

## **DISSENT OF UNION PANEL DELEGATE CAUMIANT**

AFSCME Council 31 dissents because we do not believe that a mandatory vaccination policy without a testing option will result in a level of protection against infection by and transmission of COVID-19 that is superior to the protection that can be provided by a “vaccinate or test” mandate. We are concerned that a “vaccinate only” policy will actually reduce safety in correctional and juvenile justice facilities by 1) weakening the impetus for the State to repair its inadequate employee testing program, as well as other long-neglected preventive measures; and 2) decreasing already low staffing levels—whether through employee resignations, retirements, involuntary leaves of absence or layoffs—that will make it difficult to maintain order, security and safety in these facilities. Given the high number of breakthrough cases among the already vaccinated, it is essential that measures not reliant on vaccination be part of any COVID containment strategy in correctional facilities.

AFSCME Council 31 has a long history of fighting for the health and safety of its members. It has fought countless battles to ensure the safety and security of State correctional and juvenile justice facilities and the members who work in those facilities. During the COVID-19 pandemic, Council 31, along with local union leaders at correctional and juvenile justice facilities across the state, have worked tirelessly to both keep members safe on the job and enable the Departments of Corrections and Juvenile Justice to continue to fulfill their public safety mission.

COVID vaccination is one of a number of measures that are important to safe workplaces during the current pandemic. Council 31 has worked steadfastly to educate union members and their families about the safety and efficacy of the vaccines that help prevent the transmission of

COVID-19. However, the Union opposes the State’s plan to impose a vaccination mandate on all security employees in DOC and DJJ congregate facilities. Employees who braved the entire pandemic should not have to choose between vaccination and their livelihoods.

As outlined below, vaccination is only one of many tools to prevent the transmission of disease in DOC and DJJ facilities. Those other tools include a robust surveillance testing program, proper screening and testing for all individuals who enter correctional centers, use of appropriate face coverings and respiratory protection, expeditious isolation and quarantine of infected and exposed individuals, proper social distancing procedures, and proper ventilation and cleaning of facilities. Indeed, given the number of breakthrough infections among the vaccinated caused by the delta and omicron variants, these measures are more critical now than ever before.

Our argument proceeds in four steps.

1. The case for “vaccinate only” mandates rests upon the premise that vaccination will safeguard against infection by and transmission of COVID-19.

It is now clear, however, that vaccinated individuals can frequently become infected by and transmit COVID-19 to both unvaccinated and to other vaccinated individuals.<sup>1</sup> Research also shows that the effectiveness of vaccines declines over time.<sup>2</sup>

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<sup>1</sup> UX-19: Burugorri-Pierre, C., et al., *Investigation of an Outbreak of COVID-19 in French Nursing Home With Most Residents Vaccinated*, JAMA Network Open, (September 12, 2021); UX-18: Brown, et al., *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings – Barnstable County, Massachusetts, July 2021*, Centers for Disease Control MMWR, (August 6, 2021); UX-16: Hagan, et al., *Outbreak of SARS-CoV-2 B.1.617.2 (Delta) Variant Infections Among Incarcerated Persons in a Federal Prison – Texas, July-August 2021*, Centers for Disease Control, MMWR, (September 24, 2021); UX-20: Singanayagam, et al. *Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective longitudinal, cohort study*, The Lancet, (October 28, 2021).

<sup>2</sup> UX-21: Rosenberg et al. *New COVID Cases and Hospitalizations Among Adults by Vaccination Status – New York May 3-July 25, 2021*, MMWR, Centers for Disease Control,

The emerging scientific evidence regarding the spread of the omicron variant confirms that current vaccines are not as effective as anticipated. Recently, a peer reviewed study concluded that the omicron variant was “markedly less resistant to neutralization by serum not only from convalescent patients, but from individuals vaccinated with one of the four widely used COVID-19 vaccines. Even serum from persons vaccinated and boosted with mRNA-based vaccines exhibited substantially diminished neutralizing activity against B.1.1.529.” Liu, L., et al., *Striking antibody evasion manifested by the Omicron variant of SAR-CoV-2*, Nature (December 23, 2021).

Other evidence confirms that the Omicron variant spreads easily even in vaccinated populations. UX-52: *SARS-CoV-2 B.1.1.529 (Omicron) Variant – United States, December 1-8*, Centers for Disease Control, MMWR 4 (December 10, 2021)(chart showing that 34 of 43 cases of omicron variant had occurred in vaccinated individuals); UX-58: Crist, C., *Cornell University Reports 930 COVID Cases, Including Omicron Variant*, WedMD (December 15, 2021)(noting that virtually every case of the Omicron variant to date at Cornell has occurred in fully vaccinated students, including some who had received a booster shot).

