

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**ALLEGHENY COUNTY PRISON
EMPLOYEES INDEPENDENT UNION
(ACPEIU),**

Plaintiff,

v.

**COUNTY OF ALLEGHENY,
PENNSYLVANIA (COUNTY JAIL),**

Defendant.

Counsel of record for Defendants:

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***Served upon said counsel via US mail, email
and fax on October 15, 2021.***

CIVIL DIVISION

NO. GD-21-12507

Code: _____

**MOTION FOR
PRELIMINARY INJUNCTION
PURSUANT TO Pa. R.C.P. No. 1531
(Contested)**

**(In re Complaint in Equity
Seeking Preliminary and Permanent
Injunctions)**

Filed on behalf of:

Allegheny County Prison Employees
Independent Union (ACPEIU)
Plaintiff/Movant

Counsel of Record for Plaintiff/Movant:

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I, Ronald R. Retsch, Esq. hereby certify that
this motion requests relief for a case that has
never appeared on any published trial list, has
not been designated complex, and or complex
designation is not pending.

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CIVIL DIVISION

NO. GD-21-12507

**NOTICE OF PRESENTATION &
CERTIFICATE OF SERVICE**

PLEASE TAKE NOTICE that the attached Plaintiff's *Motion for Preliminary Injunction* in accordance with Pa. R.C.P. No. 1531, will be presented in Motion Court before **the presiding General Motions Judge in Courtroom 703** of the Allegheny County Court of Common Pleas, Civil Division at **700 City-County Building, 414 Grant Street, Pittsburgh, PA 15219** on **Wednesday, October 27, 2021, at 9:30 a.m.**¹

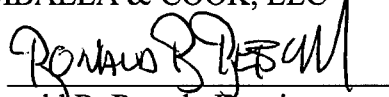
I/we also hereby certify that, pursuant to Allegheny County Local Rule 208.3(a)(2)(b), a true and correct copy of said *Motion for Preliminary Injunction* was served upon the following by mailing the same via first class mail, postage pre-paid, as well as by fax and email on OCTOBER 15, 2021, at least **ten (10) days** prior to the date of presentation listed above:

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¹ See https://www.alleghenycourts.us/civil/general_procedures.aspx

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Date: October 15, 2021

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**ALLEGHENY COUNTY PRISON
EMPLOYEES INDEPENDENT UNION
(ACPEIU),**

Plaintiff,

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**COUNTY OF ALLEGHENY,
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Defendant.

CIVIL DIVISION

NO. GD-21-12507

MOTION FOR PRELIMINARY INJUNCTION
PURSUANT TO Pa.R.C.P. No. 1531

AND NOW, comes the Plaintiff/Movant, Allegheny County Prison Employees Independent Union (ACPEIU), by and through its counsel, Ronald R. Retsch, Esquire, and Welby, Stoltenberg, Cimballa & Cook, LLC, who files this *Motion for Preliminary Injunction* pursuant to Pa. R.C.P. No. 1531, supplemental to their *Complaint in Equity for Permanent Injunction* filed with this Honorable Court, **seeking the issuance of a preliminary injunction** enjoining any vaccine mandate issued or adopted by Allegheny County relating to COVID-19 (SARS-CoV-2), including but not limited to, said vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021, with an effective date of December 1, 2021, and to impose such relief as is necessary, and in support thereof avers as follows:

Jurisdiction

1. This Honorable Court of Common Pleas has original jurisdiction over a complaint in equity seeking a preliminary injunction, and the authority to enter injunctive relief, for all other matters whose jurisdiction is not specifically assigned to another court by statute or general rule. 42 Pa. C.S.A. § 761; 42 Pa. C.S.A. § 931; Pa. R.C.P. No. 1531; Citizens

Bank of Pennsylvania v. Myers, 872 A.2d 827, 831 n.4 (Pa. Super. 2005)); Buffalo Twp. v. Jones, 571 Pa. 637, 813 A.2d 659 (2002).

Parties & Case History

2. The Plaintiff, Allegheny County Prison Employees Independent Union (“ACPEIU”) is the exclusive collective bargaining representative for Corrections Officers employed by Allegheny County, Pennsylvania, pursuant to the Public Employee Relations Act (PERA) (Act 195), 43 P.S. §1101.101 et seq., with a principal place of business at 950 Second Avenue, Pittsburgh, Allegheny County, PA 15219.
3. The Defendant, County of Allegheny (Jail) (“County”) is a political subdivision of the Commonwealth of Pennsylvania and the public employer of ACPEIU’s members within the meaning of PERA, with a principal place of business at The Allegheny County Jail, 950 Second Avenue, Pittsburgh, Allegheny County, PA 15219.
4. The County recognizes the ACPEIU as the sole and exclusive bargaining representative of the unit employees with respect to rates of pay, wages, hours of employment and other mandatory subjects of bargaining and terms and conditions of employment pursuant to PERA/Act 195.
5. The ACPEIU’s members consist of all part-time and full-time Correctional Officers employed at the Allegheny County Jail, including employees included in the bargaining unit certified by the Pennsylvania Labor Relations Board at PERA-R-1061-W.
6. The ACPEIU and the County are parties to a Collective Bargaining Agreement (CBA) setting forth wages, hours of work and other terms and conditions of employment and mandatory subjects of bargaining (including matters of discipline). Impasses over new CBAs are submitted to interest arbitration in accordance with PERA/Act 195, resulting in

subsequent interest arbitration awards being incorporated into the CBA. The parties have not yet consolidated the provisions of these subsequent Interest Awards into an updated consolidated CBA; nevertheless, the parties are bound to follow the CBA as amended by mutual settlement agreements and interest arbitration awards issued under the PERA, effective to December 31, 2023.

7. The County Jail presently employs an estimated total of 402 Corrections Officers and 10 Corrections Officer Cadets, for a total of 412 member employees.
8. The ACPEIU's membership includes individuals who are vaccinated against COVID-19 and those who are not. The ACPEIU estimates that roughly 60% of its current members are vaccinated against COVID-19, while 40% are not. The membership also includes those who have recovered from COVID-19 infection (estimated between 166 and 170 employees). See **Complaint Ex. 1**.
9. The County publicly reports that its inmate population at the Allegheny County Jail is 1,616 inmates as of October 7, 2021. See **Complaint Ex. 1**.
10. The County of Allegheny publicly reports the figures on COVID-19 testing, positives cases, hospitalizations and deaths related to those who work or are confined at the Allegheny County Jail. See **Complaint Ex. 1**.
11. The County reports that, as of October 7, 2021, the Total Lives Lost of Incarcerated Individuals was one (1). The Total Positive Cases Historically (Unduplicated Count) was 691 (noting that "some rapid tests have required confirmatory testing") and that the most recent COVID-19 results for September 2021 revealed 122 PCR tested, 4 positive, 118 negative and 0 indeterminate. See **Complaint Ex. 1**.

12. As of October 7, 2021, COVID-19 Employee Testing at the Jail resulted in 384 tested employees, 170 found to be COVID-19 positive, 214 negative, with zero (0) pending and 166 deemed recovered. No officers died as a result of COVID-19. See **Complaint Ex. 1**.
13. For comparison, per the CDC data on US COVID-19 deaths among males and females, tabulated as of September 15, 2021, for males and females ages 18 through 50 (which is the average age range of the ACPEIU members), the rate of COVID-19-related deaths is between 0.002% and 0.100%. See **Complaint Ex. 12**.
14. Prior to the commencement of this immediate action, on or about August 5, 2021, the County announced a new work rule for Allegheny County employees, which includes all bargaining unit members represented by the ACPEIU. See **Complaint Ex. 2**. The new rule took effect immediately and mandates that County employees who are unvaccinated against COVID-19 shall be required to 1) wear face masks and 2) undergo weekly testing for COVID-19 by way of nasal swab.
15. That new work rule changes the existing working conditions for the Plaintiff ACPEIU bargaining unit members. Although the members are currently required to wear face masks while working, regardless of vaccination status, there is no regular, periodic testing requirement. Bargaining unit members are presently only required to take a COVID-19 test where they have been exposed to an individual infected with COVID-19, experienced COVID-19 symptoms or contracted COVID-19. In such cases, the employee is required to obtain two (2) negative COVID-19 tests before returning to the workplace.

