

United Food and Commercial Workers Union, Canada Local 333 v. Paragon Protection Ltd. (Policy Grievance)

Ontario Labour Arbitration Awards

Ontario

Labour Arbitration

Toronto, Ontario

Panel: F.R. Von Veh, Q.C. (Arbitrator)

Heard: October 8, 2021.

Award: November 9, 2021.

[2021] O.L.A.A. No. 435

IN THE MATTER OF an Arbitration Between United Food and Commercial Workers Union, Canada, Local 333 ("Union"), and Paragon Protection Ltd. ("Company") (The Company and the Union collectively "the Parties")

(89 paras.)

Case Summary

Subject Matter: Covid-19 Vaccination Policy.

Appearances

For The Union: Mark Gernon, Representative, Labour Relations, Paul Bedi, Business Agent, Alfredo Leparulo, Representative.

For The Company: Simone Ostrowski, Counsel, Chris Sullivan, Director, Human Resources.

AWARD

- 1 The Union filed a policy grievance on September 13, 2021.
- 2 *"RE: Paragon Covid-19 Vaccination policy"*
- 3 *RE: Policy Grievance Article 4 -- "Management Rights" and Article 24 -- "Health and Safety"*
- 4 *The United Food and Commercial Workers' Union Local 333 ("Local 333") is by copy of the letter filing a grievance with Paragon Security ("Employer") for violating the collective agreement, Article 4 -- "Management Rights" and Article 24 -- "Health and Safety".*
- 5 *Further, Local 333 asserts the Employer and its policy violates the (Ontario) Human rights Code.*
- 6 *Local 333 has been made aware the Employer issued a notice to its employees (date unknown) advising the implementation of a new Employer policy ordering employees to be fully vaccinated by October 31, 2021.*
- 7 *Local 333 deems such policy to violate the collective agreement and is unreasonable.*

8 Further, Local 333 deems the policy is in contravention of Article 24.

9 As remedy Local 333 demands the Employer immediately:

- Rescind the new policy; and
- Comply with the terms of the collective agreement

10 Should the Employer not remedy this matter forthwith, to the satisfaction of Local 333, Local 333 shall advance this grievance to arbitration and will seek the arbitrator issue a declaration the Employer has breached the collective agreement; the Employer has breached the (Ontario) Labour Relations Act, 1995; and any other remedy an arbitrator deems appropriate.

11 Please immediately contact Mr. Paul Bedi, UFCW Local 333 Business Agent- to discuss and remedy this grievance."

12 On September 20, 2021, the Company replied in relation to the Policy Grievance dated September 13, 2021.

"RE: Response to Policy Grievance Article 4 and Article 24

13 This letter is in response to the policy grievance filed on September 13, 2021, alleging breaches of the Ontario Human Rights Code and Article 4 ('Management Rights') and Article 24 (Health and Safety') of the collective agreement.

14 The majority of Paragon Security clients have implemented their own mandatory vaccination policies for all staff on site, this includes all contract employees (including site security staff). Those clients who have not yet implemented these policies have indicated to the company that mandatory vaccination policies are forthcoming. This has left the company no other option than to introduce the mandatory vaccination policy on September 3, 2021.

15 Additionally, many employees have raised concerns about working with other site security team members who have not been vaccinated.

16 Paragon Security contends that the company had no choice other than to implement this policy as an operational necessity to properly service our clients. Additionally, the policy was also necessary to maintain a safe and healthy work environment for our employees, clients and their staff, and the public we serve.

17 The company denies it breached the Ontario Human Rights Code as an exemption policy was developed and there is a form available to accommodate requests on a Creed/Religious and Health basis.

18 The company is open to further discussions and/or actions to reach a remedy for the grievance."

19 The Union representative and Company counsel made comprehensive submissions on the matters in issue, and the Company called Chris Sullivan, Director of Human Resources for the Company to testify.

I- THE PARTIES AGREED ON CERTAIN FACTS AND DOCUMENTS:

- (i)- Approximately 4400 security guards fall under the ambit of Article 2.01(a).

20 "The Company recognizes the Union as the sole and exclusive bargaining agent for all security guards in its employ in the Province of Ontario, save and except supervisors and persons above the rank of supervisor."

(ii)- the Company has approximately 450 client sites in Ontario employing the Company's security guards who are members of the Union.

(iii)- as of October 4, 2021, at least 226 of the Company's 450 client sites were subject to the Company's COVID-19 Vaccination Policy.

(iv)- The coverage and applicability of the Company's COVID-19 Vaccination Policy increases on a daily basis.