Of the 27,000 inmates confined to Illinois correctional centers, 30% are unvaccinated. Mandatory vaccination of correctional employees will do little to protect those inmates against infection from the omicron variant of COVID-19. Nor will mandatory vaccination of correctional employees significantly protect the communities surrounding correctional centers because correctional employees are already vaccinated at higher rates than the general population

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September 17, 2021 ; UX- 22: Cohn et al. *SARS-CoV-2 Vaccine Protection and deaths among US veterans during 2021*, Science, Nov. 4 2021

in the adjacent areas.<sup>4</sup> And, given the transmissibility of the Omicron variant and the need to protect thousands of unvaccinated inmates, infected but asymptomatic, vaccinated correctional personnel will still need to isolate or quarantine due to infections. Thus, the incremental benefits of mandatory vaccination at this stage of the pandemic do not justify the potential job loss among correctional employees who do not wish to be vaccinated.

2. In addition, there is a real danger that mandatory vaccination will have unintended consequences. One all too likely outcome is that mandatory vaccination will weaken the impetus for IDOC and DJJ to strengthen the other layers of protection that are essential for limiting the transmission of COVID-19. As the Director of the World Health Organization warned at the beginning of the surge of the omicron variant, “we are concerned about a false sense of security that vaccines have ended the pandemic, and that people who are vaccinated do not need to take any other precautions . . . even if you are vaccinated, continue to take precautions to prevent becoming infected yourself, and to infecting someone else who could die. That means wearing masks, maintaining distance, avoiding crowds and meeting others outside if you can, or in a well ventilated space inside.” UX-23: WHO Director-General’s opening remarks at the media briefing on COVID-19, 24- November 2021. As will be described later, IDOC’s preventative measures in the pandemic have fallen well short of what is required to consistently prevent disease transmission. In many instances, IDOC has relaxed stronger preventative measures prematurely. This history is good evidence for what would happen when the State imposes a vaccine mandate.

A second unintended consequence is that a significant number of correctional and juvenile

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<sup>4</sup> UX-38 compared the vaccination rates of correctional employees with the vaccination rates of the counties in which their correctional centers were located. The vaccination rate of the employees exceeded the vaccination rate in the county of the correctional center in all but six instances. This comparison is attached to this dissent.

justice employees will resist the mandate, by quitting, retiring, or by taking unpaid leave or layoff if available. The evidence at the hearing in this case was that staffing in Illinois correctional centers has been stretched to the breaking point during the pandemic and that the IDOC was struggling to recruit new correctional officers. The Union introduced both anecdotal and survey evidence that indicated that many unvaccinated employees might leave their positions if they were subject to a vaccination mandate. This would aggravate an already strained staffing situation.

The neutral arbitrator discounts this argument, by presuming that the State has weighed the risks of substantial attrition and concluded that the benefits outweigh the risks. There is no such evidence in the record in this case. Moreover, this conclusion ignores the evidence in the record that understaffed correctional institutions present safety risks to the personnel employed in them. In other words, the members of AFSCME have a very direct interest when it comes to the dangers of understaffed prisons. And, in addition to the risk of injury in an understaffed environment, the remaining correctional employees too often find they must neglect their family life in order to work the overtime required to maintain the security at understaffed institutions. Such adverse conditions of employment mean that the arbitrator should not have left the question of unforeseen attrition to the State's undocumented "good judgment." Instead, the impact of the adverse conditions of employment must be carefully balanced against the benefits of the State's proposed new condition of employment to determine whether the imposition of the new condition is justified by the evidence.

3. It is a basic principle of law that interest arbitration is a conservative process and that a party seeking to impose new conditions of employment status quo must present compelling reasons to do so. As the neutral arbitrator observed, this high bar often controls the results in

interest arbitration disputes.