16. The ACPEIU timely filed a Charge of Unfair Practices under PERA to this new work rule with the Pennsylvania Labor Relations Board (PLRB) on or about August 19, 2021. See **Complaint Ex. 3, @ p. 4 to 6.**
17. The ACPEIU Charge argues that the imposition of a medical test mandate on employees constitutes a mandatory subject of collective bargaining within the meaning of the PERA, specifically Sections 1201(a)(1) and (5). See **Complaint Ex. 3, @ p. 6.**
18. PERA at 43 P.S. 1101.1201 (a) provides in relevant part that public employers, their agents or representatives are prohibited from:
- (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act.
 - ...
 - (5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
19. The ACPEIU Charge avers that the County's imposition of the weekly testing mandate on unvaccinated bargaining unit members modifies the existing working conditions of said members, and that the County acted unilaterally in imposing this new work rule and failed to satisfy its collective bargaining obligation in violation of Sections 1201(a)(1) and (5) of the PERA. See **Complaint Ex. 3, @ p. 6.**
20. The ACPEIU avers that the County is required to rescind the weekly testing mandate unless and until it satisfies its collective bargaining obligation pursuant to PERA, and requested as a remedy that the PLRB declare the unilateral imposition of the new work rule an unfair practice within the meaning of Sections 1201(a)(1) and (5), direct the County to cease and desist in engaging in such unlawful actions, issue an order directing the County to rescind the weekly testing mandate and to make the ACPEIU's members

whole for any and all losses sustained due to the unlawful action. All other appropriate relief was also requested. See **Complaint Ex. 3, @ p. 6.**

21. The PLRB thereafter issued a *Complaint and Notice of Hearing* at PERA-C-21-188-W, scheduling an initial telephone conciliation call for October 26, 2021, followed by a pre-hearing conference before Hearing Examiner Stephen Helmerich on November 4, 2021 and then an evidentiary hearing for November 19, 2021 in Pittsburgh, PA. The hearing would thereafter be followed by post-hearing written argument of the parties, followed by a written decision from the Examiner. See **Complaint Ex. 3, @ p. 12.**
22. While that litigation continued, on September 29, 2021, Allegheny County Executive Rich Fitzgerald announced that the County modified its August 5, 2021 work rule by implementing a COVID-19 vaccine mandate for the ACPEIU's bargaining unit members (as they are employees of the County Executive), "subject to such exceptions as required by law". The County cited that the decision was made "in the interest of the health and safety of the county workforce and of the communities we serve, and in light of public health guidance regarding the most effective and necessary defenses against COVID-19...". The County did not indicate that any or all medical or religious exemptions provided by employees would be actually be accepted. See **Complaint Ex. 4.**
23. The County mandate requires "current County employees (including ACPEIU members) must show proof of their second dose of a two-dose COVID-19 vaccine, or proof of a one-dose vaccine on or before December 1, 2021". Specifically, this means proof that the member received the 2nd dose of a two-dose vaccine (Pfizer and/or Moderna) or proof of having received a single dose of the Johnson & Johnson one-dose vaccine. Members who are vaccinated are required to show proof thereof, and those who are not vaccinated

are required to become vaccinated and to show proof of same (though it doesn't specify what proof would be sufficient). The County communicated its mandate to the ACPEIU members via email, which includes a citation to the website of the United States Centers for Disease Control (CDC). See **Complaint Ex. 4**.

24. The County's mandate also advised that "employees who have submitted proof of vaccination will be entitled to up to eighty (80) hours of paid leave for reasons related to COVID-19: 1) if an employee tests positive for COVID-19; 2) if an employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; or 3) if an employee has been advised by a health care provider to self-quarantine related to COVID-19 (with appropriate documentation provided by the employee)". See **Complaint Ex. 4**.
25. The County's mandate announced that employees failing to provide proof of vaccination by December 1, 2021 "will be subject to termination of employment". The County does not define what "full vaccination" means in this context. See **Complaint Ex. 4**.
26. The CDC states that "fully vaccinated" for medical purposes is *not* when the injection is received, *but when the effect of the injection is produced*: "People are considered fully vaccinated 2 weeks after their second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines, or 2 weeks after the single-dose Johnson & Johnson's Janssen COVID-19 vaccine²" The County's mandate does not provide guidance on that point in terms of how that affects compliance with its mandate.

² "Key Things to Know About COVID-19 Vaccines", CDC at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html#:~:text=COVID%2D19%20vaccines%20teach,19%20just%20after%20vaccination>

27. There are three (3) COVID-19 vaccines at issue, which require different dosage schedules in order to achieve “full vaccination”. See **Complaint Ex. 5**.
28. The first, **Johnson & Johnson (J&J) (Janssen)**, is a “Viral vector” vaccine, and requires one (1) injection³. See **Complaint Ex. 5., p. 1**. A single injection of the J&J (Janssen) vaccine must be received on or before the County’s deadline of December 1, 2021. However, taking a two (2) week “CDC effective period” into account, then the last required injection must be received by Wednesday, November 17, 2021 to be “fully vaxed” by December 1, per the CDC guideline.
29. The second, **Moderna**, is an “mRNA” vaccine which requires two (2) injections, administered **28 days** apart⁴. See **Complaint Ex. 5., p. 8**. If the County’s deadline is December 1, 2021, and a person receives the second injection of Moderna on December 1, 2021, then 28 days before that date is **Wednesday, November 3, 2021**, making that the latest date to obtain the first Moderna injection. However, taking a 2 week “CDC effective period” into account, then the second Moderna injection must be received by **Wednesday, November 17, 2021**, and the first must be received 28 days earlier on **Wednesday, October 20, 2021**.
30. The third, **Pfizer-BioNtech** (Brand name **Comirnaty**), is also an mRNA vaccine which requires two (2) injections, administered **21 days** apart⁵. See **Complaint Ex. 5., p. 14**. If the County’s deadline is December 1, 2021, and a person receives the second Pfizer injection on December 1, 2021, then 21 days before that date is **Wednesday, November**

3 See "Johnson & Johnson's Janssen COVID-19 Vaccine Overview and Safety", CDC at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/janssen.html>

4 See "Moderna COVID-19 Vaccine Overview and Safety" CDC at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>

5 See "Pfizer-BioNTech COVID-19 Vaccine Overview and Safety (also known as COMIRNATY)" CDC at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html>

10, 2021, making that the latest date to obtain the first Pfizer injection. However, taking a 2 week “CDC effective period” into account, then the second Pfizer injection must be received by **Wednesday, November 17, 2021**, and the first must be received 21 days earlier on **Wednesday, October 27, 2021**. Further, per the CDC with regard to the Pfizer vaccination, “[m]oderately to severely immunocompromised people should get an additional shot (3rd dose) at least 28 days after their 2nd shot. Other groups of people are recommended to get a booster shot at least 6 months after getting their 2nd shot.”⁶

31. The County mandate provides no guidance on how these varying dosages dates may affect compliance with its mandate, and thus, how it will affect potential officer discipline.
32. The County asserts that its decision to require employee COVID-19 vaccination for COVID-19 is purely a managerial prerogative that it alone can make with no input from the ACPEIU or its members.
33. The ACPEIU argues that the additional imposition of a vaccine mandate on the ACPEIU member employees constitutes a mandatory subject of collective bargaining within the meaning of the PERA.
34. The ACPEIU argues that the County acted unilaterally in enacting the COVID-19 vaccine mandate. It therefore failed to satisfy its mandatory obligation to bargain collectively with the ACPEIU prior to issuing the rule.
35. The ACPEIU argues that the County’s failure to bargain with the ACPEIU prior to issuing the September 29, 2021 vaccine mandate constitutes an unfair practice in violation of Sections 1201(a)(1) and (5) of the PERA.

⁶ See “Understanding mRNA COVID-19 Vaccines” CDC at https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mRNA.html?s_cid=11344:mrna%20vaccine:sem.ga:p:RG:GM:gen:PTN:FY21

36. As a result of this policy change, the ACPEIU timely filed an *Amended Specification of Charges of Unfair Labor Practices* under PERA at PERA-C-21-188-W with the PLRB on or about September 30, 2021, alleging that the imposition of the COVID-19 vaccination mandate upon the ACPEIU's members constitutes a mandatory subject of collective bargaining within the meaning of PERA, specifically Sections 1201(a)(1) and (5) because the County did not bargain with the ACPEIU prior to implementing the aforementioned vaccination mandate, but acted unilaterally. See **Complaint Ex. 3, @ p. 7 to 10.**
37. The ACPEIU argues that the County is required to rescind the COVID-19 vaccination mandate unless and until it satisfies its collective bargaining obligation pursuant to the PERA, and requested that the PLRB declare the unilateral imposition of the new vaccination mandate an unfair practice within the meaning of Sections 1201(a)(1) and (5) of the PERA, direct the County to rescind the mandate and to cease and desist from engaging in such unlawful actions, and make the bargaining unit members whole for any and all losses sustained due to the unlawful action. All other appropriate relief was requested. See **Complaint Ex. 3, @ p. 7 to 10.**
38. The PLRB thereafter issued an *Amended Complaint and Notice of Hearing* at the same case number PERA-C-21-188-W, maintaining the scheduling of an initial telephone conciliation call for October 26, 2021, followed by a pre-hearing conference before Examiner Stephen Helmerich on November 4, 2021 and an evidentiary hearing before Examiner Helmerich for November 19, 2021 in Pittsburgh, PA. See **Complaint Ex. 3, @ p. 1 to 3.**

Request for Relief - Preliminary Injunction

39. It is essential that the Court issue preliminary injunctive relief to prevent immediate and irreparable injury because to the Plaintiff ACPEIU, as explained fully in the ACPEIU's *Complaint* at GD 21-12507 and supporting *Brief*, incorporated herein.
40. The Plaintiff ACPEIU respectfully requests that this Honorable Court preliminarily enjoin any vaccine mandate issued or adopted by Allegheny County relating to COVID-19, including but not limited to, the December 1, 2021 COVID-19 vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021., for the reasons cited herein and herein above. Pa.R.C.P. No. 1531.
41. The PLRB does not possess the authority to enjoin an employer work rule, such as the vaccine mandate, prior to a full adjudication of the unfair practice charge. The ACPEIU is thus without an adequate remedy at law to compel the County to comply with its collective bargaining obligation prior to the commencement of the COVID-19 vaccination mandates.
42. It is highly unlikely that the underlying labor action at PERA-C-21-188-W addressing the Charges of Unfair Practices will resolve before the County's vaccination mandate for unvaccinated ACPEIU members takes effect on December 1, 2021, upon which time employee disciplinary discharges are expected, or employees will have been compelled to take the vaccinations in order to protect their continued employment.
43. Once even a single vaccination is administered, its effect is immediate and it cannot be removed from the body or mitigated in effect thereafter. This also necessarily affects the bargaining power of the ACPEIU in the underlying PLRB litigation, for if the PLRB later

ruled that the mandate was subject to bargaining, any vaccinations that took place could not be reversed.