(v)- Two Articles of the collective agreement between the Parties were referred to by the Parties in submissions made:

(1) A portion of Article 4.01 (b) (Management Rights)

"Except, and to the extent specifically modified by this Agreement, all rights and prerogatives of management are retained by the Company and remain exclusively and without limitation within the rights of the Company and its management. There shall be no attempt by either party or an Arbitrator or a Board of Arbitration to read into the provisions of this Agreement a principle or authority whereby the process of collective bargaining has in any way usurped the rights of management. Without limiting the generality of the foregoing, the Company's exclusive rights, power and authority shall include but shall not be confined to: (b) make, enforce and alter, from time to time, reasonable rules and regulations to be observed by the employees;"

(2) Article 24.05

"If an employee is assigned to a site where specific vaccination acid or inoculation is required by law or where the conditions of contractors having access to the site stipulates specific vaccination and inoculation requirement, the employee must agree to receive such vaccination or inoculation.

The Company shall provide access to any vaccination or inoculation and any cost for such will be borne by the company. In addition employees required to be vaccinated or inoculated on their own time shall be paid in accordance with the call in provisions of this agreement.

Where an employee refuses such vaccination or inoculation for any reason, the company shall reassign the employee as per the relevant provisions of this agreement."

(vi)- The current collective agreement between the Parties became effective December 20, 2018, and expires December 19, 2022.

21 The previous collective agreement between the Parties became effective December 20, 2015 and expired December 19, 2018.

22 The previous collective agreement contained Article 24.05, identical the current Article 24.05 referenced in point (v)-(2) noted above.

(vii)- The Company's COVID-19 Vaccination Policy was launched on September 3, 2021. A copy of the five page Policy is appended to this Award as Schedule "A".

(viii)- The Company's three page COVID-19 Vaccination Exemption Policy is appended to this Award as Schedule "B".

(ix)- Reference to portions of the Ontario Human Rights Commission policy statement on COVID-19 vaccine mandates and proof of vaccine certificates, dated September 22, 2021.

"Vaccination requirements generally permissible

23 *While receiving COVID-19 vaccine remains voluntary, the OHRC takes the position that mandating and requiring proof of vaccination to protect people at work or when receiving services is generally permissible under*

the Human Rights Code (Code) as long as protections are put in place to make sure people who are unable to be vaccinated for Code-related reasons are reasonably accommodated. This applies to all organizations.

24 Upholding individual human rights while trying to collectively protect the general public has been a challenge throughout the pandemic. Organizations must attempt to balance the rights of people who have not been vaccinated due to a Code-protected ground, such as disability, while ensuring individual and collective rights to health and safety."

"Personal preferences and singular beliefs not protected

25 The OHRC and relevant human rights laws recognize the importance of balancing people's right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks associated with COVID- 19.

26 Receiving a COVID-19 vaccine is voluntary. At the same time, the OHRC's position is that a person who chooses not to be vaccinated based on personal preference does not have the right to accommodation under the Code. The OHRC is not aware of any tribunal or court decision that found a singular belief against vaccinations or masks amounted to a creed within the meaning of the Code.

27 While the Code prohibits discrimination based on creed, personal preferences or singular beliefs do not amount to a creed for the purposes of the Code.

28 Even if a person could show they were denied a service or employment because of a creed-based belief against vaccinations, the duty to accommodate does not necessarily require they be exempted from vaccine mandates, certification or COVID testing requirements. The duty to accommodate can be limited if it would significantly compromise health and safety amounting to undue hardship -- such as during a pandemic.

*29 Read the OHRCs **Policy on preventing discrimination based on creed** for full explanation of creed-based discrimination and the duty to accommodate."*

(x)- The Company sent out a communication to its employees concerning the COVID-19 Vaccination Policy.

30 "As you know, the health and safety of Paragon's workforce is its number one priority. Since the beginning of the Covid-19 pandemic, Paragon has put various measures in place to maintain a safe workplace for our workers, the company's clients and their staff, as well as members of the public. Particularly given the current and higher transmissibility of the Delta variant, we want to ensure that we can continue to keep our workplace safe and minimize the risk of spreading the virus.

31 At the same time, more and more of Paragon's clients have required exclusively vaccinated security personnel, effective early September, and in some instances will not allow anyone on their sites who has not been fully vaccinated. At the same time, as most of you also know, the Ontario government is in the process of putting measures in place to prohibit unvaccinated citizens from engaging in many civic activities; in this regard it has followed the lead of many other jurisdictions across Canada and internationally. Put simply, full vaccination has quickly become a societal expectation and Paragon plans to adhere to this mandate.

*32 For this reason, we have implemented a new policy that is designed to ensure Paragon employees are **fully vaccinated against the Covid-19 virus by October 31st 2021**. It is the company's expectation that every member of our staff will take this obligation extremely seriously, up to the highest levels of management. Please review the policy very carefully and contact a member of the HR team if you have any questions.*

33 You will receive during the week of September 06th, a declaration form to be complete confirming your

vaccination status. We expect to receive a completed form from every one of our employees, and we will be following up with anyone who has not done so as we approach the deadlines set out within the policy. Though we hope it will not be necessary, there will be serious consequences for anyone who has failed to comply with the policy's requirements.