The Union's position, both at bargaining and at the hearing, is that mandatory vaccination should only be considered if other means for preventing the spread of COVID-19 had been implemented and had failed. In response to the Union's proposal in negotiations for a mandatory "vaccinate or test" program, the Employer alleged that testing had not proved to be a viable means of controlling the virus. However, as the neutral arbitrator notes, the Union presented "compelling" evidence that IDOC had not implemented many measures that would control the transmission of COVID-19 short of mandatory vaccination, including evidence showing that IDOC was not adhering to its own policies regarding weekly testing of inmates and employees, the screening of visitors, social distancing in IDOC programming, and the quarantine of individuals likely to spread infection.<sup>5</sup> The evidence also showed that the IDOC had no screening program in place for delivery people, tradespersons, volunteers and others with frequent access to correctional facilities.<sup>6</sup>

The Union also submitted evidence that a better testing program would decrease transmission of COVID-19 and that a better program was both economically and logistically feasible.<sup>7</sup> All of this evidence supports the argument that IDOC and DJJ can readily take

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<sup>5</sup> While the Declarations of Chief Eilers and Dr. Bowman asserted that IDOC had a program of weekly testing in place, the evidence at the hearing was to the contrary. While the current policy for visitors requires temperature and symptom checks, AFSCME witness testified that the thermometers did not seem to work and that any symptom screening was perfunctory at best. The Union presented evidence that, despite the current surge, the IDOC was relaxing social distancing policies at Dixon, Centralia and East Moline. It presented evidence that contact tracing in the Department was infrequent and it presented an example of a recent outbreak at Shawnee that occurred because the Department did not act quickly enough when it learned of a positive test.

<sup>6</sup> In addition to the testimony of the AFSCME witnesses, the IDOC Chief of Operations confirmed this point during his cross examination.

<sup>7</sup> For example, the Union submitted evidence regarding the effectiveness of testing in other large

additional measures to control COVID-10 transmission short of mandatory vaccination. This evidence negates the State's argument that mandatory vaccination of correctional employees is necessary to prevent outbreaks of COVID-19 in state facilities because other preventative measures are not sufficient to do so.<sup>8</sup>

4. The neutral arbitrator correctly holds that the statutory factor of internal comparables does not favor the State's position in this case. In our judgment, though, the neutral arbitrator should have held that the factor of external comparables weighs strongly in favor of the Union's position in this case. Those comparables extend over all sectors of employment in the United States.

First, the United States Occupational Safety and Health Administration, the pre-eminent occupational health and safety agency in the Nation, has determined that the option of weekly

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congregate settings. UX-43; Motta, et al., *Assessment of Simulated Surveillance Testing and Quarantine in a SAR-CoV-2-Vaccinated Population of Students on a University Campus*, JAMA Health Forum (October 1, 2021); UX-44; Chin et al., *Frequency of Routine Testing for Coronavirus Disease 2019 (COVID-19) in High-risk Health Care Environments to Reduce Outbreaks*, Clinical Infectious Diseases, Brief Report (October 26, 2020).

It also submitted evidence regarding the low cost and high effectiveness of the saliva testing program developed by the University of Illinois. UX-28: Smith et al., *Longitudinal Assessment of Diagnostic Test Performance Over the Course of Acute SARS-CoV-2 Infection*, Journal of Infectious Diseases, Volume 224, Issue 6 (September 15, 2021)(describing accuracy of saliva testing program); UX-40: Shield Illinois, *Shield Illinois Saliva Test for Organizations* (setting cost of test under the Illinois Shield program at \$20-30 per test); UX-42; Mendoza, et al., *Implementation of a pooled surveillance testing program for asymptomatic SAR-CoV-2 infections in K-12 schools and universities*, EclinicalMedicine 38 (2021) 1010028 (July 17, 2021)(describing procedures for testing many samples with one test).

<sup>8</sup> In the declaration submitted by Dr. Bowman, he asserted that an outbreak of COVID-19 at Centralia was caused by an unvaccinated staff member. On cross examination, Dr. Bowman conceded that the chart cited on this point in his declaration did not support this assertion. The State introduced no additional evidence to support Dr. Bowman's statement. The Union introduced countervailing evidence from the AFSCME Local Union President at Centralia that linked the outbreak to visitors to inmates in the facility in the last week of September 2021.

testing (along with the wearing of masks) is sufficient to prevent grave danger from COVID-19 in large private sector workplaces. United States Department of Labor, *COVID-19 Vaccination and Testing: Emergency Temporary Standard*, 86 Fed. Reg. 61,402 (Nov. 5, 2021). Under State law, the Illinois Department of Labor will have to promulgate an equally protective health standard for governmental employers in the State of Illinois. 820 ILCS 219/35(b)(requiring Department to promulgate State regulation that is as effective as federal standards within 30 days of the notice of federal emergency temporary standard rule making). The vaccine or test option will then become the default rule for every public employer, including the State.