44. Accordingly, the ACPEIU filed a *Complaint in Equity for Preliminary and Permanent Injunction* before this Honorable Court on October 12, 2021 at Case No. GD 21-12507. Said Complaint seeks the issuance of both a preliminary and permanent injunction enjoining any vaccine mandate issued or adopted by Allegheny County relating to COVID-19, including but not limited to, said vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021, with an effective date of December 1, 2021. Please refer to said *Complaint* filed of-record at this case number.
45. This Honorable Court has broad discretion to grant a preliminary injunction so as to preserve the *status quo* as it exists before the vaccine mandate takes effect. Pa.R.C.P. No. 1531.

Grounds for Relief – Preliminary Injunction

46. Incident to said *Complaint*, Plaintiff ACPEIU presents this *Motion for Preliminary Injunction*, seeking relief as follows. The ACPEIU will supplement the Motion's argument with a Supporting *Brief*. The ACPEIU also incorporates the averments and exhibits of its *Complaint in Equity* here, in full.
47. Pa.R.C.P. No. 1531, *Special Relief. Injunctions*, at subsection (a) provides that, "A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a

hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require".

48. Pa.R.C.P. No. 1531 (b) provides that, "Except when the plaintiff is the Commonwealth of Pennsylvania, a political subdivision or a department, board, commission, instrumentality or officer of the Commonwealth or of a political subdivision, a preliminary or special injunction shall be granted only if (1) the plaintiff files a bond in an amount fixed and with security approved by the court, naming the Commonwealth as obligee, conditioned that if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees, or (2) the plaintiff deposits with the prothonotary legal tender of the United States in an amount fixed by the court to be held by the prothonotary upon the same condition as provided for the injunction bond.
49. This Honorable Court has broad discretion to grant a preliminary injunction so as to preserve the *status quo* as it exists, in this case, before the vaccine mandate takes effect. WPNT Inc. v. Secret Commc'n Inc., 443 Pa. Super. 269, 661 A.2d 409 (1995).
50. With regard to supporting evidence, in determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition, and may consider affidavits of parties or third persons, *or any other proof that the court may require*. Pa. R. Civ. P. 1531(a). For example, the court may rely on the complaint, attached affidavits, preliminary objections, and arguments of counsel in determining whether to grant a preliminary injunction. Philadelphia Minit-Man Car Wash v. Bldg. & Const. Trades

Council of Philadelphia & Vicinity, AFL-CIO, 411 Pa. 585, 192 A.2d 378 (1963). A trial court may properly consider testimony going to the merits of the underlying controversy at the time of the preliminary injunction hearing, including deposition testimony, to extent needed for the moving party to show that it has reasonable likelihood of success on the merits. Lewis v. City of Harrisburg, 158 Pa. Cmwlth. 318, 631 A.2d 807 (1993); Robert Clifton Assocs., Inc. v. O'Connor, 338 Pa. Super. 246, 487 A.2d 947 (1985).

51. The purpose of a preliminary injunction is to prevent irreparable injury or gross injustice by preserving the *status quo* as it exists, or as it previously existed before the acts complained of in the complaint. Ambrogi v. Reber, 2007 PA Super 278, 932 A.2d 969 (2007).
52. The party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. Greenmoor, Inc. v. Burchick Const. Co., 2006 PA Super 252, 908 A.2d 310 (2006). An injury is “irreparable,” as that term is contemplated in the context of a preliminary injunction, if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard. Ambrogi v. Reber, 2007 PA Super 278, 932 A.2d 969 (2007).
53. A party seeking a preliminary or special injunction must satisfy six (6) essential requirements to obtain preliminary injunctive relief. Specifically, the party must show that:
 - (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
 - (2) greater injury would result from refusing an injunction than from granting it, and, concomitantly, issuance of an injunction will not substantially harm other interested parties in the proceedings;

(3) a preliminary injunction will properly restore the parties to their status immediately prior to the alleged wrongful conduct;

(4) the activity to be restrained is actionable, the right to relief is clear, and the wrong is manifest, or, in other words, the party seeking the injunction is likely to prevail on the merits;

(5) the injunction is reasonably suited to abate the offending activity; and

(6) a preliminary injunction will not adversely affect the public interest.

Porter v. Chevron Appalachia, LLC, 204 A.3d 411, 416 (Pa. Super. 2019); Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 573 Pa. 637, 828 A.2d 995 (2003); Allegheny Cty. v. Com., 544 A.2d 1305, 1307 (Pa. 1988).

54. In order to sustain a preliminary injunction, a plaintiff's right to relief must be clear, the need for relief must be immediate, and the injury must be irreparable if the injunction is not granted. Sheridan Broadcasting Networks, Inc. v. NBN Broadcasting, Inc., 693 A.2d 989 (Pa. Super. Ct. 1997); Masure v. Massa, 692 A.2d 1119 (Pa. Super. Ct. 1997). Thus, unless a plaintiff's right is clear and the wrong is manifest, a preliminary injunction is generally not awarded. All-Pak, Inc. v. Johnston, 694 A.2d 347 (Pa. Super. Ct. 1997).
55. When applying the general rule, a trial court must properly balance the hardships in deciding whether to grant a preliminary injunction. Cappiello v. Duca, 449 Pa. Super. 100, 672 A.2d 1373 (1996). Unlike a party seeking a permanent injunction, a party seeking a preliminary injunction is not required to establish his or her claim absolutely, Buffalo Twp. v. Jones, 571 Pa. 637, 644, 813 A.2d 659, 663 (2002), and whether a preliminary injunction is granted or denied has no effect on whether a final, permanent injunction will ultimately be issued. Berger By & Through Berger v. W. Jefferson Hill Sch. Dist., 669 A.2d 1084 (Pa. Commw. Ct. 1995).

56. The party moving for a preliminary injunction has the burden to demonstrate a reasonable probability of eventual success in the litigation and that it will be irreparably injured if relief is not granted. Novatek Corp. v. Mallet, 324 F. Supp. 3d 560 (E.D. Pa. 2018). However, the party seeking a preliminary injunction is not required to prove that he will prevail on his theory of liability, *but only that there are substantial legal questions that the trial court must resolve to determine the rights of the parties*. Ambrogi v. Reber, 2007 PA Super 278, 932 A.2d 969 (2007).
57. The party seeking a preliminary injunction must establish such party's own rights as well as the inequitable nature of the defendant's conduct, but, nevertheless, the defendant must show that the defendant's conduct was reasonable or that a defense exists to the plaintiff's claims. Masure v. Massa, 692 A.2d 1119 (Pa. Super. Ct. 1997).
58. The ACPEIU argues that it has satisfied the aforementioned six (6) essential requirements to obtain preliminary injunctive relief, as follows:
- (1) The injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages, namely:**
- a. Plaintiff ACPEIU's members will suffer immediate, irreparable loss and damage to their individual rights; bodily autonomy; personal medical health and privacy.
 - b. Once even a single vaccination is administered, its effect is immediate and it cannot be removed from the body or mitigated in effect thereafter. This also necessarily affects the bargaining power of the ACPEIU in the underlying PLRB litigation, for if the PLRB later ruled that the mandate was subject to bargaining, any vaccinations that took place could not be reversed.
 - c. Plaintiff ACPEIU's members will suffer immediate, irreparable loss and damage to their right to collectively bargain through the labor organization of their choice guaranteed, inter alia, by the Public Employee Relation Act, by Defendant County's continued violation of the parties' *status quo* in violation of the PERA.

- d. As corrections officers subject to PERA, the ACPEIU and its members are legally prohibited from striking as they are afforded collectively bargaining rights. 43 Pa. Stat. § 1101.1001.
- e. It is highly unlikely that the underlying labor action at PERA-C-21-188-W addressing the Charges of Unfair Practices will resolve before the County's vaccination mandate for unvaccinated ACPEIU members takes effect on December 1, 2021, upon which time employee disciplinary discharges are expected, or employees will have been compelled to take the vaccinations in order to protect their continued employment.
- f. The PLRB does not possess the authority to enjoin an employer work rule, such as the vaccine mandate, prior to a full adjudication of the unfair practice charge. The ACPEIU is thus without an adequate remedy at law to compel the County to comply with its collective bargaining obligation prior to the commencement of the COVID-19 vaccination mandates.
- g. As the ACPEIU has already placed the County's actions before the PLRB for purposes of an adjudication of unfair practices related to employment benefits subject to collective bargaining, that litigation will not be resolved by December 1, 2021, and maintaining the effect of the mandate deadline of December 1, 2021 substantially harms the ACPEIU and its members to protect those benefits.
- h. The termination of a sizeable amount of the County's workforce at the Jail with result in not only matters of officer and inmate safety, but also significant financial loss to the County, by way of losing 40% of their trained, professional workforce without ability to replenish their staffing.
- i. The vaccine themselves are subject to CDC-FDA confirmed medical side effects, both known and suspected, some serious or fatal, as summarized in the "greater injury" analysis herein below.

