you fail to timely respond to the Union's bargaining demand, then the Union will consider such failure to respond as a refusal to collectively bargain the aforementioned matter and the Union will take any and all necessary steps to protect the rights of its membership.

¹ Please note that the above-stated examples are for illustrative purposes only and does not constitute an exhaustive list of all the issues the DEA has with the Policy nor the various means in which the Policy violates the NYCCBL.

Finally, if you have any questions, comments, and/or concerns regarding the above-referenced matter, please do not hesitate to contact me. Thank you for your anticipated attention and cooperation.

Very truly yours,


Stephen McQuade

SM/

cc: Steven Banks, Esq., General Counsel of OLR (*via email*)
Daniel Pollak, Esq., Assistant General Counsel of OLR (*via email*)
Paul DiGiacomo, President of DEA (*via email*)
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