Second, none of the other large states in the Nation require their State corrections employees to be vaccinated as a condition of employment. UX-34. Only seven states require vaccination of correctional employees. UX-35.

Third, the next largest correctional employer in the State, the Sheriff of Cook County, which operates one of the largest county correctional facilities in the Nation, is not currently enforcing a vaccine mandate. UX-36(a).

Fourth, one of the other large law enforcement agencies in the State, the Illinois State Police, has no vaccine mandate. Indeed, there was no evidence that the State has even proposed such a mandate for the State Police.

The IPLRA explicitly requires arbitrators to consider external comparables if applicable. While there are undoubtedly distinctions between State correctional systems, there are many basic similarities. Moreover, the basic epidemiology of SARS-CoV-2 is the same in every large, populous State. It is hard to imagine how the correctional systems in those states would not be similar to Illinois.



It is almost impossible to imagine why the Cook County Jail is not a comparable. It is in the same State. Many individuals move from the Jail to IDOC. The labor market for the Jail overlaps with the labor market for the IDOC facilities in Elgin and Joliet and for the DJJ facilities in St. Charles and Chicago. The State and Cook County are both subject to the IPLRA. Indeed, one would think that the turnover of inmates at the Jail and its location inside a densely populated city would make it more likely to impose a mandate.

In the Union's view, there is a common thread that explains the lack of vaccine mandates in law enforcement – law enforcement administrators are worried about the effect of a mandate on morale and on their ability to safely and securely staff their operations so they have relied on other highly effective measures to contain the virus. The neutral arbitrator should have taken these worries into account when deciding this case. Instead of first imposing a mandate and then attempting to fix the other layers of precautions that are broken, the other layers should be fixed first, to determine whether a mandate is truly necessary. This course of action reduces the risk to the safe and secure operation of State correctional facilities and is the proper course of action in this case.

For these reasons, I dissent.

December 30, 2021

*Eddie Caumiant*  
/s/Eddie Caumiant  
Union Panel Delegate

## IDOC STAFF VACCINATION RATES COMPARED TO COUNTY VACCINATION RATES

Facility	Total Staff	Staff Vaccinated	Percentage of Staff Vaccinated (%)	Location of Facility (County)	County Vaccination Rate (%)
Big Muddy River CC	361	276	76%	Jefferson	40%
Centralia CC	443	220	50%	Marion	40%
Crossroads ATC	82	77	94%	Cook	63%
Danville CC	351	261	74%	Vermillion	39%
Decatur CC	230	158	69%	Macon	47%
Dixon CC	729	446	61%	Lee	53%
East Moline CC - PILOT	340	260	76%	Rock Island	47%
Elgin Mental Health	82	68	83%	Kane	58%
Fox Valley ATC	74	20	27%	Kane	58%
Graham CC/R & C	517	297	57%	Montgomery	46%
Hill CC	347	190	55%	Knox	53%
Illinois River CC	446	251	56%	Fulton	51%
Jacksonville CC	425	289	68%	Morgan	49%
JTC	406	256	63%	Will	58%
Kewanee LSRC	199	162	81%	Henry	51%
Lawrence CC	464	261	56%	Lawrence	37%
Lincoln CC	240	134	56%	Logan	49%
Logan CC/R & C/MSU	603	456	76%	Logan	49%
Menard CC/R & C/MSU	902	539	60%	Randolph	46%
Murphysboro	95	81	85%	Jackson	46%
North Lawndale ATC	52	32	62%	Cook	63%
Peoria ATC	119	30	25%	Peoria	53%
Pinckneyville CC	533	338	63%	Perry	44%
Pontiac CC	784	427	54%	Livingston	46%
Robinson CC	281	136	48%	Crawford	43%
Shawnee CC	384	148	39%	Johnson	42%
Sheridan CC	441	382	87%	La Salle	52%
Southwestern CC	292	228	78%	St. Clair	51%
Stateville CC/NRC	1144	827	72%	Will	58%
Stateville NRC					
Taylorville CC	294	124	42%	Christian	43%
Vandalia CC	351	192	55%	Fayette	32%
Vienna CC	389	174	45%	Johnson	42%
Western CC	459	210	46%	Brown	47%
Other		156			
<b>Total/Average</b>	<b>12859</b>	<b>8106</b>	<b>63%</b>		<b>48%</b>

Other: Concordia

DOC data as of November 5, 2021; received from IDOC on 12/1/21

County Vaccination Rates: % of population fully vaccinated; Data accessed from IDPH as of November 29, 2021