(2) Greater injury would result from refusing an injunction than from granting it, and, concomitantly, issuance of an injunction will not substantially harm other interested parties in the proceedings; namely:

- a. The only parties to this proceeding that would be subject to substantial harm caused by an injunction are the County and the ACPEIU and its members. In balancing the harms to each, far more harm will occur to the ACPEIU's members by denial of the injunction than to the County by granting the injunction.

- b. As the ACPEIU has already placed the County's actions before the PLRB for purposes of an adjudication of unfair practices related to employment benefits subject to collective bargaining, that litigation will not be resolved by December 1, 2021, and maintaining the effect of the mandate deadline of December 1, 2021 substantially harms the ACPEIU and its members to protect those benefits.
- c. The County cannot show that it has a compelling interest, or even a rational basis, in coercing the ACPEIU's members into taking a COVID-19 vaccine, because the County has no compelling interest in treating those employees with natural immunity any differently from employees who obtained immunity from a vaccine.
- d. The County cannot show that it has a compelling interest, or even a rational basis, in coercing the ACPEIU's members into taking a COVID-19 vaccine, because the County has no compelling interest in forcing employees to vaccinate against COVID-19 for the alleged protection of others when, according to the CDC, *the vaccines do not protect against transmission and infection of COVID-19, but rather simply mitigate symptoms suffered by the vaccinated person*, thus fatally undercutting any public safety concern for protecting the unvaccinated populace.
- e. If a vaccination causes an immediate or delayed side-effect which results in physical, mental, and other medical damages to the employee, while insurance claims *may* be available to provide payment of medical treatment and wage replacement, said benefits will not make the affected employee whole, in-fact, if they become permanently or otherwise indefinitely disabled as a result. When weighed against the minor benefit such a vaccination would have on the general public (given that it does not prevent remission and infection), the risk of irreparable harm is far greater to the employee than the perceived benefit to the public. Any employee would prefer to remain healthy as opposed to disabled yet financially compensated.
- f. This provides evidence that the County is trying to exert control over individuals' personal health decisions, rather than attempting to promote a legitimate public health aim.
- g. The County's mandate did not include confirmed acceptance any express exceptions to the mandate, such as a *bona fide* religious objection or an underlying medical condition rendering vaccination a threat to the employee's health. Pennsylvania law explicitly provides for both medical and religious exemptions from vaccinations. See 28 Pa. Code § 23.84(a), (b).
- h. The County's mandate did not address the availability of any reasonable accommodations/alternatives to vaccination, such as periodic testing and mask usage as the County implemented previously, or medical

treatments/therapeutics. Nor does it address why those methods, currently in use for nearly two years, are no longer considered sufficient for the unvaccinated employees. Nor does it explain why vaccinated employees are permitted to go without masks, despite CDC guidance to the contrary.

- i. The County's mandate does not refer to any supporting medical evidence or justification beyond boilerplate statements of safety and effectiveness and appeals to political authority, aside from a rudimentary Q&A sheet.
- j. The mandate does not define "full vaccination" in regard to simple administration of the vaccination(s) by December 1, 2021, or the in-fact medical vaccination status achieved two weeks post-injection.
- k. The County mandate provides no guidance on how these varying dosages and dosage schedules will affect compliance with its December 1, 2021 vaccination mandate, and thus, how it will affect potential officer discipline.
- l. Further, a single or double vaccination may not serve to comply with a progressively changing definition of "full vaccination". The County's mandate did not address what "full vaccination" constitutes in regard to the availability of, or recommended use of, COVID "booster shots"⁷ to improve the decreasing efficiency of the prior vaccinations. The continuing recommendations for "boosters" to the vaccines requires the employee to comply with an indefinite and undefined standard of "full vaccination" that will require ongoing maintenance of vaccine injections and the risk of compounding health effects upon the employees. The mandate establishes a precedent to mandate not only vaccinations and boosters for this year for present virus strains, but for all strains ongoing into perpetuity.
- m. The deadline for Mandate Compliance December 1, 2021 is vague, arbitrary and capricious. The mandate provides no explanation (medical, political or economical) as to why that date, as opposed to a date earlier or later than, was selected for compliance.
- n. The County's mandate does not address whether the County would discipline or discharge an employee who was willing to comply with the mandate for full vaccination, but could not be fully vaccinated in-fact by the County's deadline of December 1, 2021 due to factual or medical reasons (such as a side effect suffered post-first injection).

⁷ See Newsweek, "CDC Declines to Change Definition of 'Fully Vaccinated' Amid Third Dose Authorization", September 24, 2021. CDC Director Rochelle Walensky stated publicly in a White House COVID-19 briefing that, "We are not changing the definition *right now* of fully vaccinated. I think we need to have more experience with our third shot and have more people eligible or recommended to receive it before we change that definition that is something that we will be looking at in real-time". See <https://www.newsweek.com/cdc-declines-change-definition-fully-vaccinated-amid-third-dose-authorization-1632565>

- o. The County's mandate does not address what will constitute sufficient medical proof of full vaccination status to avoid discipline.
- p. The County's mandate did not address whether the County would make the vaccine available to employees (and at what cost, and to whom), and does not address whether their vaccinations would take place during working hours or non-work hours.
- q. The County's mandate requires the Plaintiff ACPEIU's members to take a vaccine without their consent and against the expert medical advice of their doctors, thereby depriving them of their ability to refuse unwanted medical care.
- r. The mandate of forced vaccination removes the employee's ability to perform an individual medical cost/benefit analysis of a vaccination on their own health, with informed consent in consultation with their treating physician(s) privy to their medical history and profile. The mandate replaces it with the County's pre-determined "one-size fits all" political decision (one directly made by non-medical professionals), enforced through coercion by threat of termination of employment and denial of benefits.
- s. Given the legal immunity provided by the Public Readiness and Emergency Preparedness Act (PREP Act) to vaccine manufacturers and distributors for anything less than willful misconduct⁸, the County did not address any liability issues related to the vaccines, such as the liability of the County for the effects of its mandate, and whether an employee who becomes disabled or otherwise harmed after having received a vaccination, will be provided work related disability benefits and/or other methods of compensation (i.e. health insurance coverage, workers' compensation coverage, short term/long term disability coverage, life insurance, use of paid leave, etc.).
- t. The Pfizer and J&J vaccines are derived from abortion-related fetal human embryonic cell lines, making the vaccines "morally compromised" and subject to religious exemption, and per the FDA, a medical safety concern as well⁹.

⁸ The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving "willful misconduct" as defined in the PREP Act. This Declaration is subject to amendment as circumstances warrant. The PREP Act was enacted on December 30, 2005, as Public Law 109-148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F-3, which addresses liability immunity, and Section 319F-4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d-6d and 42 U.S.C. 247d-6e, respectively. See <https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures>

⁹ See "Investigating Viruses in Cells Used to Make Vaccines; and Evaluating the Potential Threat Posed by Transmission of Viruses to Humans", FDA at <https://www.fda.gov/vaccines-blood-biologics/biologics-research-projects/investigating-viruses-cells-used-make-vaccines-and-evaluating-potential-threat-posed-transmission>

- u. The CDC advises that *EUA Fact Sheets for Recipients* should be provided to patients at the time of vaccination¹⁰. See **Complaint Ex. 5 and Complaint Ex. 6**. The Fact Sheets provide explanations of the EUA status of the vaccines; summaries of potential side effects; warnings that other side effects may be possible; and advice on seeking medical care if side effects occur or persist, including reporting such side effects to the Federal medical agencies. These were not provided with the mandate.
- v. The Recipient Fact Sheets for the **J&J-Janssen, Moderna and Pfizer-BioNTech** (including Comirnaty) Vaccines provide the specific advisory information detailing numerous potential side effects, some serious and/or life-threatening. See **Complaint Ex. 5**.
- w. The COVID-19 vaccines are not 100% harmless, i.e. “perfectly safe”. Every one of the COVID-19 Vaccine Recipient Fact Sheets advise the vaccine recipient of side effects, both serious and minor, stressing that each vaccine is “unapproved”; that it has not undergone the same type of review as an FDA-approved or cleared product that they may not protect everyone; that the duration of protection is currently unknown; that the vaccines do not contain SARS-CoV-2; that the vaccines can cause several severe side effects; that these may not be all the possible side effects of the COVID-19 Vaccine; that serious and unexpected effects may occur; that the COVID-19 Vaccine is still being studied in clinical trials; to report vaccine side effects to FDA/CDC Vaccine Adverse Event Reporting System (VAERS); and that the Countermeasures Injury Compensation Program (CICP) is a federal program that may help pay for costs of medical care and other specific expenses for certain people who have been seriously injured by certain medicines or vaccines, including the vaccines. **Complaint Ex. 5**.
- x. Every one of the COVID-19 Vaccine Recipient Fact Sheets advise that “It is the patient’s choice to receive or not receive the Janssen COVID-19 Vaccine. Should the patient decide not to receive it, it will not change their standard medical care”. None of the Fact Sheets advise as to adverse non-medical-related consequences, such as loss of employment, etc. See **Complaint Ex. 5 and Complaint at para. 61-64**.
- y. As early as October 2020, the US Food & Drug Administration, in its safety surveillance capacity, is well aware of the potential for serious side effects of COVID-19 vaccinations then prepped for release. See **Complaint Ex. 7 and Complaint at para. 104**. Many of these serious side-effects were subsequently reported by patients and doctors since the release of the EUA vaccines.

