

ARTICLE

Union Responses to Workplace COVID-19 Vaccine Mandates in Canada

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Abstract: This article explores union responses to workplace-based COVID-19 vaccine mandates in Canada. Specifically, the authors examine the complex interplay of factors that drove unions to adopt their respective positions on vaccine mandates and to frame those positions in particular ways for the benefit of their members and the wider public. Interviews with key informants, along with analysis of documents and arbitration decisions, reveal a disjuncture between the discursive quality of certain unions' positions and their actual positions. In particular, media framing of unions as either "for" or "against" vaccine mandates oversimplified or misrepresented the actual positions adopted. In response, the article introduces a typology of union positions that distinguishes between support for mandatory-vaccination policies and support for voluntary-vaccination policies and reveals that the vast majority of unions favoured the latter. The authors further reveal that workplace vaccine mandates were both internally divisive and disorienting for unions, given the central role labour organizations play in managing workplace disputes and representing the interests of workers, both individually and collectively.

Keywords: COVID-19; unions; occupational health and safety; vaccination

Resume: Cet article explore les réponses des syndicats aux mandats de vaccination contre la COVID-19 en milieu de travail au Canada. Plus précisément, les auteurs examinent l'interaction complexe des facteurs qui ont poussé les syndicats à adopter leurs positions respectives sur les mandats en matière de vaccins et à formuler ces positions de manière particulière pour le bénéfice de leurs membres et du grand public. Les entretiens avec des informateurs clés, ainsi que l'analyse de documents et de décisions arbitrales, révèlent un décalage entre la qualité discursive des positions de certains syndicats et leurs positions réelles. En particulier, les médias présentant les syndicats comme étant « pour » ou « contre » les mandats en matière de vaccins ont simplifié à l'extrême ou dénaturé les positions réellement adoptées. En réponse, l'article présente une typologie des positions syndicales qui distingue le soutien aux politiques de vaccination obligatoire et le soutien aux politiques de vaccination volontaire et révèle que la grande majorité des syndicats sont favorables à ces dernières. Les auteurs révèlent en outre que

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les mandats de vaccination sur le lieu de travail étaient à la fois source de division en interne et désorientant pour les syndicats, compte tenu du rôle central que jouent les organisations syndicales dans la gestion des conflits sur le lieu de travail et dans la représentation des intérêts des travailleurs, tant individuellement que collectivement.

Mots clefs : COVID-19; syndicats; santé et sécurité du travail; vaccination

THE COVID-19 PANDEMIC THRUST the issue of vaccine mandates into the spotlight in an unprecedented way. In the workplace, such mandates proved controversial as issues of health and safety were variously pitted against workers' privacy concerns, including concerns over preserving "bodily autonomy."

Workplace vaccine mandates were both internally divisive and disorienting for unions, given the central role labour organizations play in managing workplace disputes and representing the interests of workers, both individually and collectively. Mandates (or their lack) required unions to grapple in new ways with the privacy rights of individual members, on the one hand, and the need to ensure that workers could report to work with confidence that they would not be exposed (or expose others) to potentially fatal illness, on the other.

Once the prospect of widespread workplace vaccine mandates emerged in 2021, unions were immediately confronted with how to respond. Initially recommended for workers in high-risk settings like health care, calls for vaccine mandates quickly spread to almost every sector of the economy.¹ Governments viewed mandates as a means to reduce the transmission of the COVID-19 virus, thus mitigating its impact on the economy and healthcare system and reducing the need for closures and lockdowns. Many employers and unions also embraced mandates, concerned for the impacts of COVID-19 on worker health – alongside employer concerns about productivity.

News reports tended to frame the introduction of workplace-based vaccine mandates as a matter of significant division for the labour movement, characterizing some unions as "for" and others as "against" them.² Some unions

1. Adam Miller, "Why Mandatory COVID-19 Vaccines for Health-Care Workers Could Help Canada Fight a 4th Wave," *CBC News*, 22 July 2021, <https://www.cbc.ca/news/health/canada-mandatory-vaccines-covid-19-healthcare-workers-1.6111486>.

2. See, for example, Alan Freeman, "Unions against Vaccine Mandates Fail Members and Society," *iPolitics*, 30 September 2021, <https://www.ipolitics.ca/news/unions-against-vaccine-mandates-fail-members-and-society>; Marcella Bernardo, "What's a Union's Role When It Comes to Vaccine Mandates?," *CityNews*, 13 October 2021, <https://vancouver.citynews.ca/2021/10/13/bc-unions-mandatory-vaccine/>; Ross Marowitz, "Growing Vaccine Mandates Reveal Split in Labour Movement," *Toronto Star*, 10 September 2021, https://www.thestar.com/business/growing-vaccine-mandates-reveal-split-in-labour-movement/article_40f451f9-9c70-581b-958f-8947d43d4342.html; Sara Mojtehedzadeh, "Vaccine Mandates Put Unions in a Delicate Spot: They Encourage Members to Get the Job but Seek to Protect Those Who Don't," *Toronto Star*, 18 August 2021, https://www.thestar.com/news/canada/vaccine-mandates-put-unions-in-a-delicate-spot-they-encourage-members-to-get-the-job/article_b56f20e1-ff90-505a-ad37-502df5cad60c.html; "Airline Worker Speaks to CBC News about Refusing Mandatory

reinforced this characterization by how they themselves framed their positions on workplace-based vaccine mandates for the benefit of their own members and the general public. A closer look, however, reveals that the actual differences among union positions were more rhetorical than substantive.

Drawing on interviews with key informants, news reports, primary union documents, and arbitration decisions, we argue that despite differing discursive approaches, it would be more accurate to present differences in union positions as revolving around which *type* of policy (mandatory or voluntary) to accept and/or endorse, rather than employing the “for” and “against” framing that became, arguably, the dominant way of thinking about mandates. The distinction between mandatory-vaccination and voluntary-vaccination policies, we contend, was often lost in news reports and union documents, leading to confusion about what was actually at issue. As a result, this “for” and “against” framing suggested a starker contrast among union positioning than was the case.

In this article, we accomplish three things. First, we provide context within which the internal union dynamics informing union positions on vaccine mandates can be brought into focus. Second, we draw out the indelible aspects of mandatory-vaccination and voluntary-vaccination policies by conceptualizing a typology of union responses to workplace-based vaccine mandates. Third, we explore the disjuncture between the discursive quality of certain unions’ positions and what appeared to be their actual positions, by highlighting specific examples.

Context: The Disorienting Effects of Vaccine Mandates

IT IS WELL ESTABLISHED that workers have innate privacy interests, which must be appropriately balanced against an employer’s legitimate concerns.³ In particular, these concerns are imposed by virtue of occupational health and safety legislation.⁴ Employer vaccination policies in the context of a worldwide pandemic are clearly situated at the intersection of these two, sometimes competing, interests. However, until recently, the issue of vaccine mandates in the workplace was relegated to the healthcare sector, where nurses’ unions were often at the forefront in opposing mandatory vaccination, particularly

Vaccinations,” *The National*, CBC News, video, uploaded 3 November 2021, <https://www.youtube.com/watch?v=p1RHamfb4MA>.

3. See, generally, Communications, Energy and Paperworkers Union of Canada, *Local 30 v Irving Pulp & Paper Ltd.*, [2013] 2 SCR 458, esp. para 458, <https://canlii.ca/t/fz5d5>.