34 *You can access our Vaccination Policy on the following link: <https://paragonsecurity.ca/notifications/>"*

(xi)- Ontario Regulation 50/20 passed pursuant to the Emergency Management and Civil Protection Act- Declaration of Emergency, covering time period March 18, 2020 to July 23, 2020.

35 *"WHEREAS the outbreak of a communicable disease namely COVID-19 coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons.*

36 *AND WHEREAS the criteria set out in subsection 7.0.1(3) of the Emergency Management and Civil Protection Act, R.S.O. 1990 chapter E.9 (the "Act") have been satisfied.*

37 *NOW THEREFORE, an emergency is hereby declared pursuant to section 7.0.1 of the Act in **the whole of the Province of Ontario.**"*

(xii)- Portion of Directive #6 for Public Hospitals within the meaning of the Public Hospitals Act Issued under Section 77.7 of the Health Protection and Promotion Act (HPPA) R.S.O. 1990, c.H.7

38 *"Date of Issuance: August 17, 2021*

39 *Effective Date of Implementation: September 7, 2021*

40 **Issued To:** Public hospitals within the meaning of the Public Hospitals Act, service providers within the meaning of the Home and Community Care Act, 1994 with respect to their provision of community services to which that Act applies, Local health integration Networks within the meaning of the Local Health System Integration Act, 2006 operating as Home and Community Care Support Services with respect to the provision of community services and long-term care home placement services, and Ambulance Services within the meaning of the Ambulance Act, with respect to paramedics (collectively the "**Covered Organizations**")

Required Precautions and Procedures

1. Every Covered Organization must establish, implement and ensure compliance with a COVID-19 vaccination policy requiring its employees, staff, contractors, volunteers and students to provide:

- a) Proof of full vaccination¹ against COVID -19; or*
- b) Written proof of a medical reason, provided by a physician or registered nurse in the extended class that sets out: (i) a documented medical reason for not being fully vaccinated against COVID-19, and (ii) the effective time-period for the medical reason; or*
- c) Proof of completing an educational session approved by the Covered Organization about the benefits of COVID-19 vaccination prior to declining vaccination for any reason other than a medical reason. The approved session must, at a minimum address:*

i how COVID 19 vaccines work;

ii vaccine safety related to the development of the COVID-19 vaccines;

iii the benefits of vaccination against COVID-19;

iv risks of not being vaccinated against COVID-19; AND

v possible side effects of COVID 19 vaccination.

(xiii)- Portion of Vaccine information Fact Sheet for Recipients and Caregivers about Comirnaty (COVID-19 Vaccine, mRNA) revised September 22, 2021.

"WHAT ARE THE RISKS OF THE VACCINE?"

41 *There is a remote chance that the vaccine could cause a severe allergic reaction. A severe allergic reaction would usually occur within a few minutes to one hour after getting a dose of the vaccine. For this reason, your vaccination provider may ask you to stay at the place where you received your vaccine for monitoring after vaccination.*

42 *Signs of severe allergic reaction can include:*

- * *Difficulty breathing*
- * *Swelling of your face and throat*
- * *A fast heartbeat*
- * *A bad rash all over your body*
- * *Dizziness and weakness*

43 *Myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the lining outside the heart) have occurred in some people who have received the vaccine. In most of these people, symptoms began within a few days following receipt of the second dose of vaccine. The chance of having this occur is very low. You should seek medical attention right away if you have any of the following symptoms after receiving the vaccine:*

- * *Chest pain*
- * *Shortness of breath*
 - * *Feelings of having a fast-beating, fluttering, or pounding heart."*

(xiv)- Portion of Public Health Ontario (published 2021) Key Features of Influenza, SARS-Cov-2, and other Common Respiratory Viruses.

44 (SARS-Cov-2 is the virus that causes COVID-19)

Comparing Key Features of Influenza, SARS-CoV-2

Key features	Seasonal Influenza	SARS-CoV-2 (COVID-19)
<p>How infectious is the virus?</p> <p>The higher the basic reproductive number (R₀) the larger the number of people infected by each case on average</p>	R ₀ : 1.27 ¹⁷	<p>R₀: 2.7-3.3¹⁸</p> <p>Evidence to suggest some SARS-CoV-2 Variants of Concern have increased reproduction numbers compared to wild-type.¹⁹</p>
<p>Case fatality</p> <p>Number of deaths divided by number of identified cases, expressed as a percentage</p>	<0.1% ⁷	<p>Variable ~ 2.16%²¹ world wide; 1.8%²² in Canada.</p>

References

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II- COMPANY WITNESS

45 The Company's only witness was Chris Sullivan, Director of Human Resources for the last seven years. He oversees the Human Resources Department, issues of employee discipline, union related matters, and the implementation of new policies affecting employees of the Company.