¹⁰ See "Current VISs", CDC at <https://www.cdc.gov/vaccines/hcp/vis/current-vis.html>; see also "COVID-19 Vaccine Emergency Use Authorization (EUA) Fact Sheets for Recipients and Caregivers", CDC at <https://www.cdc.gov/vaccines/covid-19/eua/index.html>.

- z. According to the CDC and its “Selected Adverse Events Reported after COVID-19 Vaccination”, as of October 6, 2021, for COVID-19 vaccines issued in the United States from December 14, 2020, through October 4, 2021, VAERS received **8,390 US** reports of death among people who received a COVID-19 vaccine. See **Complaint Ex. 8**.
- aa. VAERS and OpenVAERS indicates reports of adverse events (possible side effects) incident to COVID-19 vaccinations (593,727 Total COVID-19 Vaccine only **US** Reports, through October 1, 2021) at **Complaint Ex. 9**, including deaths, hospitalizations, anaphylaxis, miscarriages, heart attacks, Myocarditis/Pericarditis, etc.
- bb. VAERS and OpenVAERS indicates the reports of adverse events (possible side effects) incident to COVID-19 vaccinations (778,683 Total COVID-19 Vaccine **ALL** (US and non-domestic) Reports¹¹, through October 1, 2021) at **Complaint Ex. 10**.
- cc. VAERS an OpenVAERS likewise shows that marked increase in reports of alleged death resulting from *all* vaccinations (not just COVID vaccinations) as of late 2020 into 2021, coinciding with release of the COVID-19 vaccines. Reports of alleged deaths incident to all vaccinations did not exceed 1,000 per year from 1990 to 2020, until 2021 when they reached 16,598, a 3,587.47% increase. See **Complaint Ex. 10**.¹²
- dd. See **Complaint at paras. 106 to 120** for more summaries of numerous, serious COVID-19 vaccine related side effects documented by VAERS.
- ee. As stated in the Recipient Fact Sheets, the vaccines could cause other side effects that remain unknown at this time due to their relatively recent development. Logically, one cannot be certain about the long-term effects of a vaccine that has not been in existence for the long term and thus cannot have been studied over a span of years. See **Complaint Ex. 5**.
- ff. Since the issuance of the vaccines, numerous agencies and countries have issued warnings or pauses on their use of the vaccines due to these effects. See **Complaint at para. 104**.

¹¹ See CDC, “Advisory Guide to the Interpretation of VAERS Data “ at <https://wonder.cdc.gov/wonder/help/vaers/VAERS%20Advisory%20Guide.htm> - “VAERS occasionally receives case reports from US manufacturers that were reported to their foreign subsidiaries. Under FDA regulations, if a manufacturer is notified of a foreign case report that describes an event that is both serious and unexpected (in other words, it does not appear in the product labeling), they are required to submit it to VAERS. It is important to realize that these case reports are of variable data quality and completeness, due to the many differences in country reporting practices and surveillance system quality.”

¹² <https://openvaers.com/covid-data>

- gg. Note that “[v]accine development is a long, complex process, often lasting 10-15 years and involving a combination of public and private involvement.”¹³. Typically, vaccine development includes six stages¹⁴. The third phase typically takes place over years, because it can take that long for a new vaccine’s side effects to manifest.¹⁵
- hh. In contrast, FDA grants EUAs in emergencies to “facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic.”¹⁶ EUAs allow FDA to make a product available to the public based on the best available data, without waiting for all the evidence needed for FDA approval or clearance.
- ii. Studies of immunizations *outside* of clinical-trial settings began in December 2020, following the first EUA for a COVID vaccine. None of the precise EUA vaccines approved for use in the United States has been tested in clinical trials for its safety and efficacy on individuals who have recovered from COVID-19.
- jj. These vaccines were rushed to the market and not tested to the standards usually used to assess drugs or biologics. Given their novelty, there is no long-term safety data on these vaccines. Short-term safety data is not being systematically collected over large populations (and, as noted herein, injury data is not being properly assessed).

(3) A preliminary injunction will properly restore the parties to their status immediately prior to the alleged wrongful conduct; namely:

- a. In this case, the injunction will restore the parties to their present status that the County seeks to permanently change as of December 1, 2021. Said status would be no different than that undertaken for nearly two (2) years, namely: COVID-19 testing, personal protective equipment (PPE) and social distancing. Thus, an injunction on the mandate will continue that *status quo*, a practice also recommended to abate the spread of COVID-19.

¹³ See "Vaccine Development, Testing, and Regulation", The History of Vaccines at <https://www.historyofvaccines.org/content/articles/vaccine-development-testing-and-regulation> cited by the CDC at See "Vaccine Testing and the Approval Process", CDC at <https://www.cdc.gov/vaccines/basics/test-approve.html>

¹⁴ See CDC, *Vaccine Testing and the Approval Process* (May 1, 2014), available at <https://www.cdc.gov/vaccines/basics/test-approve.html>.

¹⁵ See FDA, "Understanding the Regulatory Terminology of Potential Preventions and Treatments for COVID-19", available at <https://www.fda.gov/consumers/consumer-updates/understanding-regulatory-terminology-potential-preventions-and-treatments-covid-19>

¹⁶ See FDA, "Emergency Use Authorization for Vaccines Explained", available at <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained>

- b. The *status quo* is that the ACPEIU members who are not already vaccinated sanitize; wear PPE including masks and gloves; maintain social distancing to the extent possible; and are subject to weekly COVID testing, as they have for nearly two years with no COVID-19 related hospitalizations or deaths among its members (which also remains subject to the pending PLRB action at PERA-C-21-188-W). Further, given that the County's mandate will nevertheless provide 80 hours of COVID-19 paid leave time to fully vaccinated employees who contract the COVID-19 virus or are otherwise quarantined for exposure, it is reasonable to conclude that the vaccinated employees may also be subject to work requirements of PPE, social distancing and sanitization given their ability to contract and spread COVID-19.

(4) The activity to be restrained is actionable, the right to relief is clear, and the wrong is manifest, or, in other words, the party seeking the injunction is likely to prevail on the merits; namely:

- a. Conventional vaccinations inject a weakened or inactivated germ or virus (an antigen¹⁷) into the body to trigger an immune response according to their respective dosage schedules¹⁸. Pennsylvania law defining vaccines utilizes only this antigen method. See 28 Pa. Code § 23.81, Subchapter C. *Immunization*, and 28 Pa. Code § 23.82.
- b. However, the processes that the three COVID-19 vaccines at issue utilize to trigger an immune response are different in that, by their own admission, they *do not involve the injection of an antigen*, and according to the CDC, the three vaccines differ in their prescribed dosage schedules in order to achieve "full vaccination", as illustrated herein above. This makes these vaccines legally and medically distinct from those recognized under Pennsylvania law. See **Complaint Ex. 5**.
- c. The process the County has established in relation to taking COVID-19 vaccines poses dangers to Plaintiff's members' health (and thus to their liberty

¹⁷An "antigen" is any substance that causes the body to make an immune response *against that substance*. Antigens include toxins, chemicals, bacteria, viruses, or other substances that come from outside the body. See the National Cancer Institute definition of "antigen" at <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/antigen>. "Antigens" are molecular structures on the surface of viruses that are recognized by the immune system and are capable of triggering an immune response (antibody production). On influenza viruses, the major antigens are found on the virus' surface proteins. See "Antigenic Characterization", CDC at <https://www.cdc.gov/flu/about/professionals/antigenic.htm>.

¹⁸ See "Understanding How Vaccines Work", CDC at <https://www.cdc.gov/vaccines/hcp/conversations/understanding-vacc-work.html>. These methods include Live, attenuated vaccines (such as the Smallpox vaccine, the MMR vaccine and some influenza vaccines); Inactivated vaccines (such as the polio vaccine and some influenza vaccines); Toxoid vaccines (such as the DTaP vaccine); Subunit vaccines (such as the DTaP vaccine); and Conjugate vaccines (such as the Haemophilus influenzae type B (Hib) vaccine). See also "Smallpox", FDA at <https://www.fda.gov/vaccines-blood-biologics/vaccines/smallpox>.

interests) as well as threatening the members with penalties if they do not comply.