4. Here, employers are generally required to “take every precaution reasonable” to safeguard their employees’ health and safety. See, Canada, Canadian Centre for Occupational Health and Safety, “Health and Safety Legislation in Canada,” last modified 11 June 2024, <https://www.ccohs.ca/oshanswers/legisl/legislation/responsi.html>.

regarding seasonal flu.⁵ Nurses' unions have not opposed *all* mandatory vaccination.⁶ However, some nurses' unions have argued that the efficacy of the flu vaccine only hovers around 60 per cent in years when the vaccine displays a good "match" with the predicted circulating strain of the virus, which changes year to year. In years where there is a mismatch, nurses' unions have pointed out that the vaccine's efficacy plummets.⁷

Parties invariably attempt to harness scientific data to support their position, whether for or against mandates, and the debate becomes a weighing of autonomy rights versus the social good, using the scientific data as a buffer. Since every vaccine carries an extremely small likelihood of severe adverse effects, and a good likelihood of very minor adverse effects (e.g. swelling at the injection site), the possibility of adverse effects factors into the risk-benefit analysis. Thus, while nurses' unions routinely encourage their members to be vaccinated, they have simultaneously harnessed the supposed relative inefficacy of the flu vaccine to oppose policies against mandatory vaccination for seasonal flu.

Flowing from the above, a small handful of "vaccinate or mask" policies related to seasonal flu have been challenged by nurses' unions in Canada under the so-called KVP principles, which allow unionized workers to challenge unilateral employer policies in front of a labour arbitrator.⁸ The core of the "KVP test" lies in the requirement that any workplace policy or rule imposed by an employer that invites discipline and that lacks the union's agreement must be reasonable, consistent with the collective agreement, properly promulgated, and consistently applied.⁹ In the case of "vaccinate or mask" policies developed to address seasonal flu, labour arbitrators noted the purpose of the policy, and the scientific evidence proffered regarding the efficacy of the vaccine to meet that purpose, but also the language of the relevant collective agreement to determine whether such policies were "reasonable" and thus could be upheld. This examination did not lead to the same legal outcome in all cases.¹⁰ With

5. Robert I. Field, "Mandatory Vaccination of Health Care Workers: Whose Rights Should Come First?," *P&T* 34, 11 (2009): 615–616, 618, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2810172/pdf/ptj34_11p615.pdf; Alexandra M. Stewart, "Mandatory Vaccination of Health Care Workers," *New England Journal of Medicine* 361, 21 (2009): 2015–2017, <https://www.nejm.org/doi/pdf/10.1056/NEJMp0910151>.

6. Stewart, "Mandatory Vaccination," 2017.

7. *St. Michael's Hospital v Ontario Nurses' Association*, 2018 CanLII 82519 (ON LA), at p. 8.

8. See, for example, Owen Dyer, "Flu Vaccination: Toronto Hospitals Cannot Implement Staff 'Vaccinate or Mask' Policy, Says Ruling," *British Medical Journal* 362 (2018): 3931, doi:10.1136/bmj.k3931.

9. *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd.*, 1965 CanLII 1009 (ON LA).

10. See, for example, *Health Employers Assn. of British Columbia v the Health Sciences Assn* (2013) 237 LAC (4th) 1, [2013] BCCA 138; *Sault Area Hospital and Ontario Nurses'*

the emergence of COVID-19 vaccines, workplace-based mandates quickly became a dominant, if unsettling, concern for the entire labour movement in virtually every sector of the economy.

Immediately following Health Canada's approval of a COVID-19 vaccine in December 2020, legal experts began weighing in on the predicted legality of workplace-based vaccine mandates. Most of this commentary sought to apply established labour and employment law principles to the issue, often arriving at quite disparate conclusions.¹¹ Some commentators argued that mandatory-vaccination policies would be impermissible in the absence of a specific legislative or regulatory order. Others, however, indicated that even where such mandates were permissible, any termination provisions would not be legally upheld. Ultimately, many mandatory-vaccination policies were upheld by labour arbitrators, even in the absence of a particular legislative or regulatory order.¹² Moreover, in many instances, termination provisions were also upheld.¹³ The application of "established principles" was not always

Association, 2015 CanLII 55643 (ON LA); *St. Michael's Hospital v Ontario Nurses' Association*. Underlining the fact-specific nature of arbitration, the same arbitrator who had refused to uphold a "vaccinate or mask" policy in *St. Michael's Hospital* (2018) upheld a policy of mandatory vaccination against COVID-19 in *Toronto District School Board v CUPE, Local 4400*, 2022 CanLII 22110 (ON LA).

11. See, for example, Sharaf Sultan, "Can Employers Mandate COVID-19 Vaccination?," *Law360 Canada*, 5 January 2021, <https://www.law360.ca/ca/articles/1753640>; Rhonda B. Levy and Monty Verlint, "Big Question for Employers in 2021: Can They Require Employees to Be Vaccinated?," *Law360 Canada*, 19 January 2021, <https://www.law360.ca/ca/articles/1753777>; Gilbert Sharpe and Margot Mary Davis, "Employee Vaccine Mandates? Not So Fast," *Law360 Canada*, 20 September 2021, <https://www.law360.ca/ca/articles/1756014>; Amanda Jerome, "Privacy, Required COVID-19 Vaccines Highlights at Employment Law Webinar," *Law360 Canada*, 15 June 2021, <https://www.law360.ca/ca/articles/1755156>; Alison Braley-Rattai, "Can COVID-19 Vaccinations Be Mandated? Short Answer: Yes," *The Conversation*, 16 December 2020, <https://theconversation.com/can-covid-19-vaccinations-be-mandated-short-answers-151958>; Ian Burns, "Mandatory Vaccinations, Work Refusals Major Issues for Employers in 2021, Legal Experts Say," *Law360 Canada*, 20 January 2021, <https://www.law360.ca/ca/articles/1753786>; Stuart Rudner, "A Close Look at 'Mandatory' Vaccination Policies," *Law360 Canada*, 20 September 2021, <https://www.law360.ca/ca/articles/1756006>.

12. See, for example, *Coca Cola Canada Bottling Inc. v Teamsters, Local 213*, 2022 CanLII 60956 (BC LA); *UNIFOR, Local 882 v Maritime Paper Products Limited Partnership*, 2022 CanLII 109448 (NB LA); *Coast Mountain Bus Company v Unifor, Local 111*, 2022 CanLII 94447 (BC LA); *United Food and Commercial Workers Union, Canada Local 333 v Paragon Protection Ltd.*, 2017 CanLII 26156 (ON LA).