46 The witness reviewed what was filed as Exhibit 5 -- a list of Company client sites subject to vaccination policy. Two prominent examples of such sites in Toronto are: Brookfield-the Exchange Tower and Brookfield-First Canadian Place.

47 The clients listed on Exhibit 5 represent clients that have implement their own vaccination policies for their employees and contractors --such as security guards of the Company. These employees and contractors must be "fully vaccinated" in order to "work or remain working" at such Company sites.

48 The witness testified that the Company's vaccination policy was created *"out of necessity due to our clients implementing their own vaccination policy which requires our employees, working on their properties to be fully vaccinated"*

49 *"Also, concerns have been raised by our employees about co-workers and Company employees not being vaccinated. Our employees felt they were vulnerable due to health concerns or age who had concerns working in close proximity and sharing equipment with colleagues who were not vaccinated."*

50 The witness testified that *"We are a client customer facing business."* Part of the service provided by the Company is to screen others to make sure they are vaccinated in order to *"gain entry to our client's premises."*

51 In conclusion, the witness testified, *"We have taken a reasonable approach to protect our employees, our clients and their guests, and the general public we interact with."*

52 The witness was not cross-examined.

III- UNION SUBMISSIONS

53 The Union's representative submitted that: *"We are in a pandemic- there is no dispute that Toronto-Ontario-Canada, and the world is working to address the C- 19 pandemic. However, the response with science, and the rush to implement vaccination policies are unfair to our members. Our members are concerned about incurring additional health issues, resulting from vaccinations."*

54 The issue of Union members releasing personal medical information was addressed. In this regard, the Health Care Consent Act, 1996, S.O. 1996, Chapter 2 was referred to.

55 The following provisions were addressed:

(i) Section 2(1) -- definition of "treatment":

"treatment" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan, but does not include.

(ii) Section 10(1) -- No treatment without consent:

"A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,

(a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent, or

(b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision --maker has given consent on the person's behalf in accordance with this Act. 1996, c.2. Sched. A, s, 10 (1)

(c) Section 2 (1)-definition of "health practitioner"

"health practitioner" means a member of a College under the Regulated Health Professions Act, 1991 or a member of a category of persons prescribed by the regulation as health practitioners; ("praticien de la santé")

56 It is submitted that to receive a "treatment" (as defined in Section 2(1)), there must be consent (as defined in Section 10(1)). The "treatment must be administered by a "health practitioner" (as defined in Section 2(1)).

57 It was suggested that with the advent of the "*vaccine policy*", the Government has thrown out a person's right to be free from an invasive procedure requiring needle injection and a serum to be injected into a person.

58 It was further suggested, that the Company vaccination policy is "*do it or else*" -- the "*else*" being removed from a job site and possibly being accommodated for work elsewhere or being placed on an unpaid leave of absence. This policy was categorized as being "*unreasonable*."

59 The Union further submitted that the Company's COVID-19 Vaccination Policy is unreasonable and not in conformity with the principle of "rules" as set out in the KVPCo. v. Lumber and Sawmill Workers' Union 16 LAC 73 more particularly as set out in paragraph 34 of that Award, and the provisions of Article 4.01 (b).

60 *"A rule unilaterally introduced by the company, and not subsequently agreed to by the union must satisfy the following requisites:*

1. It must not be inconsistent with the collective agreement.

2. It must not be unreasonable.

3. It must be clear and unequivocal.

4. It must be brought to the attention of the employee affected before the company can act on it.

5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for the discharge.

6. Such rule should have been consistently enforced by the company from the time it was introduced."

61 The Union also relied on the 2018 Award re St. Michael's Hospital and the Ontario Hospital Association and the Ontario Nurses' Association.

62 Arbitrator Kaplan briefly in an "introduction" set out the issues being arbitrated.

63 *"Summarily stated, this case concerns the reasonableness of the Vaccinate or Mask Policy (hereafter "VOM policy") that was introduced at St. Michael's Hospital (hereafter "St. Michael's") in 2014 for the 2014-2015 flu season and which has been in place ever since. Under the VOM policy, Health Care Workers and that group, of course, includes nurses (hereafter "HCW's"), who have not received the annual influenza vaccine, must, during all or most of the flu season, wear a surgical or procedural mask in areas where patients are present and/or patient care is delivered."*

64 A portion of the Conclusion of Arbitrator Kaplan is hereafter set out.

65 *"It was noted at the outset that this case was, in large measure, a repeat of the one put before Arbitrator Hayes. It is not, therefore, surprising that there is an identical outcome. Ultimately I agree with Arbitrator Hayes: "There is scant scientific evidence concerning asymptomatic transmission, and, also scant scientific evidence of the use of masks reducing the transmission of the virus to patients" (at para. 329). To be sure, there is another authority on point, and the decision in that case deserves respect. But it was a different case with a completely different evidentiary focus. It is not a result that can be followed.*