- d. The County's mandate is not a mere initial presumption that vaccination is superior to natural immunity of that it prevents infection and transmission (a contention that would have to be borne out by the science in any event or else the County had no business adopting its mandate that the ACPEIU's members can try to overcome. The mandate is, in essence, a conclusive presumption (and a procedural due process of law violation) that vaccination is required (even as to vaccines of far-lesser efficacy), unless the risks of the vaccine to a particular recipient warrant a special exception "acceptable" to the County.
- e. The County has deemed all vaccines to be equally protective in the fictitious presumption it has established. There is no scientific basis for the suppositions that the County has built into its mandate, given the Fact Sheets.
- f. The County cannot by means of its mandate effectively flip the burden of proof and require the ACPEIU's members to prove that it is safe for them to perform their respective jobs while unvaccinated. And setting up such a process, which is what County's mandate does, thereby represents a concurrent procedural due process of law violation and an unconstitutional condition burdening their liberty interests to be free of unwanted medical interventions.
- g. For the foregoing reasons, the *de facto* presumptions the mandate establishes become another part of the County's procedural due process of law violations that run afoul of unconstitutional conditions doctrine.
- h. By allocating burden of proof responsibility to the ACPEIU's members, coupled with the County stacking the process deck with presumptions that the ACPEIU has shown are scientifically unwarranted, the County contravenes the Due Process Clause.
- i. The mandate violates both the constitutional and federal statutory rights of the Plaintiff's members because it undermines their bodily integrity and autonomy and conditions their employment on their willingness to take a medically unnecessary and experimental vaccine. Forcing Plaintiff's members to take this vaccine will provide no discernible, let alone compelling, benefit either to the ACPEIU members or to the County of Allegheny. The unconstitutional conditions doctrine exists precisely to prevent government actors from clothing unconstitutional objectives and policies in the garb of supposed voluntarism when those actors fully intend and expect that the pressure they are exerting will lead to the targets of such disguised regulation succumbing to the government's will.

- j. Forced Vaccination of an employee violates individual employees' Constitutional Rights in bodily autonomy and privacy in medical decisions, rights to work for a living and pursue his or her chosen occupation, as well as rights to procedural and substantive due process and to equal protection, under the Fourteenth Amendment. Compulsory vaccination violates fundamental human rights, notably the right to prior, free and informed consent for medical interventions.
- k. Coercing employees to receive a vaccine (whether approved under an EUA or fully by the FDA) for a virus that presents a near-zero risk of illness or death to them and which they are exceedingly unlikely to pass on to others because those employees already possess natural immunities to the virus, violates the liberty and privacy interests that the Ninth and Fourteenth Amendments protect.
- l. The County cannot show that the mandate is narrowly tailored to a compelling governmental interest.
- m. Alternatively, the County cannot show that the mandate is founded in a rational basis.
- n. All three COVID-19 vaccines remain subject to Emergency Use Authorization approval. See **Complaint Ex. 5, p. 7, 13, and 20.**
- o. Though the Pfizer Comirnaty Vaccine received "full FDA approval" on August 23, 2021, no dosages of Comirnaty are available in the United States¹⁹, and the vaccine is legally distinct from the Pfizer vaccine under FDA EUA approval. All existing Pfizer vials (in the hundreds of millions), remain under the EUA (meaning people have the "option to accept or refuse"). Further, the CDC admits that "it is not known if Comirnaty protects against asymptomatic SARS-CoV-2 infection.... Most vaccines that protect from viral illnesses also reduce transmission of the virus that causes the disease by those who are vaccinated. While it is hoped this will be the case, the scientific community does not yet know if Comirnaty will reduce such transmission".²⁰ Even after licensure, the clinical trials will not be complete for these products for more than a year (and, in the case of Pfizer, approximately 2 years). These products will remain experimental and investigational and the use of these products is a Phase IV post-market trial in which all recipients are part of the trial.²¹

¹⁹ See "Newly Approved COVID-19 Vaccine Not Yet Available in US" The Epoch Times at https://www.theepochtimes.com/newly-approved-covid-19-vaccine-not-yet-available-in-us_3976794.html

²⁰ See "Q&A for Comirnaty (COVID-19 Vaccine mRNA)", FDA at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>

²¹ <https://www.cdc.gov/vaccines/basics/test-approve.html>

- p. As 21 U.S.C.A. § 360bbb-3(c)(3) only permits the emergency use of products if “there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition, then if Pfizer has indeed “won the race” against Moderna and J&J to “full FDA approval” for persons age 16, thus removing its own vaccine from the EUA, then logically the approval makes the Pfizer Comirnaty vaccine the *only* “adequate, approved, and available alternative to the other EUA COVID-19 vaccines for diagnosing, preventing, or treating COVID, the serious or life-threatening disease or condition”, suggesting that Moderna and J&J’s EUAs should now be void and their use denied until they are also fully approved. See.

Complaint Ex. 5.

- q. Under 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III), EUA products must be subject to consent or refusal. See Doe #1 v. Rumsfeld, 297 F.Supp.2d 119 (2003).
- r. The word “consequences” used in 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) should not be defined broadly to encompass any adverse action that may be taken should a person decline vaccination. Under this interpretation, “consequences” could include health risks as well as adverse consequences related to work, access to education, use of public transportation, ability to shop in a store, board an airplane, and more. Since the term is not defined in the statute, statutory interpretation principles dictate that the word should be defined in ordinary terms within the context of the statute. Allstate Life Ins. Co. v. Com., 617 Pa. 1, 52 A.3d 1077 (2012). If this interpretation were adopted, the FDCA would require that individuals be informed, prior to their decision on whether to accept an EUA medical product, of all possible health and non-health related consequences. It is unlikely that Congress would set this broad disclosure requirement on health care providers who are administering products available under an EUA. Such language is not presently found in the Fact Sheets, and the CDC itself has said that EUA products cannot be mandated.²² See **Complaint Ex. 5**.
- s. Thus, the mandatory disclosures of Section 360bbb-3(e)(1) (A)(ii)(III) [i.e. the Fact Sheets] are limited to health risks of refusing an EUA product during a public health emergency. Because EUA products are by definition experimental or investigational, and thus require the right to refuse.
- t. There is no evidence of employers historically mandating vaccinations subject to EUAs prior to the COVID-19 vaccinations in 2021. This is because mandating COVID-19 vaccines under an EUA is legally and ethically problematic. The first mandates regarding the vaccines at issue did not occur until nearly a year after release.

²² See “Advisory Committee on Vaccination Practices”, CDC at https://www.cdc.gov/vaccines/videos/low-res/acipaug2020/COVID-19Supply-NextSteps_3_LowRes.mp4

- u. Even beyond its constitutional defects, the County's unlawful mandate is irreconcilable with and frustrates the objectives of the statute governing administration of medical products authorized for emergency use only. Pursuant to the Supremacy Clause of the United States Constitution, federal law overrides conflicting state law and action by agents of the County of Allegheny. Accordingly, the mandate is preempted by the EUA statute and must be enjoined. U.S. Const. art. VI, cl. 2. "State law is pre-empted to the extent that it actually conflicts with federal law." English v. General Elec. Co., 496 U.S. 72, 79 (1990) (internal citations and quotation marks omitted).
- v. The EUA Statute preempts the County's mandate. Defendant County's mandate requires the ACPEIU's members to receive a vaccine in order to continue working for the County without regard to their natural immunity or the advice of their doctors concerning their health conditions.
- w. The ACPEIU's member must also divulge personal medical information to the County and are threatened with disciplinary action if they decline to comply with this arbitrary mandate.
- x. The mandate thus coerces or, at the very least, unduly pressures, the ACPEIU's members into getting vaccines that FDA approved only for emergency use.
- y. The EUA statute mandates informed and voluntary consent. See John Doe No. 1 v. Rumsfeld, No. Civ. A. 03-707(EGS), 2005 WL 1124589, *1 (D.D.C. Apr. 6, 2005) (allowing use of anthrax vaccine pursuant to EUA "on a voluntary basis"). See also 21 U.S.C. § 360bbb- 3(e)(1)(A)(ii). It expressly states that recipients of products approved for use under it be informed of the "option to accept or refuse administration," and of the "significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown." Id.
- z. Since the County's mandate (a political subdivision of the Commonwealth of Pennsylvania) coerces the ACPEIU's members by making enjoyment of their constitutionally and statutorily protected consent rights contingent upon receiving an experimental vaccine, it cannot be reconciled with the letter or spirit of the EUA statute. See 21 U.S.C. § 360bbb-3.
- aa. The conflict between the mandate and the EUA statute is particularly stark given that the statute's informed consent language requires that recipients be given the "option to refuse" the EUA product. That is at odds with the mandate effectively forcing Plaintiff's members to sustain significant injury to their careers if they do not want to take the vaccine, i.e. the mandate frustrates the objectives of the EUA process. See Geier, 520 U.S. at 873 (citing Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

- bb. This Honorable Court must not ignore the plain statutory prohibition on mandating EUA products.
- cc. The FDA's Approval of the Comirnaty Vaccine does not save the mandate from preemption. That the Comirnaty Vaccine has received full FDA approval does not foreclose the preemption argument presented herein, since this approval does not extend to the Pfizer-BioNTech Vaccine, which is actually available. Indeed, even Pfizer acknowledges that the two vaccines are "legally distinct." See **Complaint Ex. 5**.
- dd. The claim that the two vaccines are interchangeable comes from a Guidance document, which does not carry force of law. Christensen v. Harris County, 529 U.S. 576, 587-88 (2000).
- ee. The FDA cannot convert a legally distinct product that is available (the BioNTech vaccine) into a fully approved vaccine (Comirnaty) that is not yet widely available. The FDA, via a mere guidance document, is improperly trying to establish equivalence between what are two legally distinct vaccines. That is improper as a general matter of administrative law. It is yet more improper since it is a maneuver conducted to override federal statutory rights to informed medical consent. The County cannot be permitted to rely on mere FDA-issued guidance documents, especially not where doing so would vitiate clear statutory rights.
- ff. Since the Comirnaty Vaccine, being the only FDA-approved vaccine, is not widely available, and certainly is not available to all members of the population, the EUA statute's sphere of preemption continues to apply to override the County's Mandate. Worse yet, no publicly released documents from the County indicate that the County has even considered the issue of federal preemption and whether the full approval granted to the unavailable Comirnaty Vaccine has any significance to the rights of the ACPEIU's members.
- gg. Just as Congress prohibited the federal government from mandating EUA products, the state governments and their political subdivisions like the County, cannot do so, for the Supremacy Clause dictates that the EUA statute must prevail over conflicting state law or policy.
- hh. Defendant County's Mandate is thus preempted by federal law and must be preliminarily and permanently enjoined. See U.S. Const. art. VI, cl. 2; see also Kindred Nursing Ctrs. Ltd P'ship v. Clark, 137 S. Ct. 1421 (2017).