13. See, for example, *Lakeridge Health v CUPE, Local 6364*, 2023 CanLII 33942 (ON LA), and *Unifor Local 973 v Coca-Cola Canada Bottling Limited*, 2022 CanLII 25769 (ON LA) [Wright Award], but compare with *Chartwell Housing Reit (The Westmount, the Wynfield, the Woodhaven and the Waterford) v Healthcare, Office and Professional Employees Union, Local 2220*, 2022 CanLII 6832 (ON LA), and *BC Hydro and Power Authority v International Brotherhood of Electrical Workers, Local 258*, 2022 CanLII 25764 (BC LA). In both these cases, the mandatory-vaccination policy was upheld, while the attendant termination provision was struck down. See also *Quinte Health v Ontario Nurses Association*, 2024 CanLII 14991 (ON LA).

smooth and straightforward, as arbitrators and labour boards were forced to apply them to an unprecedented situation.¹⁴

In some cases, even the otherwise straightforward language of the relevant collective agreement was set aside as ill-fitting the novelty and urgency of the situation.¹⁵ The overriding point is that the fact-specific nature of legal analysis, combined with the novelty of the situation, meant that legal responses, at least initially, were not going to yield a foregone conclusion. As the case law mounted, however, the centrality of certain considerations to the analysis became discernible. These included the level of interaction in the workplace and/or between the workers and the public, the extent to which duties involved interaction with “vulnerable populations,” the extent of transmission and the efficacy of the vaccine to mitigate it, and whether rules around vaccinations were imposed by third parties with which the workers in question would be required to comply to complete their work duties. As the pandemic continued, the legal landscape represented something of a double-edged sword for unions. On the one hand, the emerging consensus congealed in terms of the sorts of considerations that arbitrators were going to privilege. On the other hand, how these considerations applied, given the evolving nature of the virus and the efficacy of vaccines to mitigate its effects, represented something of a moving target.¹⁶ While the legality (or not) of various mandates was not the only or even most pressing concern of unions, it was certainly germane to their responses to these policies.

As David Doorey and Rawan Abdelbaki argue, some union responses to workplace-based vaccine mandates are explained, at least in part, by the union’s understanding of the legal framework governing the relationship

14. *Amalgamated Transit Union, Local No. 583 v Calgary (City)*, 2022 CanLII 13682 (AB LRB). Here, for example, the Alberta Labour Board upheld the invocation of a mandatory-vaccination policy during bargaining, despite the fact of the presence of the statutory freeze during bargaining that is mandated by the *Alberta Labour Relations Act*. Concluding that the introduction of the policy fell within one of the two legislated exceptions in the act, the labour board noted that “the Employer’s adoption of the vaccination policy was plainly an action for which there was no precedent,” and “it occurred during, and was motivated by, the first truly global pandemic in most of our lifetimes” (para 29).

15. See, for example, *Ontario Power Generation and The Power Workers Union, Re OPG-P-185*, (12 November 2021), unreported. There, Arbitrator Murray writes, “In the specific context of this situation, and on a without precedent basis to any other situation, I find that Article 2A.3 does not apply. This conclusion is driven entirely by context, and nothing in this Award should lead any party to believe that the traditional interpretation and application of Article 2A.3 should not continue to apply in all other circumstances.”

16. This idea might be best expressed in the arbitral decision *FCA Canada Inc. v Unifor, Locals 195, 444, 1285*, 2022 CanLII 52913 (ON LA), whereby a mandatory-vaccination policy that had been considered reasonable was no longer so on the basis that the two-dose regimen that it required was no longer, in the view of the arbitrator, sufficiently superior to “no vaccination” as to be considered “reasonable.” The decision left open the possibility that had the policy simply required a “booster” or third dose, it would have been upheld.

between itself and the members of the bargaining units they represent.¹⁷ The “duty of fair representation” imposes upon unions a legal duty to treat all those they represent – including those who refuse to be vaccinated – fairly, without arbitrariness and in a non-discriminatory manner.¹⁸ Some union members who did not want to be vaccinated understood this to mean that the union was duty-bound to oppose employer policies requiring vaccination.¹⁹ Concern not to run afoul of this fiduciary duty appears to explain at least some union responses to vaccine mandates; however, very few interviewees identified the duty of fair representation as a key factor in formulating their response to COVID-19 mandates.²⁰ Not all unions challenged mandatory-vaccination policies. Those unions that chose not to challenge such policies presumably disagreed that the duty of fair representation required them to do so. This view ultimately proved correct, as labour boards consistently refused to uphold the claim that unions were failing in their fiduciary duty simply for not bringing a grievance challenging such policies.²¹ It is important to note, however, that even a union’s belief that the duty of fair representation committed it to oppose mandatory-vaccination policies cannot, by itself, explain how those same unions understood themselves to be balancing that duty with a similar responsibility to advocate for the collective health and safety of their members, which some unions viewed as *requiring* mandatory-vaccination policies.

Such tensions are deeply ingrained in unions. Unions serve both adversarial and co-operative functions and carry out a multiplicity of roles, some of which

17. David Doorey and Rawan Abdelbaki, “How Canadian Unions Responded to Vaccine Mandates, Protests, and Blockades,” *The Law of Work* blog, 17 March 2022, lawofwork.ca/how-canadian-unions-responded-to-vaccine-mandates-protests-and-blockades.

18. In most jurisdictions, the duty is imposed by statute, and a claim that the union has violated it would be heard by the relevant labour board. In those few jurisdictions where the duty is not imposed by statute, it nevertheless exists at common law, and a court would have jurisdiction to hear the complaint. For more information, see David Doorey and Alison Braley-Rattai, *Canadian Labour Relations: Law, Policy, and Practice* (Toronto: Emond, 2020), chap. 14.

19. See, for example, *Amalgamated Transit Union, Local No. 583 v Calgary (City)*; *Andrew Harris v Service Employees International Union, Local 1 Canada*, 2022 CanLII 25826 (ON LRB); *Cheryl Mucci v Ontario English Catholic Teachers’ Association Hamilton-Wentworth*, 2022 CanLII 25527 (ON LRB).

20. The main exception was Annabree Fairweather, executive director of the Confederation of University Faculty Associations of British Columbia (interviewed 29 June 2023), who raised the issue without prompting. She described some unions’ concern about being exposed to a duty of fair representation claim if they recommended a mandate that, in turn, exposed members to discipline for non-compliance, in which they might then be viewed as “acting as an employer and engaging and participating in discipline against a member.”

21. See, for example, Tiffany Bloomfield, Danielle Hurding, Mel Lewis, Lexi L. Bezzo, and Jaclyn Wagner *v Service Employees International Union*, 2022 CanLII 2453 (ON LRB); *Amalgamated Transit Union, Local No. 583 v Calgary (City)*; *Andrew Harris v Service Employees International Union, Local 1 Canada*; *Cheryl Mucci v Ontario English Catholic Teachers’ Association Hamilton-Wentworth*.

conflict.²² Unions' role in defending workers' individual versus collective interests is an enduring source of tension in the workplace.²³ This is perhaps best exemplified by a union's responsibility to represent a worker accused of member-on-member sexual harassment while also representing the interests of the complainant, and the broader right of members to a workplace free from harassment.²⁴ The introduction of workplace-based vaccine mandates exacerbated these kinds of intra-union tensions, even where, as was generally the case, only a small minority of the membership strongly objected to mandatory vaccination.²⁵

Unions are also extremely complex organizations with varied cultures, repertoires, and internal organizational practices based on a range of historical and contextual factors.²⁶ Researchers have typically made sense of this complexity by categorizing union orientations according to ideal types: business unionism and social unionism.²⁷ Business unionism is narrowly concerned with securing the best possible economic deal for union members through collective bargaining and workplace representation.²⁸ In contrast, social unionism offers a far broader understanding of the labour movement's goals and purpose, including a legitimate role for political engagement on behalf of the entire working class. Advocates of social unionism typically argue that unions have an important political role to play in organizing, educating, and mobilizing working-class people around issues that transcend the workplace.²⁹

Ideologically, debates within unions over workplace vaccination mandates have been somewhat disorienting for leaders and members because both support for and opposition to workplace-based vaccine mandates have taken on different ideological dimensions, pitting individual versus collective interests in various ways that do not neatly conform to the typical business

22. Andy Hodder and Paul Edwards, "The Essence of Trade Unions: Understanding Identity, Ideology and Purpose," *Work, Employment and Society* 29, 5 (2015): 843–854.