66 *One day, an influenza vaccine like MMR may be developed, one that is close to 100% effective. To paraphrase Dr. Gardam, if a better vaccine and more robust literature about influenza specific patient outcomes were available, the entire matter might be appropriately revisited."*

IV- COMPANY SUBMISSIONS

67 Counsel for the Company submitted that the Company's COVID-19 Vaccination Policy ("the Policy") is reasonable and enforceable. The Policy is consistent with the provisions of Article 24.05 which was agreed to by the Parties before the onset of COVID-19. It was also stressed that the provisions of the current Article 24.05 were negotiated in the previous collective agreement which became effective December 20, 2015. Counsel submitted that in view of the fact that the Policy is consistent with the provisions of Article 24.05, the instant policy grievance should be dismissed.

68 Counsel referred to Article 4.01 (b) which gives the Company the exclusive right, power, and authority to *"make, enforce and alter, from time to time, reasonable rules and regulations to be observed by the employees."* It is submitted that the Policy is reasonable, and that the Company has a duty and responsibility pursuant to the Occupational Health and Safety Act to protect the health and safety of its employees, including the duty to prevent COVID-19 infection.

69 It is submitted that the Company has a duty to its employees -- the security guards, and its clients, to establish and enforce the Policy. Nothing in the Policy forces security guards to be vaccinated. They, on legitimate grounds, can apply for an exemption from the Policy. As well, nothing in the Policy violates the provisions of the Human Rights Code.

70 Counsel addressed the Union's submission relating to the Health Care Consent Act, 1996. Counsel submitted that the Health Care Consent Act has no relevance to the instant matters being adjudicated. The Company is not a "health care practitioner" as defined in Section 2(1), and in any event, the Company does not force any of its employees to be vaccinated without their consent.

71 Counsel addressed the Union's submissions relating to the KVP Award (see Page 14 of this Award). It is submitted that the Company has completely satisfied the issues referred to in paragraph 34 of the Award as set out on Page 14 of this Award.

72 Counsel addressed the Union's submissions relating to the St Michael's Hospital Award (see Page 14 and 15 of this Award). It is submitted that the St. Michael's Award is over three years old, and is not based on up to date science that is applicable in current pandemic conditions.

73 The St. Michael's Award dealt with influenza and mask issues. Counsel referred me to what is set out on Page 11 of this Award concerning a comparison of seasonal influenza and COVID-19.

V- OBSERVATIONS AND FINDINGS

1- Throughout the instant proceedings, the word "pandemic" was frequently used. This word must be properly defined.

From the Merriam-Webster Dictionary

74 Pandemic: an outbreak of a disease that occurs over a wide geographic area (such as multiple countries or continents) and typically affect a significant proportion of the population: a pandemic outbreak of a disease.

From the Oxford Concise English Dictionary -- ninth edition

75 Pandemic: adj -- (of a disease) prevalent over a whole country or the world: n-an outbreak of such a disease.
2- Paragon Protection Ltd ("the Company") employs approximately 4400 security guards in Ontario. Such security guards are represented by the United Food and Commercial Workers Union, Canada, Local 333 ("the Union").

76 The Company has approximately 450 client sites in Ontario. As of October 4, 2021, the majority of these clients have implemented their own vaccination policies for their employees and contractors such as security guards of this Company. Such employees and contractors (security guards) must be fully vaccinated in order to work or remain working at such sites.

3- The Company 'introduced' its COVID-19 Vaccination Policy on September 3, 2021, which is appended to this Award as Schedule "A".

77 I find the Company's COVID-19 Vaccination Policy to be reasonable, enforceable, and compliant with the Ontario Human Rights Code and the Occupational Health and Safety Act of Ontario.

4- As part of the Company's COVID-19 Vaccination Policy, it introduced its COVID- 19 Vaccination Exemption Policy, which is appended to this Award as Schedule "B".

78 I find the Company's COVID-19 Vaccination Exemption Policy, to be reasonable, enforceable, and compliant with the Ontario Human Rights Code.

79 I recommend a change to the Exemption Policy, affecting the third bullet on Page 1. Many persons do not have a family physician. Accordingly, I suggest the opening line of the third bullet read -- *"Health requests must include certified medical documentation from a physician, immunologist, or allergist confirming ..."*

80 Also, in bullets 5, 6 and 7, the bottom of page 2 and on page 3 of the Exemption Policy, the word "Physician" should be replaced by *"Physician, immunologist or allergist."*

5- I have reviewed reference to portions of the Ontario Human Rights Commission policy statement on COVID-19 as set out on pages 6 and 7 of this Award.

