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October 21, 2021

VIA EMAIL (rcampion@olr.nyc.gov) and FIRST CLASS MAIL

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

**Re: Detectives Endowment Association
Demand to Bargain
(Vaccination Mandate)**

Dear Ms. Champion:

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

On October 20, 2021, the New York City Department of Health and Mental Hygiene (“DOHMH”), through its Commissioner David A. Chokshi, M.D., MSc, issued an order mandating that all public sector employees of the City of New York (“City”), *inter alia*, receive a vaccination(s) against COVID-19 by October 29, 2021 and provide proof of the same (“Order”).

In addition to the fact that the Order is woefully absent of specifics regarding its implementation, the Order has been issued without any regard to the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). As such, it is the position of the DEA that the unilateral institution of the Order, as well as the practical impact the Order has on the Union’s membership, violates the expressed terms of the NYCCBL and 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 implementing a managerial decision are mandatory subjects of bargaining. *Unif. Fire Alarm*

Dispatchers Benevolent Assn., 12 OCB2d 6, at 7 (BCB 2019); 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”). 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, procedures that affect terms and conditions of employment are mandatorily negotiable. And finally, any attempt by a covered employer to interfere with a union member’s statutory right to select and use union representation of his/her choosing. See *Sergeants Benevolent Assn.*, 75 OCB 32, at 9 (BCB 2005) (finding that an employee’s right to union representation is a “fundamental” activity under NYCCBL § 12-305); *Patrolmen’s Benevolent Assn.*, 23 OCB 21, at 11 (BCB 1979) (holding that attempts to transfer union delegates, thereby restricting union members’ access to their chosen union representation, constituted a violation under NYCCBL § 12-306(a)(1)).

Relying upon this statutory and decisional law, the DEA is confident that the Order runs afoul of the NYCCBL and the mandates contained therein. As such, based upon these factors, the Union seeks to negotiate with the City concerning the following items:

- The institution of an exemption in connection with DEA members who have already contracted and recovered from COVID-19 that still maintain a sufficient level of antibodies to combat this virus;
- The institution of an exemption to permit DEA Executive Officers and Delegates to continue with their organizational activities without mandating compliance with the Order or any effects thereof;
- The authorization of DEA members to utilize/draw down existing leave balances, such as Compensatory Time and Annual Leave, prior to being placed on a leave without pay (“LWOP”) status;
- The policies and procedures for enacting the Order, including but not limited to the manner in which confidential medical information is provided to the City and which representatives thereof may access the same;
- The policies and procedures by which requests for religious/medical exemptions shall be adjudicated, as well as the status of DEA members during the pendency of such requests;
- The receipt of monetary remuneration (currently reported as \$500) for all DEA members who received or will receive vaccination(s) from COVID-19;

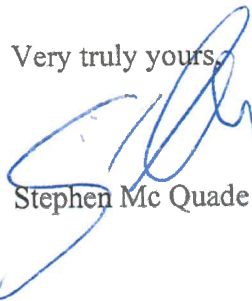
- The continuation of monetary contributions to the Union in connection with its health, welfare, and annuity funds, for all DEA members who are placed in a LWOP status;
- The period of time DEA members may maintain their respective medical health insurance coverage while in a LWOP status;
- The period of time DEA members, who are in a LWOP status, may return to service without suffering any adverse employment consequences, such as loss of rank or separation from service;
- The ability of unvaccinated DEA members to avail themselves of other unpaid leaves, such as that contained in the Family Medical Leave Act of 1993, rather than being placed in a LWOP status;
- The receipt of Hazardous Duty pay in recognition of the past and continued service of DEA members, who lost at last count eight brethren/sistren and who fulfilled their respective duties during the height of the COVID-19 pandemic, when no vaccinations were available.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.

Due to the short-sided and gadarene roll out of the Order and the deadlines contained therein, the Union requests that you respond to this demand to collectively bargain the topics and issues raised herein by the close of business on October 22, 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.

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 Mc Quade

SM/sg

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 Order nor the various means in which the Order violates the NYCCBL.

cc: Steven Banks, Esq., General Counsel of OLR (*via email*)
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Paul DiGiacomo, President of DEA (*via email*)
Paul Morrison, Vice-President of DEA (*via email*)
Vincent F. Pitta, Esq. (*via email*)