23. Richard Hyman, *Industrial Relations: A Marxist Introduction* (London: Macmillan, 1975).

24. Judy Haiven, "Zero Tolerance: Can It Work in a Unionized Environment?," *Labour/Le Travail*, no. 58 (Fall 2006): 169–202.

25. While precise numbers are not available, when asked, interviewees indicated that their perception was that a very small minority were strongly opposed.

26. Stephanie Ross, "Varieties of Social Unionism: Towards a Framework for Comparison," *Just Labour* 11 (2007): 16–34.

27. Christopher Schenk and Elaine Bernard, "Social Unionism: Labor as a Political Force," *Social Policy* 23, 1 (1992): 38–46; Stephanie Ross, "Business Unionism and Social Unionism in Theory and Practice," in Stephanie Ross and Larry Savage, eds., *Rethinking the Politics of Labour in Canada*, 2nd ed. (Halifax: Fernwood, 2021), 29–46.

28. Robert Hoxie, "Trade Unionism in the United States: The Essence of Unionism and the Interpretation of Union Types," *Journal of Political Economy* 22, 5 (1914): 464–481; Louis S. Reed, *The Labor Philosophy of Samuel Gompers* (Port Washington, New York: Kennikat, 1966).

29. Ross, "Business Unionism and Social Unionism," 38–41.

unionist/social unionist dichotomy. For example, opposition to mandates has been arguably cast in business unionist terms, as defending the right of individuals to work and earn a wage,³⁰ but has also been invoked to argue in favour of mandates as the best tool to protect the health and safety of workers in a particular workplace so that they *can* continue to work. By contrast, defence of mandates has been cast in social unionist terms, as an act of solidarity with the immunocompromised and doing one's part to protect the healthcare system upon which the community must rely.³¹ However, a social unionist orientation has also been invoked to *oppose* mandatory mandates, as an act of solidarity with those vaccine-hesitant workers who are part of marginalized communities and/or are less likely to be afforded the legal protections offered by unionization than those from non-marginalized communities.³² The point here, following Stephanie Ross, is that established conceptual dichotomies typically fail to appreciate the degree to which labour unions are “complicated hybrids,” a theme that became apparent in our interview data and one we will revisit when exploring rhetorical versus substantive differences in union responses to vaccine mandates.³³

Methodology and Participants

SEMI-STRUCTURED INTERVIEWS were conducted with two dozen key informants who were recruited through direct requests to unions and thereafter by using a snowball sample based on recommendations from interviewees. Interviewees included elected union leaders, union staff representatives, and union occupational health and safety specialists, in both the private and public sectors and across various industries, including health and long-term care, aviation, social services, post-secondary education, transportation, meat-processing, and retail. Interviews were conducted via videoconference and were one to two hours in length. Ten interviewees were based in Ontario, eleven in western Canada, and three in Atlantic Canada. Five interviewees occupied elected or appointed positions that are national in scope. While interviewees were not perfectly representative of the labour movement as a whole, the

30. Michael Corrado, interview by authors, 18 October 2023.

31. SEIU Healthcare, “SEIU Healthcare Supports Mandatory Vaccinations,” news release, 19 August 2021, <https://www.newswire.ca/news-releases/seiu-healthcare-supports-mandatory-vaccinations-818331687.html>.

32. Raluca Bejan, “The Progressive Case against Mandatory Vaccination,” *Rabble.ca*, 17 August 2021, <https://rabble.ca/education/progressive-case-against-mandatory-vaccination/>; Peter A. Newman, Luke Reid, Suchon Tepjan, Sophia Fantus, Kate Allan, Thabani Nyoni, Adrian Guta, and Charmaine C. Williams, “COVID-19 Vaccine Hesitancy among Marginalized Populations in the U.S. and Canada: Protocol for a Scoping Review,” *PLOS ONE* 17, 3 (2022), doi:10.1371/journal.pone.0266120.

33. Ross, “Varieties of Social Unionism,” 22.

consistency of the themes that emerged from interviews gave us confidence that we accurately captured the dynamics at play.

Interviewees were given the choice to be identified as part of the research or to have their identity remain confidential with regard to some or all of their responses. None requested anonymity in relation to the responses shared in this article. Interviewees were asked to describe their union's formal position on vaccine mandates, explain what factors shaped their union's position, and describe how members responded. Interviewees were also asked what role, if any, the union played in negotiating a vaccination policy and the nature of any grievances filed over the application of such policy. Finally, interviewees were asked to consider what went right and what went wrong in Canada's pandemic response vis-à-vis workplaces. Interviews were supplemented by a careful review and analysis of news reports and publicly available union documents, including press releases, FAQs, and video transcripts. Direct quotes from union officials in this article are drawn from those materials as well as from the interviews themselves.

In general, interviewees described the debate over workplace mandates during the pandemic as stressful and internally divisive in workplaces but also fuelled by a relatively small minority. A review of publicly available union documents shows that the overwhelming majority of unions recommended to their members that they be vaccinated and believed the COVID-19 vaccines to be safe and effective in reducing the rate of virus transmission and severe disease. While interviewees were rarely unanimous in their assessments, our general finding is that unions faced outright hostility from only a very small minority of members for recommending vaccination. Slightly larger groupings of members were vocal in their support for vaccination against COVID-19 to remain a voluntary rather than a mandatory condition of employment. These groups sometimes included those who were not opposed themselves to being vaccinated against COVID-19 but who did not believe that vaccination should be a job requirement. It is impossible, at this point, to tease out how many of these objected to mandatory vaccination per se versus those who objected specifically to termination as a potential consequence for those who refused to get vaccinated – a possibility that many mandatory-vaccination policies contemplated. While interviewees offered mixed views concerning the desirability of mandatory-vaccination mandates, with most favouring voluntary-vaccination policies, not one thought termination was an appropriate penalty for a worker who refused to be vaccinated.

In general, clear sectoral cleavages on the question of union responses to mandatory-vaccination mandates were difficult to discern, owing to the intersection of a number of competing factors, including regional differences and the preferences of individual union leaders. Resistance to mandatory-vaccination mandates appeared to be rooted in both a reflex to question employers' authority to unilaterally impose terms and conditions of work and a desire to ensure that members' individual interests were addressed. This resistance

went hand in hand with a desire to be consulted and to work co-operatively with employers to shape workplace policy and find solutions and alternatives to vaccination for members who did not want to be vaccinated. This dynamic played out differently depending on the workplace and the union involved. Commonly proposed alternatives to vaccination included remote work and job switching or bundling, to reduce the number of workers who needed to congregate or to concentrate these numbers among those who were willingly vaccinated.³⁴ Rapid antigen testing (RAT) was generally invoked, either in addition to or alongside other alternatives. Those who favoured mandatory vaccination over voluntary vaccination generally were concerned that RAT was inadequate as a substitute for vaccination. Relevantly, this question of whether RAT was an adequate substitute for vaccination featured in some arbitration decisions, particularly as the virus evolved.³⁵

Mandatory- versus Voluntary-Vaccination Policies: A Typology

IMPORTANTLY, NOT ALL WORKPLACE-BASED vaccine mandates are created equal. Despite the frequent “for” and “against” framing, the real question with which unions grappled was not about whether a workplace should or should not have a vaccination mandate, but rather whether that mandate should impose mandatory vaccination or a voluntary vaccination scheme. It follows that identifying the difference between these two types of mandate is integral.