81 I find that the Company's Vaccination Policy and Vaccination Exemption Policy strike a balance in order to respect the rights of employees who have not, or do not wish to be vaccinated, while respecting a safe workplace for "Staff" as defined in the Vaccination Policy, the Company's clients, and members of the public with whom the Company's security guards interact.

82 I further find that pursuant to the provisions of the Occupational Health and Safety Act, ("the Act") the Company has an obligation and responsibility to protect the health and safety of its employees. In this regard, I specifically refer to Section 25(2) (h) of the Act, which provides that an employer must take *"every precaution reasonable in the circumstances for protection of its worker."* The Company, by introducing its Vaccination Policy and Vaccination Exemption Policy has taken *"every precaution reasonable"* to satisfy its obligations and responsibility.

6- I find that receiving the COVID-19 vaccine is voluntary. However, the issue of employees choosing not to be vaccinated on the basis of 'personal preferences' must be carefully considered. In that regard, I refer to considerations of the Ontario Human Rights Commission as set out on pages 6 and 7 of this Award.

83 There is a wealth of scientific information available on the pandemic and COVID- 19. I find that personal subjective perceptions of employees to be exempted from vaccinations cannot override and displace available scientific considerations.

84 My findings in this regard in no way negate *bona fide* requests for COVID-19 Vaccination Exemption Requests pursuant to the Exemption Request Form set out in Schedule B.

7- I refer to Article 24.05 set out on Page 5 of this Award. This Article has been in effect since December 20, 2015.

85 I find it remarkable that such perceptive vaccination and inoculation provisions were agreed to by the Parties at least five (5) years before the arrival of the pandemic which is currently surrounding the world.

86 I find that the substantive and mandatory principles of Article 24.05 ("*...the employee must agree to receive such vaccinations or inoculations*") which are agreed to by the Parties, have been correctly incorporated into the Company's COVID-19 Vaccination Policy.

8- I have reviewed the submissions of the Parties relating to the Health Care Consent Act, 1996, and find that the provisions of that Act are not applicable to the matters being adjudicated in the instant proceedings.

9- I have reviewed the position of the Parties relating to the KVP CO. v. Lumber and Sawmill Workers' Union Award as addressed on Pages 14 and 17 of this Award.

87 I find that the Company, in unilaterally introducing its COVID-19 Vaccination Policy, promulgated "*reasonable rules and regulations to be observed by the employees*" pursuant to the provision of Article 4.01 (b).

10- I have reviewed the position of the Parties relating to the 2018 Award re St. Michael's Hospital as addressed on pages 14, 15 and 17 of this Award.

88 I find that the St. Michael's Hospital Award dealt with an annual influenza vaccine and the wearing of masks. I further find that the said Award most certainly did not deal with pandemic conditions which currently exist.

89 I find there is a distinct difference between the influenza related considerations addressed in the St. Michael's Hospital Award and the current pandemic and COVID-19. In this regard, I refer to and rely on the comparison of key features of influenza and COVID-19 set out on page 11 of this Award.

11- I find that the Union has not established a violation of Articles 4 and 24, as alleged in the Policy Grievance dated September 13, 2021.

ORDER

1- Based on the evidence before me, and the Observations and Findings set out above, the Policy Grievance dated September 13, 2021 is hereby dismissed.

2- I remain seized to assist the Parties on any issues relating to the application and interpretation of this Award.

Dated at Toronto, Ontario this 9th day of November 2021.

F.R. von Veh. Q.C.
Arbitrator

* * * * *

November 9, 2021

Mr. Mark Gernon

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Ms Simone Ostrowski
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Dear Ms Ostrowski and Mr. Gernon,

RE: UFCW, Canada, Local 333 and Paragon Protection Ltd -- Policy Grievance dated September 13, 2021 re COVID-19 Vaccination Policy.

Please find attached my Award dated November 9, 2021 relating to the above-captioned matter.

There are three additional matters which may be of assistance to the Parties:

- (1) A quote from an article in the Toronto Star, October 9, 2021, pages 1N1 and 1N3:

There is no theological justification for avoiding the vaccine -- last month, Mennonite Church Canada said they would not be providing religious exemptions from the COVID-19 vaccine because "there is nothing in the Bible, in our historic confessions of faith, in our theology or in our ecclesiology that justifies granting a religious exemption from vaccinations against COVID-19"

- (2) A quote from an article in the Toronto Star, October 6, 2021, page A4:

Those concerns (relating to medical exemptions) intensified Tuesday after chief medical officer Dr. Kieran Moore said that the narrow list of legitimate medical exemptions -- mainly severe allergic reactions and inflammation in or around the heart -- means just "one to five in 100,000" Ontarians should qualify for one.

- (3) The issue of Rapid Antigen Testing:

Paragon's Vaccination Policy is entirely reasonable and enforceable. However -- what happens when an employee is granted an exempt status and returns to work? There is no continuing monitoring system in place.