(5) The injunction is reasonably suited to abate the offending activity; namely:

- a. The "offending activity" is the County's unilateral imposition of a vaccine mandate and its deadline of December 1, 2021. Granting the injunction will

stop the mandate and permit the matter to be addressed in litigation (both before the PLRB and this Honorable Court) before an irreversible medical treatment (i.e. vaccination of the employee) is administered, to insulate the Plaintiff ACPEIU's members from this pressure and to vindicate their constitutional and statutory rights, including its Complaint of Unfair Practices arguing that a vaccine mandate is a mandatory subject of bargaining/term and condition of employment under PERA, and not subject to unilateral County action.

(6) And a preliminary injunction will not adversely affect the public interest;

namely:

- a. The ACPEIU members who do not comply with the mandate will be subject to termination by the County, which includes not simply the loss of wages, service credit and employment benefits, but also "employment status" for future employment, as a discharge discipline is usually utilized by the County for serious legal and/or moral offenses (theft, excessive force, conduct unbecoming, fraternization, contraband, etc.) that will negatively affect future employment opportunities. This discipline is not usual for vaccination status, especially for EUA vaccines.
- b. If the percentage of the ACPEIU member/employees who refuse to comply with the mandate as of December 1, 2021 is sizeable (estimated to be 40% of the Jail's work force at present), then the functions of the Allegheny County Jail in housing inmates will be seriously adversely affected, affecting both officer, inmate and public safety.
- c. It will be next to impossible to obtain a sufficient number new employees who are properly trained in the care, custody and control of inmates to replace any terminated unvaccinated employees. New Correction Officers Trainees may be rushed into positions before their training is complete, and existing hires will be subject to continual double or triple overtime shifts to cover for those shifts usually staffed by the unvaccinated employees. This creates an increased financial burden to the County and an increased risk to officer safety (as well as increased legal liability).
- d. Further, the County has already invested considerable expense in the training of unvaccinated employees, so discharging them for vaccination status will harm the County even further, especially if any such discipline is later overturned by labor arbitrators with "make whole" afforded to the employees (further increasing costs to the County).
- e. Accordingly, the disciplinary action that the County is using to leverage ostensibly "voluntary" compliance with its mandate is not proportional to the

County's purported public health aims, and frustrates the ACPEIU members rights under PERA.

- f. COVID-19 Mortality Rates for the age range of the ACPEIU'S members are statistically, significantly minimal. See **Complaint Ex. 12.**
- g. The overwhelming majority of ACPEIU members work within the Jail and interact with other Jail employees and the inmates confined there; thus, they are not exposed to the general public.
- h. In nearly 2 years, no ACPEIU members were hospitalized for COVID-19. See **Complaint Ex. 1.**
- i. In nearly 2 years, no ACPEIU members died of COVID-19. See **Complaint Ex. 1.**
- j. In nearly 2 years, there was only one (1) COVID-19-related inmate death. See **Complaint Ex. 1.**
- k. Allegheny County's COVID-19 Mortality Rate is 1.79%, statistically consistent with the United States at 1.6%.
- l. According to the CDC, COVID overall has a 99.74% survival rate. Among young people, that number is even higher. For people aged 18 to 29, the survival rate is 99.97%.²³
- m. The ACPEIU estimates that roughly 60% of its current members are vaccinated against COVID-19, while 40% are not. The membership also includes those who have recovered from COVID-19 infection (between 166 and 170 employees). See **Complaint Ex. 1.**
- n. Per the CDC data on US COVID-19 deaths among males and females, tabulated as of September 15, 2021, for males and females ages 18 through 50 (which is the average age range of the ACPEIU members), the rate of COVID-19-related deaths is between 0.002% and 0.100%. See **Complaint Ex. 12.**
- o. Asymptomatic Transmissions of COVID are too insignificant to warrant the mandate of a vaccine.
- p. Further, according to the CDC, COVID-19 vaccinations do not provide immunity from COVID-19 infection and do not prevent transmission of COVID-19 to others, but instead act as an individual "therapeutic" treatment beneficial only for health of the subject employee to lessen the severity of

²³ See "Provisional COVID-19 Deaths by Sex and Age ", CDC at <https://data.cdc.gov/NCHS/Provisional-COVID-19-Death-Counts-by-Sex-Age-and-S/9bhg-hcku/data>

symptoms²⁴. The clinical trial study designs for COVID vaccines did not address transmission, but merely addressed reducing symptoms, as explained in the materials they submitted to the FDA to obtain Emergency Use Authorization²⁵. See **Complaint paras. 141 to 156**.

- q. Numerous cited studies indicate the declining efficacies of the vaccines after as little as 6 months, hence the push for “boosters”. See **Complaint paras. 141 to 156**.
- r. The County’s mandate itself advised that employees who have submitted proof of vaccination will be entitled to up to eighty (80) hours of paid leave for reasons related to COVID-19: 1) if an employee tests positive for COVID-19; 2) if an employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; or 3) if an employee has been advised by a health care provider to self-quarantine related to COVID-19 (with appropriate documentation provided by the employee). See **Complaint Ex. 4**. This is an explicit admission that the County anticipates its employees to become infected with COVID-19, and thus a risk to others, regardless of their individual full vaccination status, and as such, is an admission of the ineffectiveness of the vaccinations on immunity from the virus, and the prevention of spread of the virus to others, which is the focus of their mandate.
- s. Accordingly, the County’s mandate, ostensibly intended to benefit others in the general public by requiring vaccination of its employees to prevent the spread of the virus to persons unvaccinated, has little to no relevance in protecting members of the general public from infection by “first responder” employees, when the public will not, in fact receive the intended benefit.
- t. If that person cannot be vaccinated, the argument that a “first responder” must be vaccinated themselves in order to protect those unprotected others is greatly diminished when the mandated vaccines *provide only protection from the effects caused by more serious illness, and not prevention of transmission of the virus to others*.
- u. Given that the vaccination is publicly touted as “safe and effective”, there is no reason that a person in the general public (or an inmate confined in the Jail) cannot obtain a vaccination to ensure their own protection. The Federal, State and Local governments have made the vaccine available to all who desire it, often at little to no cost. In some cases, monetary enticements (such as monetary bonuses, tickets to lotteries, etc.) have been offered to entice vaccination. Such enticement would not be necessary if the vaccinations were

²⁴ See <https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html>

²⁵ <https://www.fda.gov/media/144245/download>; <https://www.fda.gov/media/144434/download>; <https://www.fda.gov/media/146217/download>.

truly effective against a deadly virus, as those unvaccinated would be clamoring for protection.

- v. If an unvaccinated person cannot receive the injection (based upon medical consultation with their own provider) then it must be for their health-related reasons where vaccination will be harmful to them, thus justifying the merit and acceptance of medical exemptions of employees from vaccinations as well.
- w. The factual, medical circumstances are not a binary choice between “vaccinated and unvaccinated”. The County’s mandate makes no effort to distinguish, or exempt from compliance, those employees with natural immunity to COVID-19, i.e. immunity (antibodies) most commonly developed after recovering from COVID-19 infection, or immunity otherwise obtained due to the employee’s unique biochemistry²⁶.
- x. Given that the vaccines are more therapeutic than preventative²⁷, there is no justifiable reason to terminate an employee who already recovered from the virus for failing to obtain the vaccine that does not prevent infection and transmission.
- y. Given an employee’s proof of naturally acquired immunity by way of antibody testing, the County cannot establish a compelling governmental interest in overriding the personal autonomy and constitutional rights of Plaintiff’s members and those who are similarly situated by forcing them either to be vaccinated or to suffer adverse professional consequences.

59. The entry of a preliminary injunction is necessary in order to maintain the *status quo* and to prevent the invasion of the ACPEIU members’ bodies via compelled vaccination pending the outcome of the PLRB hearing and adjudication process.

²⁶ See. <https://www.yahoo.com/now/fauci-lacks-firm-answer-covid-200300992.html>.