A mandatory-vaccination policy is one whereby workers are required to be vaccinated against COVID-19 or risk either a non-disciplinary unpaid leave or formal discipline including termination of employment. Such policies usually stipulated that workers should be “fully vaccinated,” according to the definition provided by the government of Canada, which required the completion of either two doses of what was then considered a two-dose series or one dose of what was then considered a one-dose series, depending upon the vaccine and manufacturer (i.e. Moderna, Pfizer, Astra-Zeneca, and Johnson).³⁶ All such policies required that employers would undertake their legal duty to follow the accommodation process for those claiming a medical exemption or an exemption based upon a sincere religious belief that precluded COVID-19 vaccination, consistent with human rights law.³⁷

34. See, for example, Mojtehedzadeh, “Vaccine Mandates”; Barry Sawyer, interview by authors, 20 June 2023.

35. See, for example, *Toronto District School Board v CUPE, Local 4400*.

36. Given the effect of the virus’ mutability upon the efficacy of the available vaccines, Canada has revised its definitions. See Teresa Wright, “COVID-19: Canada to Update Its ‘Fully-Vaccinated’ Definition,” *Global News*, 14 June 2022, <https://globalnews.ca/news/8919947/covid-canada-update-fully-vaccinated-definition/>.

37. While some unions filed individual grievances on the basis that the employer had inappropriately denied accommodation to those seeking it on human rights–based grounds,

By contrast, a voluntary-vaccination policy is one that extends accommodation to those who choose not to be vaccinated for “personal” reasons for which there is otherwise no legal human rights basis to compel a workplace accommodation. The Ontario Human Rights Commission articulated early on its view that “singular beliefs” – for example, that the vaccine is harmful or ineffective, or that vaccination is unnecessary because the effects of the virus are overblown – do not enjoy the protection afforded to sincere religious beliefs that form part of a comprehensive and overriding ethical framework.³⁸ BC’s Office of the Human Rights Commissioner (BCOHRC) took what we would describe as a more circumspect approach, possibly because in British Columbia – as opposed to Ontario – freedom from discrimination based on “political belief” is a code-protected right. Nonetheless, in the guidebook *A Human Rights Approach to Proof of Vaccination during the COVID-19 Pandemic*, the BCOHRC recognized that the September 2021 provincial health order requiring proof of vaccination for some BC businesses was “justified from a human rights perspective and will result in increased protection for those among us who are most vulnerable to the virus.” The guidebook also acknowledges that “no one’s safety should be put at risk because of others’ personal choices not to receive a vaccine.”³⁹ It links this position to that of a BC Human Rights Tribunal screening decision of a challenge to the provincial order. That decision stated that “a genuinely held belief opposing government rules regarding vaccination could be a political belief within the meaning of the Code. In saying this, however, I stress that protection from discrimination based on political belief does not exempt a person from following provincial health orders or rules. Rather, it protects a person from adverse impacts in their employment based on their beliefs.”⁴⁰ Various human rights commissions advanced similar positions. The

that is separate from a policy grievance challenging the essence of a mandate itself, namely the requirement to be vaccinated subject to disciplinary measures.

38. Ontario. Ontario Human Rights Commission, “OHRC Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates,” 22 September 2021, https://www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-vaccine-mandates-and-proof-vaccine-certificates. There is a point to be raised about why sincere religious-based conscientious belief is protected by human rights law but non-religious-based conscientious belief is not. Indeed, consistent with Charter jurisprudence that has been understood to protect both (see *R v Big M Drug Mart* [1985] 1 SCR 295), the Ontario Human Rights Tribunal has clarified that a non-religious conscientious belief that exemplified an all-encompassing moral worldview may qualify (see, generally, *Jazairi v Ontario Human Rights Commission*, 1999 CanLII 3744 (ON CA)). For a brief discussion, see Alison Braley-Rattai, “The Best Interest of the Child and the Limits of Parental Autonomy to Refuse Vaccination,” *McGill Journal of Law and Health* 65, 15-1 (2021): 84–86.

39. British Columbia’s Office of the Human Rights Commissioner (BCOHRC), *A Human Rights Approach to Proof of Vaccination during the COVID-19 Pandemic*, policy guidance, July 2021, updated October 2021, pp. 4, 5, <https://bchumanrights.ca/wp-content/uploads/COVID-19-vaccine-guidance-Oct.-2021-update.pdf>.

40. Complainant obo Class of Persons v. John Horgan, 2021 BCHRT 120 (CanLII) at para 11, as

general upshot is that opposition to vaccination is not in and of itself a meaningfully protected right and that, at any rate, rights are not absolute.⁴¹

Common to both types of policy is the imposition of alternative mitigation measures for those permitted an exemption from the vaccination requirement. Among such measures was almost invariably the need to submit to RAT at various intervals – usually at least twice weekly – for those not otherwise accommodated through a remote work arrangement.⁴² Such was generally the case whether the accommodation was grounded in a legally recognized human rights basis, as per mandatory-vaccination policies, or the preference to remain unvaccinated for other reasons, as per voluntary-vaccination policies. As a result, and in contrast to earlier “vaccinate or mask” policies, COVID-19 vaccination policies have sometimes been referred to as “vaccinate or test” policies.⁴³

Though we did not encounter them, anti-mandate positions would be those whereby the union had opposed both mandatory- and voluntary-vaccination policies. As we explain below, some unions did object to various aspects of each type of policy, but we distinguish between this and the rejection of the policies themselves, which would require rejection of those indispensable aspects without which the policy could not be operationalized.

Finally, “no position” captures those unions that took no discernible public stance on the issue. Of course, to take no *publicly discernible* position on the issue is not coterminous with *actually* having no position. Unions in various workplaces may have chosen not to challenge their employer’s vaccination policy and thereby took a position on the policy, without that fact being readily obvious from a review of news reports, publicly available union documents, or

quoted in BCOHRC, *Human Rights Approach*, 11. To our knowledge, no *workplace* vaccination mandate was challenged on the basis of *political* belief before a human rights tribunal.

41. See, for example, Canadian Human Rights Commission, “Vaccination Policies and Human Rights: FAQ for Employers and Employees,” 21 October 2021, <https://www.chrc-ccdp.gc.ca/en/resources/vaccination-policies-and-human-rights-frequently-asked-questions-employers-and-employees>; Human Rights Commission Newfoundland and Labrador, “COVID and Human Rights – Best Practices,” n.d., <https://thinkhumanrights.ca/know-your-rights/covid-19-human-rights/>. Manitoba’s Human Rights Commission suggested a “cautious approach” to proof of vaccination policies relatively early on; see “Human Rights Commission Wants Cautious Approach to COVID-19 Vaccine Cards,” CBC News, 11 June 2021, <https://www.cbc.ca/news/canada/manitoba/covid-vaccine-card-manitoba-human-rights-1.6063567>. A cursory review of its website did not yield any further information.

42. Not all remote work arrangements were owing to an “accommodation.” And in rare cases, employer vaccine mandates extended even to employees otherwise on a remote work arrangement, generally for the stated reason that those workers could be required to report in person at any time. See, for example, PSAC, “PSAC Files Policy Grievances against Federal Vaccination Policy,” 23 March 2022, <https://psacunion.ca/psac-files-policy-grievances-against-federal>.