The suggested vaccination policy of Paragon is in place. To go forward, Paragon may consider the following.

In keeping with Paragon's COVID-19 Vaccination Policy, where a Staff member does not provide proof of being fully vaccinated against COVID-19, but instead relies on an acceptable medical reason or a creed/religious reason, such Staff member must submit to a regular rapid antigen testing for COVID-19 at his/her own time and expense, and demonstrate a negative result. Such testing must occur at a minimum once every seven (7) calendar days.

The Staff member must provide verification of the test result immediately upon receipt of the results.

Tests will be kept confidential and are to be submitted to: CSULLIVAN@PPLGUARD.COM.

Staff will not be permitted to work if they go beyond seven (7) calendar days between testing.

I hope these brief points will assist the parties in these troubling times.

Yours sincerely,

F.R. von Vehre

Arbitrator

* * * * *

SCHEDULE "A"

COVID-19 Vaccination Policy

PARAGON PROTECTION LTD. ("the Company") is committed to promoting and preserving a safe working environment for various parties. In pursuit of this goal, the Company has created a COVID-19 Vaccination Policy (the "Policy") to take affirmative steps to minimize potential incidents of COVID-19 in the workplace. This Policy sets out the responsibilities of the various parties.

The Policy is guided by the requirements of the *Occupational Health and Safety Act* of Ontario and the Ontario *Human Rights Code* and will be interpreted in accordance with both statutes.

The Policy is effective immediately but may be amended by the Company as public health guidelines/requirements change, including but not limited with respect to the number of vaccine doses recommended by relevant government agencies. All Staff of the Company are required to review and adhere to the contents of the Policy.

I. DEFINITIONS

Accepted Vaccine: a vaccine approved for use by Health Canada and/or the World Health Organization intended to provide acquired immunity against severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus causing coronavirus disease 2019 (COVID-19).

Fully Vaccinated: fourteen (14) days after receiving the total number of required doses of an Accepted Vaccine.

Staff: refers to all employees (permanent and temporary), contract staff, supervisors and managers of the Company.

Workplace: all premises and locations where staff are required to be located in the performance of work or services for, or on behalf of, the Company, including but not limited to the sites of the Company's clients or prospective clients.

II. SCOPE

This Policy applies to all Company Staff.

III. SAFETY GUIDELINES FOR THE WORKPLACE

All Staff are expected to help maintain a safe and healthy workplace. The rules below are not all inclusive and they are not the only steps that Staff must take towards keeping our Workplace safe. In pursuit of this goal, Staff are expected to take all reasonable steps to maintain a safe and healthy Workplace, even if those steps are not specifically listed below, using their best judgment.

A. Protect yourself and others:

- * Until further notice, staff will be required to wear disposable or cloth masks while in the Workplace, including but not limited to, while in common spaces and washrooms, except to the extent that an exemption has been granted by an authorized member of Company management. Where practicable, the Company will make disposable masks available to Staff upon entry into the workplace; however, Staff are asked and encouraged to bring their own masks to the Workplace.
- * Staff should not attend the Workplace if they are feeling sick, or have a probable COVID-19 infection, in accordance with the Company's other policies in this regard.

B. Scheduling Vaccinations

- * **All staff must be Fully Vaccinated by October 31, 2021.** For a two dose vaccine series, employees must receive one dose of COVID-19 vaccine by September 30, 2021, and two doses of COVID-19 vaccine by October 31, 2021. For a single dose vaccine series (e.g. Johnson and Johnson), employees must receive the dose by September 30, 2021.
- * Therefore, staff who are not yet Fully Vaccinated are required to schedule an appointment to obtain an Accepted Vaccine immediately, provided they are eligible for an Accepted Vaccine. Please coordinate with your supervisor, and if you cannot be Fully Vaccinated by the above-noted date, necessary arrangements will be made for employees on a case-by-case basis.
- * If employees are assigned to a site that requires to be Fully Vaccinated on an earlier date than October 31st, 2021, that date will prevail.
- * The Company will accommodate staff who are scheduled to obtain a vaccination during working hours. Please inform your scheduler if your vaccination appointment falls during working hours.
- * All staff are required to provide a signed declaration confirming that they have had two doses of vaccination, by October 17th, 2021. The form will be sent electronically to all employees on the week of September 06th, 2021.

The Company reserves the right to ask staff for proof of their vaccination status.

- * The Company will maintain vaccination disclosure information, including declarations forms and proof if required, in accordance with privacy legislation. This information will only be used to the extent necessary for implementation of this policy, for administering health and safety protocols, and infection and prevention control measures in the workplace.