²⁷ On October 4, 2021, the Hill reported that a study released in The Lancet medical journal found that the efficacy of the Pfizer-BioNTech COVID-19 vaccine fell below 50 percent after about six months after the second dose. The data indicates the decline was not dependent on the strain of the coronavirus causing an infection. The Pfizer-funded study (at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2902183-8>) found that Pfizer’s vaccine was 88 percent effective in the first month after full vaccination but dropped to 47 percent effectiveness at about six months. The vaccine was also found to be highly effective against the delta variant, which was found to be over 90 percent effective in the first months before dropping to 53 percent effectiveness after four months. Researchers determined that the waning immunity had to do with the amount of time since an individual was given the second shot rather than due to the highly infectious delta strain. However, company representatives assert that the data also shows that the vaccines help prevent hospitalizations and deaths, and the third “booster” shot will offer reliable protection against the serious Delta variant. <https://thehill.com/policy/healthcare/575279-study-shows-pfizer-covid-19-vaccine-effectiveness-declines-after-six-months>

60. The ACPEIU avers that the injunction is necessary to prevent immediate and irreparable harm to the ACPEIU and its members caused by the vaccine mandate that cannot be adequately compensated by damages, as detailed herein above.
61. The ACPEIU avers that greater injury would result from refusing an injunction than from granting it, and, concomitantly, issuance of an injunction will not substantially harm other interested parties (such as the County) in these proceedings. Rather, a denial of the injunction would harm the County by potentially nearly halving its workforce if follows through on its threat to terminate the unvaccinated employees, thereby harming public safety, officer and inmate safety, and the County's financial stability.
62. While the ACPEIU and its members would be irreparably harmed by the County's continual interference with its and its members' rights under the PERA, the County would suffer no adverse consequences if required to comply with its obligations under the PERA.
63. The County cannot establish a compelling governmental interest in overriding the personal autonomy and constitutional rights of Plaintiff's members by forcing them either to be vaccinated or to suffer adverse professional consequences.
64. The County's new "COVID-19 vaccine mandate" work rule changes the existing working conditions for the ACPEIU bargaining unit members. There is presently no COVID-19 vaccination requirement. Bargaining unit members are only required to wear masks and personal protective equipment, and to submit to COVID-19 testing as indicated herein above (which also remains subject to the pending PLRB action at PERA-C-21-188-W).

65. The ACPEIU avers that a preliminary injunction will properly restore the parties to their status immediately prior to the vaccine mandate.
66. The ACPEIU avers that the activity to be restrained, i.e. the mandate compelling vaccination, is actionable, the right to relief is clear, and the wrong is manifest, i.e., the ACPEIU is likely to prevail on the merits.
67. The ACPEIU avers that the injunction is reasonably suited to abate the vaccine mandate.
68. The ACPEIU avers that a preliminary injunction will not adversely affect the public interest, given the insufficiency of the vaccines to stop transmission and infection of COVID-19.
69. The County cannot show that their conduct was reasonable or that a defense exists to the Plaintiff's claims.

Bond Requirement

The ACPEIU will provide any bond required by this Honorable Court under Pa. R.C.P. No. 1531(b). The question of a proper amount of bond is within the discretion of this Honorable Court. Broad & Locust Assocs. v. Locust-Broad Realty Co., 318 Pa. Super. 38, 464 A.2d 506 (1983). In determining a bond amount upon issuance of a preliminary injunction, trial courts should balance the equities involved, and the court should require a bond which would cover damages that are reasonably foreseeable, rather than a bond that would cover all damages. Greene Cty. Citizens United by Cumpston v. Greene Cty. Solid Waste Auth., 161 Pa. Cmwlth. 330, 636 A.2d 1278 (1994).

Notice of Request for Injunctive Relief and for Immediate Hearing

The ACPEIU requests an immediate hearing before this Honorable Court on its request for a preliminary injunction as soon as possible, and to impose such relief as is necessary to

enjoin the County so that the *status quo* remains in place during the pending litigation before the Pennsylvania Labor Relations Board at PERA-C-21-188-W, and until a substantive decision is issued by this Honorable Court on the Plaintiff ACPEIU's underlying *Complaint in Equity* filed in this same action, namely, enjoining any vaccine mandate issued or adopted by Allegheny County relating to COVID-19, including but not limited to, said vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021, with an effective date of December 1, 2021.

Supporting Material

This *Motion* is based upon this document, on the *Complaint in Equity* and its exhibits, on the following *Brief in Support*, affidavits, declarations, judicially-noticed sources, and evidence filed in support of this *Motion*, a Proposed Order, and whatever testimony, argument and evidence may be presented at the hearing of this Motion. Pa. R. Civ. P. 1531(a); Philadelphia Minit-Man Car Wash v. Bldg. & Const. Trades Council of Philadelphia & Vicinity, AFL-CIO, 411 Pa. 585, 192 A.2d 378 (1963); Lewis v. City of Harrisburg, 158 Pa. Cmwlth. 318, 631 A.2d 807 (1993); Robert Clifton Assocs., Inc. v. O'Connor, 338 Pa. Super. 246, 487 A.2d 947 (1985).

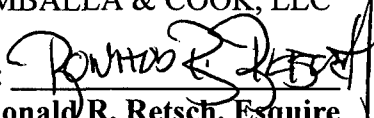
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, based upon the foregoing, Plaintiff, Allegheny County Prison Employees Independent Union (ACPEIU), respectfully requests that this Honorable Court enter an Order and Rule directing the Respondent County of Allegheny to Show Cause why it should not be enjoined by an Order of this Honorable Court pursuant to Pa. R.A.P. 1531; to schedule an immediate hearing in accordance therewith as soon as possible, and to impose such relief as is necessary to enjoin the County so that the *status quo* remains in place during the pending litigation before the Pennsylvania Labor Relations Board at PERA-C-21-188-W, and until a

substantive decision is issued by this Honorable Court on the Plaintiff ACPEIU's underlying *Complaint in Equity* filed in this same action, namely, enjoining any vaccine mandate issued or adopted by Allegheny County relating to COVID-19, including but not limited to, said vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021, with an effective date of December 1, 2021.

Respectfully submitted,

WELBY, STOLTENBERG,
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Counsel for Plaintiff, ACPEIU

Date: October 15, 2021

VERIFICATION

I, Officer Jason Batykefer, verify that I am a current employee of the County of Allegheny (Jail), as well as the duly elected President of the Plaintiff, Allegheny County Prison Employees Independent Union, and that I am authorized to make this verification on its behalf. I further verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


s/ Jason Batykefer


Date: 10-15, 2021

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

WELBY, STOLTENBERG,
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Counsel for Plaintiff, ACPEIU

Date: October 15, 2021

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**ALLEGHENY COUNTY PRISON
EMPLOYEES INDEPENDENT UNION
(ACPEIU),**

Plaintiff,

v.

**COUNTY OF ALLEGHENY,
PENNSYLVANIA (COUNTY JAIL),**

Defendant.

CIVIL DIVISION

NO. GD-21-12507

ORDER

AND NOW, this _____ day of _____, 2021, pursuant to the Plaintiff Allegheny County Prison Employees Independent Union (ACPEIU)'s *Motion for Preliminary Injunction* in support of its *Complaint in Equity for Preliminary and Permanent Injunctions*, and it is hereby ORDERED that said Motion is GRANTED.

Effective immediately, the County of Allegheny is preliminarily enjoined from mandating any COVID-19 vaccinations, including but not limited to, the December 1, 2021 COVID-19 vaccine mandate effective on employees of the Executive noticed by the County on September 29, 2021.

In complying with their obligations under this Order, the County shall also comply in full with its obligations under all applicable Pennsylvania, Federal, and local laws, including those under the Public Employee Relations Act, regarding the bargaining of mandatory subjects of bargaining and terms and conditions of employment with its employees, and nothing in this Order relieves the County of such obligations. This includes the pending litigation before the Pennsylvania Labor Relations Board at PERA-C-21-188-W.

This Court shall retain jurisdiction over this matter.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**ALLEGHENY COUNTY PRISON
EMPLOYEES INDEPENDENT UNION
(ACPEIU),**

Plaintiff,

v.

**COUNTY OF ALLEGHENY,
PENNSYLVANIA (COUNTY JAIL),**

Defendant.

CIVIL DIVISION

NO. GD-21-12507

ORDER AND RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2021, upon consideration of the Plaintiff Allegheny County Prison Employees Independent Union's foregoing *Motion for Preliminary Injunction pursuant to Pa. R.C.P. No. 1531*, it is hereby ORDERED, ADJUDGED and DECREED that:

1. A rule is issued upon the Defendant, County of Allegheny, Pennsylvania (Jail) (County), to show cause why the Plaintiff, Allegheny County Prison Employees Independent Union (ACPEIU), is not entitled to the relief requested in Plaintiff's *Motion for Preliminary Injunction* in accordance with Pa. R.C.P. No. 1531;
2. The Defendant County shall file an *Answer* to the Motion within _____ days of this date;
3. The Plaintiff ACPEIU's *Motion* shall be decided under Pa. R.C.P. No. 1531;
4. Plaintiff ACPEIU's *Brief* shall be filed on or before _____, 2021;
5. The Defendant County's *Brief* shall be filed on or before _____, 2021;

6. Oral Argument on said *Motion* is hereby scheduled for _____,
2021, at _____ .m. in Courtroom No. _____ of the Court of Common
Pleas of Allegheny County, before the Honorable _____;
7. All pending matters and proceedings shall be stayed in the meanwhile, with the exception
of the litigation pending before the Pennsylvania Labor Relations Board at PERA-C-21-
188-W; and
8. Notice of the entry of this Order shall be provided to all parties by the Plaintiff.

BY THE COURT:

_____ J.