43. See, for example, Amalgamated Transit Union, Local 113 et al. v Toronto Transit Commission and National Organized Workers Union v Sinai Health System, 2021 ONSC 7658.

arbitral jurisprudence. As such, moving forward, we do not concern ourselves with this identified “position.”

There is no publicly available data concerning the share of employers who adopted mandatory vaccination policies subject only to human rights accommodations. However, given the number and scope of government-imposed mandates in various sectors and jurisdictions, millions of Canadian workers were affected. Of course, mandatory-vaccination policies proved more challenging for unions to contend with than did voluntary-vaccination policies, given pressure from vaccine-hesitant and anti-vax members to oppose mandatory measures. While some individuals also may have opposed voluntary vaccination in that it requires RAT as an alternative to vaccination, we found no generalized opposition to voluntary vaccination for this study.⁴⁴

Rhetorical versus Substantive Differences

NEWS REPORTING AND PRESS RELEASES regarding union responses to vaccine mandates suggested a “fault line” within Canada’s labour movement that, upon closer examination, was overstated.⁴⁵ As noted above, of the unions that adopted positions on vaccine mandates, we could not identify one that opposed them outright. While the dominant discourse framed unions as substantively pro-mandate or anti-mandate, unions’ differing positions revolved around the *type* of mandate they supported – namely, mandatory-vaccination versus voluntary-vaccination mandates. Moreover, with one possible exception, detailed below, the evidence reveals that unions were united around their objection to termination in the circumstances. So, while there was variety in terms of the kinds of positions unions adopted on mandates, the differences were at once less significant and more nuanced than media reports and unions’ own press releases suggested.

Take, for example, the case of the Amalgamated Transit Union (ATU). Discursively, some of the union’s largest Canadian locals appeared to take strong anti-mandate positions. In Hamilton, Ontario, ATU Local 107 strongly opposed an employer-initiated mandatory-vaccination mandate, asserting in a press release that “science has proven vaccinations have done little to stop the spread, or to keep others safe.”⁴⁶ Local 107 president Eric Tuck acknowledged, “The International [ATU] was kind of upset with me with taking the stand that I took, but I didn’t care. I’ve never allowed that to influence me. I work for my members. I don’t work for the International.”⁴⁷ Tuck explained that while

44. See, however, *Caressant Care Nursing & Retirement Homes v Christian Labour Association of Canada*, 2020 CanLII 100531 (ON LA).

45. Marowits, “Growing Vaccine Mandates”; “Airline Worker Speaks to CBC.”

46. ATU Local 107, “Union Vows to Fight Unfair Vax Policy,” news release, 28 April 2022, <https://www.atucanada.ca/members-resources/atu-107-union-vows-fight-unfair-vax-policy>.

47. Eric Tuck, interview by authors, 7 July 2023.

the vast majority of his members opted to be vaccinated, they also opposed their employer's mandatory-vaccination policy and were very supportive of challenging its imposition through the grievance arbitration process. In addition to questioning the effectiveness of vaccines, some Local 107 members expressed concerns about vaccine side effects and the importance of protecting bodily autonomy and medical privacy. The union, however, did welcome a voluntary-vaccination mandate, and Tuck supported giving priority to public-facing transit workers who wanted access to the COVID-19 vaccine when it first became available.

ATU Local 113, in Toronto, made headlines by urging members to not confirm their vaccination status in the face of a mandate by the Toronto Transit Commission (TTC).⁴⁸ Two days after the Ontario Superior Court denied its request for an injunction against the transit commission's mandatory COVID-19 vaccination policy, the local's president took the extraordinary step of crashing an unrelated meeting organized by TTC CEO Rick Leary and a local city councillor, to angrily demonstrate against the mandate along with 40 or so members, some of whom were unmasked contrary to rules then in place. The group wanted Leary to answer for what they claimed to be an unfair double standard – that transit operators needed to be vaccinated, but transit riders did not.⁴⁹ The angry confrontation and the content of some of the barbs hurled at Leary raised concerns about anti-vax motivations within the membership of the local.⁵⁰ By attending the meeting maskless, some of the protestors belied the *apparent* concern that drivers faced ongoing health risks – given that riders did not have to be vaccinated – and suggested instead that the *actual* objection was to COVID-mitigation measures themselves.⁵¹ Nevertheless, the position of the local, in contrast to that of a handful of its members, was that it approved COVID-mitigation measures – namely, testing as an alternative to vaccination. In other words, it supported a voluntary-vaccination policy.⁵²

48. Ben Spurr, "An Inside Look at How the COVID-19 Vaccine Mandate Became the Breaking Point for the TTC's Largest Union," *Toronto Star*, 27 December 2021, https://www.thestar.com/news/gta/an-inside-look-at-how-the-covid-19-vaccine-mandate-became-the-breaking-point-for/article_dc7f14ed-3536-572e-bf07-7c7a1c7540b8.html.

49. Spurr, "Inside Look."

50. Jack Landau, "Protest Devolves into Chaos as TTC Execs Chased from Toronto Subway Station," *BlogTO*, 23 November 2021, <https://www.blogto.com/city/2021/11/protest-devolves-chaos-ttc-execs-chased-toronto-subway-station/>.

51. In January 2022, the TTC terminated hundreds of unvaccinated workers in accordance with its mandatory vaccination policy. The union grieved the policy and terminations. ATU 113, "ATU Local 113 Statement on Termination of Hundreds of TTC Workers," news release, 8 January 2022, <https://wemovetoronto.ca/media-centre/releases/atu-local-113-statement-on-termination-of-hundreds-of-ttc-workers/>.

52. "TTC Workers' Union Calls for Alternatives to Vaccinations," *Toronto Sun*, 15 October 2021, <https://torontosun.com/news/local-news/ttc-workers-union-calls-for-alternatives->

We saw a similar dynamic in segments of the aviation industry, particularly among workers represented by the Machinists Union (IAMAW). Michael Corrado, general chairperson of IAMAW District 140 Central Region, explained that the aviation industry was a key theatre of the COVID-19 pandemic: “Airports were the point of injection, and airplanes were the syringes.”⁵³ While the union supported and fought for aviation workers to be prioritized for voluntary vaccination, like ATU Local 107 did for transit operators, it strongly resisted the imposition of government-imposed mandatory-vaccination mandates. IAMAW filed a policy grievance against the introduction of such a mandate in October 2021 – a position Corrado claims was strongly supported by members, based on an informal survey of the membership. While that grievance was ultimately unsuccessful, the union worked to defend the interests of unvaccinated members in other ways. For example, IAMAW District 40 managed to shield unvaccinated workers from the harshest consequences of their decision to remain unvaccinated by negotiating what Corrado termed a non-punitive “time-out zone” as opposed to a “punitive penalty box.” In short, the union persuaded some airport employers to grant unvaccinated workers unpaid leaves rather than to terminate them. Furthermore, such leaves would be classified as “shortage of work” in order for the workers to qualify for employment insurance, in addition to attendant recall rights.