C. Travelling Outside of Canada

- * All non-essential travel outside Canada should be avoided, in accordance with public health guidelines.
- * If you are required to travel outside of Canada for an essential reason, upon your return to Canada, you must follow all governmental rules and requirements regarding COVID-19 testing and self-isolation, if any.

IV. ATTENDANCE AT CLIENT SITES

To limit the number of people at any given client site, please ensure you do not bring or allow any unauthorized visitors on site.

Approved visitors and/or any other attendees must comply with the Policy, as well as all other client rules and regulations.

V. EXEMPTIONS

The company will consider on a case-by-case basis requests from Staff for exemptions.

To continue to protect the health and safety of the community while complying with human rights requirements, Staff with an approved exemption from being vaccinated may be accommodated to the point of undue hardship. However, these Staff members, at the complete discretion of the Company and depending upon the circumstances:

- may need to be placed at a different site where the Company performs services, at the prevailing rate of pay for that site and position;
- may be required to participate in further Covid-19 testing requirements than other Staff;
- may be required to take an unpaid leave of absence; and/or
- may be subject to further requirements on a case-by-case basis.

Requests for medical exemptions will be considered upon completion and presentation of an approved Request for Medical Exemption form. Please speak to your supervisor as soon as possible if you need to obtain and complete this form. The Company reserves the right to have the form reviewed by applicable medical specialists.

Requests for creed/religion exemptions will be considered upon completion and presentation of the Company's Request for Creed/Religion Exemption form. The Company reserves the right to make the appropriate inquiries to verify the authenticity of a creed/religion-based claim.

The Company may also accommodate staff who have received the first dose of an accepted two-dose vaccine, during the recommended interval period between doses, and for 14 days after the second dose is administered. At the end of this interval period, the Company will cease accommodations, provided that Accepted Vaccines are reasonably available for those Staff.

Staff who are not Fully Vaccinated may be required to follow additional health and safety precautions not applicable to Fully Vaccinated individuals.

VI. RESPONSIBILITY AND ENFORCEMENT

Any Staff found to have violated or abused this Policy, and any individuals providing information pursuant to this Policy falsely or dishonestly, may be subject to disciplinary action in accordance with the Company's existing disciplinary policies, up to and including termination for just cause.

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SCHEDULE "B"

COVID-19 Vaccination Exemption Request Form

As all Paragon employees are no doubt aware, we have implemented a mandatory policy requiring all employees to be fully vaccinated against COVID-19. This decision was made in the best interests of health and safety for all employees, clients, and the communities we serve.

COVID-19 Vaccination Exemption Policy

- * Paragon Management will consider exemptions in two areas only, which are health and religious reasons.
- * Religious requests must include an explanation as to the basis of the applicant's beliefs which are contrary to receiving the COVID-19 vaccination.
- * Health requests must include certified medical documentation from employee's family physician confirming that health reasons prevent the administration of the COVID-19 vaccine.
- * All employees requesting exemption must complete this form and submit it to Paragon's Human Resources Director and/or HR Manager with the appropriate accompanying documentation via

electronic mail. Send to Chris Sullivan csullivan@pplguard.com or Melissa Hachey mhachey@pplguard.com

- * Completed forms must be accompanied by a letter from a Religious Leader or Physician explaining the reasons for the exception request.
- * Paragon Management reserves the right to request further information from Religious Leader or Physician within the confines of the Ontario Human Rights Code.
- * By signing and submitting the completed form, the Paragon employee authorizes Paragon Security Human Resources representatives to speak with the Physician or Religious leader about the employee request, the form completed, and the supporting documentation provided.
- * By signing and submitted the completed form, the Paragon employee certifies that all information is true and accurate and understands that any false or misleading information is subject to disciplinary action.
- * Incomplete forms or forms without the appropriate supporting documentation will not be considered.
- * Employees with an approved exemption request will be notified in writing via email by our Human Resources Department.

COVID-19 Vaccination Exemption Request Form

Employee Name: _____

Employee (License) Number: _____

Current Site: _____

Basis for Exemption Request: _____

Supporting Documentation Attached (Y/N): _____

Brief explanation of basis for Exemption Request: _____

Physician or Religious Leaders Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

Employee Declaration

I, _____ confirm that all information submitted on this form is true and accurate. I authorize Paragon Management to contact my Religious Leader or Physician and discuss my request and all documentation submitted. I understand that any false or misleading statements may lead to disciplinary action up to and including termination of my employment with Paragon Security.

Employee Signature
Date

United Food and Commercial Workers Union, Canada Local 333 v. Paragon Protection Ltd. (Policy Grievance)

- 1 *For the purposes of this document, "fully vaccinated" means having received the full series of a COVID-19 vaccine or combination of COVID-19 vaccines approved by WHO (e.g. two doses of a two-dose vaccine series, or one dose of a single-dose vaccine series); and having received the final dose of the COVID-19 vaccine at least 14 days ago."*

End of Document