At the other end of the spectrum, a number of unions appeared to champion mandatory vaccination policies. For example, Unifor president Jerry Dias made headlines with a strong pro-mandatory-vaccination position, at one point telling the CBC, “I am not supporting those that say, ‘Oh geez, it’s my right not to get vaccinated,’ [and] therefore, you know, they’re going to walk around the country like a loaded pistol.”⁵⁴ Dias stressed moral arguments in favour of mandatory vaccination. He told the *Toronto Star*, “I’ve had [personal support workers], I’ve had homecare workers, I’ve had warehouse workers who’ve died. So am I supposed to take a cavalier attitude toward the fact my members, essential workers, have lost their lives on the front lines? I’m going to honour their lives by doing the right thing.”⁵⁵ However, Dias also argued there were good legal reasons for unions to accept mandates, revealing that Unifor’s lawyers had indicated to him that mandatory vaccine mandates

to-vaccination.

53. Corrado, interview.

54. “Airline Worker Speaks to CBC.” Unifor’s formal position was outlined in the following open letter to members: Jerry Dias, Lana Payne, and Renaud Gagné, “Open Letter to Unifor Local Unions, Activists, and Staff,” 15 October 2021, <https://www.unifor.org/news/all-news/open-letter-unifor-local-unions-activists-and-staff>.

55. Josh Rubin, “Unifor President Jerry Dias Supports Mandatory Vaccination against COVID-19,” *Toronto Star*, 9 September 2021, https://www.thestar.com/business/unifor-president-jerry-dias-supports-mandatory-vaccination-against-covid-19/article_905f0b81-e3aa-5efe-b9b6-d6601cb513cc.html.

would be deemed legitimate from a legal perspective. “Unions need to be more honest” with their members about the implications of fighting mandates and the dim prospect of winning at arbitration should unvaccinated workers be let go, Dias asserted. “I’m not going to say to our members ‘if you don’t wanna take it, screw it, we’ll take ‘em on’ because I know if I take ‘em on, I’ll lose,” he said.⁵⁶ Dias’ position won him high praise from journalists like Alan Freeman, who penned an op-ed applauding Unifor’s president while chastising his counterparts in other unions who had raised objections to the imposition of mandatory-vaccination mandates.⁵⁷

As it turned out, Unifor’s seeming embrace of mandatory-vaccination mandates was uneven and in some ways more rhetorical than substantive. Contrary to Dias’ assertion, Unifor did support some members who refused to become vaccinated, through grievances challenging mandatory workplace-based vaccine policies.⁵⁸ One high-profile challenge to mandatory vaccination came from a Unifor local in Ontario that grieved the imposition of a mandatory vaccine mandate at Stellantis, one of the largest employers of Unifor members.⁵⁹ In that case, the arbitrator reasoned that waning immunity in the face of the Omicron variant meant there was “negligible difference” in the risk of transmission between those workers who had been twice vaccinated, as the policy required, and those who remained unvaccinated. Therefore, she concluded, the mandatory-vaccination policy, while reasonable at the outset, was no longer so and could not be upheld. Unifor Local 444 president Dave Cassidy declared victory, asserting, “Many people thought that we should not take it on, that it was not winnable, they saw all the case history, all the history around it, and we felt that, you know, people cannot just lose their job because of a choice that they make.”⁶⁰ In short, the union’s initial discursive support for mandatory vaccination policies was belied by the fact that it pursued grievances initiated by various of its locals that challenged that position. This reality was overlooked by leading anti-vax activists who roundly and

56. Rubin, “Dias Supports Mandatory Vaccination.”

57. Freeman, “Unions against Vaccine Mandates.”

58. See, for example, *FCA Canada Inc. v Unifor, Locals 195, 444, 1285*.

59. Dave Waddell, “Vaccine Mandate Remains Hot Topic at Unifor Local 444 General Meeting,” *Windsor Star*, 21 April 2022, <https://windsorstar.com/news/local-news/vaccine-mandate-remains-hot-topic-at-unifor-local-444-general-meeting>; *FCA Canada Inc. v Unifor, Locals 195, 444, 1285*.

60. “Arbitrator Strikes Down Stellantis COVID-19 Vaccine Mandate,” *CBC News*, 20 June 2022, <https://www.cbc.ca/news/canada/windsor/stellantis-covid19-vaccine-mandate-1.6494857>. The declared victory was somewhat misleading, as the arbitrator had articulated that the policy was reasonable at the time of its implementation. What had changed in the intervening time was the nature of the virus. Indeed, Arbitrator Nairn left open the possibility that she may have upheld a revised policy requiring an additional “booster” dose.

incorrectly condemned Unifor and *all* unions in Canada for failing to defend union members facing termination as a result of refusing the vaccine.⁶¹

Unifor leadership also faced strong resistance from other quarters of its membership, particularly with regard to comments Dias made about the potential for workers to be terminated. For example, Justin Connolly, president of Unifor Local 25 representing Bell Canada technicians in Toronto, wrote to members in September 2021 outlining his opposition to mandatory-vaccination mandates. He added, “Further, it is distressing that Unifor decided to publicly encourage companies to terminate employees that do not take a vaccine and stating they will not assist those who experience job loss is pitiful. Unions should be seeking accommodation and pragmatic resolutions, not costing people employment.” Connolly went on to assure members, “It remains my intention, regardless of Unifor’s demands, to represent everyone to the best of our ability.”⁶² Of course, promises to “represent everyone” reveal very little, precisely because unions cannot champion every position without hopelessly contradicting themselves. Moreover, some union officials who embraced mandatory-vaccination policies understood themselves to be “representing everyone” from a health and safety perspective, while pursuing individual grievances on behalf of members denied bona fide accommodation requests. Despite these competing frames, most unions were united in their opposition to termination as an appropriate consequence to remaining unvaccinated. Dias’ comments appear to be the outlier even among those who otherwise embraced mandatory-vaccination policies.

It should be noted that Unifor was not the only union that appeared to adopt a strong pro-mandatory-vaccination stance only to eventually land on a more nuanced position. In August 2021, Ontario’s elementary and secondary schoolteachers’ unions issued a joint press release with the title “Ontario’s teacher unions support mandatory vaccinations in schools,” in which they posited that “everyone working in, or attending a school who is eligible and can be safely vaccinated, should be vaccinated,” with appropriate accommodations for those with religious or medical exemptions as per human rights legislation. However, that strong position is softened elsewhere in the release by what appears to be endorsement of a voluntary-vaccination policy, one in which additional precautions should be expected of those “who are exempted for reasons due to statements of conscience, or are not vaccinated.”⁶³ It is

61. For example, Sheldon Yakiwchuk (@YakkStack), “On this labour day in Canada, while the NDP and Liberals only support union workers, this is a good time to remember that Not 1 single Union, Protected 1 single unionized employee from Vaccine...,” Twitter (now X), 4 September 2021, 1:44 p.m., <https://twitter.com/YakkStack/status/1698799219975594023>.

62. Justin Connolly, “COVID Mandates,” letter, 17 September 2021, http://unifor25.com/content/docs/updates/archive/asp/upload_archived/2021%20-%20COVID%20Mandates%20-%20queries%20about%20the%20vaccinate%20mandates%20being%20imposed.pdf.

63. Association des enseignantes et des enseignants franco-ontariens, Elementary Teachers’ Federation of Ontario, Ontario English Catholic Teachers’ Association, and Ontario Secondary

unclear, then, whether “conscience” here refers to religious conscience or mere objection to being vaccinated, often referred to as a “philosophical” objection. Likewise, it is unclear whether those “who are not vaccinated” refers to those who are not for reasons of medical inability or simply a personal choice to remain unvaccinated. This lack of clarity is buoyed by the fact that Ontario Secondary School Teachers’ Federation (OSSTF) president Karen Littlewood had stated the union’s rejection of mandatory vaccination in favour of voluntary vaccination a few weeks earlier – a position that generated plenty of backlash and debate in social media forums about what position the union was actually taking.⁶⁴

As United Nurses of Alberta (UNA) occupational health and safety adviser Joshua Bergman put it, unions needed to “thread the needle” in developing public-facing positions on vaccine mandates.⁶⁵ The pressure for unions to carefully frame their positions came from both an overwhelmingly pro-vaccination public that saw vaccination as the answer to ending the pandemic⁶⁶ and a vocal minority of union members who demanded their unions protect what they believed to be their individual right to remain unvaccinated without employment-related consequences. These opposing tensions forced most unions to walk a tightrope that often belied the claim that their positions were clear and consistent. Take for example, Canadian Union of Public Employees (CUPE) Ontario president Fred Hahn’s responses to members at a September 2021 union-organized town hall on vaccine mandates. When asked to outline the union’s position, Hahn responded, “We don’t have to take a position on vaccine mandates because, frankly, they exist now across all of our workplaces.” He went on to say that “the best of these policies, I would argue, is when the employer actually sits down with the union and tries to figure out together how they’re going to implement these measures based in their health and safety framework.” Hahn acknowledged that “it’s quite challenging, this

School Teachers’ Federation, “Ontario’s Teacher Unions Support Mandatory Vaccinations in Schools,” news release, 20 August 2021, <https://www.etfo.ca/news-publications/media-releases/joint-mandatory-vax#>. Notably, COVID vaccine policies in Ontario never did include schoolchildren, as the unions were seeking. See, for example, Braley-Rattai, “Best Interest of the Child.”

64. Alex Goudge, “OSSTF against Mandating COVID-19 Vaccines; Feels Outreach, Education Are Better Tools,” *CityNews*, 27 July 2021, <https://ottawa.citynews.ca/2021/07/27/osstf-against-mandating-covid-19-vaccines-feels-outreach-education-are-better-tools-4164843/>; for example, see Daily Deep Dive (@DailyDeepDive), “The statement by @osstf and it’s [sic] President @karenosstf stating they are against the mandatory vaccination of education workers is extremely irresponsible...,” Twitter (now X), 5 August 2021, 9:28 a.m., <https://twitter.com/DailyDeepDive/status/1423320122190614532>.

65. Joshua Bergman, interview by authors, 13 July 2023.

66. Darrell Bricker, “Strong Majority of Canadians Support Vaccination Mandates; Open to Measures Including Vaccine Passports,” Ipsos, 19 August 2021, <https://www.ipsos.com/en-ca/news-polls/majority-of-canadians-support-vaccination-mandates>.

divisiveness that is amongst us and between us,” but argued that the union’s focus had to remain on worker health: “How do we keep people from not [sic] getting sick? How do we keep people safe? This has been our main focus since the beginning of the pandemic.” When further pressed as to whether CUPE would stand up for unvaccinated members, Hahn responded, “We are going to defend the rights of all of our members. It is what we do.”⁶⁷ But he also acknowledged the practical challenges and realities from a legal perspective, given the evolving case law. This reinforces the point that whatever the union’s perspective on the issue of mandatory-vaccination policies, its room to manoeuvre was already limited by the legal reality that arbitrators were regularly upholding such policies.

The overriding point here is that positions taken by unions were often more nuanced than they appeared. As a result, it was sometimes difficult to separate rhetorical flourish from actual substance. These distinctions were important, if often overlooked by the media, union members, or the general public. They are especially relevant in the context of arbitration awards. Importantly, neither the fact that a union filed a policy grievance in reference to a vaccination policy nor the fact that a particular policy was ultimately upheld (or failed to be upheld) at arbitration tells us very much about the union’s position. Rather, we need to know the specific basis of the grievance. For example, a union challenging the possibility of termination for a failure to be vaccinated and arguing that ongoing leave should be substituted instead should not be viewed as challenging the vaccine mandate itself.⁶⁸ Indeed, the ongoing uncertainty about the utility of particular vaccination measures in the face of the virus’ mutability, and the subsequent abandonment of such measures, indicates that provisions regarding termination may have been premature. In some cases, employers sought to rehire workers terminated over their past failure to comply with a now outdated mandatory-vaccination policy.⁶⁹ Similarly, where rapid antigen testing was used by way of accommodation, union challenges to employer requirements that workers test at home during non-work hours and demands that RAT take place on company time did not constitute a challenge to a vaccine mandate itself.⁷⁰

67. CUPE Ontario, “Vaccine Policy Town Hall,” video, posted 14 September 2021, https://www.youtube.com/watch?v=C1M76j2Vnw8&t=568s&ab_channel=CUPEOntario.

68. In some cases, mandatory-vaccination policies were upheld but the termination provisions were severed and were not upheld.

69. David Rider, “Toronto Ends Mandatory COVID-19 Vaccination for City Workers,” *Toronto Star*, 8 November 2022, <https://www.thestar.com/news/gta/2022/11/08/toronto-ends-mandatory-covid-19-vaccination-for-city-workers.html>; Sharleen Stewart, interview by authors, 11 July 2023.

70. See, for example, Ontario Power Generation and The Power Workers Union, Re OPG-P-185.

Conflict and Co-operation in the Workplace over Responses to COVID-19

WHILE BOTH LEGAL AND POLITICAL complexities forced unions to carefully evaluate their positions on vaccine mandates, all of our interviewees emphasized that mandates were just one piece of the puzzle from an occupational health and safety perspective. Mandates, whether voluntary or mandatory, did not negate the need for, among other things, adequate personal protective equipment, proper ventilation, paid sick days, meaningful engagement with joint occupational health and safety committees, and careful consultation with unions. “Do we support vaccination? Absolutely. We support vaccination. What we don’t support is using vaccination as the only tool to fight off the pandemic,” explained Andréane Chénier, a CUPE national representative specializing in health and safety. “[Government] ended up making the pandemic an ‘us versus them’ conversation, instead of saying, ‘Here are the things that we need to do in workplaces to make sure that workers are safe.’”⁷¹ Governments, in Chénier’s view, essentially abdicated their responsibility concerning the pandemic as it related to workplaces and downloaded it to employers.

Dorothy Wigmore, an occupational health specialist and member of the Canadian Aerosol Transmission Coalition, who worked with both the Ontario and Manitoba Federations of Labour to develop pandemic protections for workers, effectively agreed with Chénier’s assessment. Further, in Wigmore’s view, governments of all political stripes resisted recognizing the primarily airborne nature of the virus far past when it may have been reasonable to do so, and that oversight profoundly undermined pandemic responses, especially in workplaces. Public health officials, she argued, were often poorly equipped to address workplace-based pandemic mitigation strategies and did not adequately consult occupational health and safety specialists who were sounding the alarm about airborne transmission of COVID-19. According to Wigmore, these tensions spilled over into unions themselves, where union staff specializing in occupational health and safety would sometimes butt heads with elected labour leadership in terms of pandemic response. By and large, union leaders wanted to defer to public health officials, despite growing criticism that such officials were facing undue influence from political actors. This dynamic was particularly interesting in BC, where Wigmore claims the unions “weren’t willing to challenge” the NDP government or its appointed public health officials on the basis of the long-standing ties between labour and the party.⁷² Barry Sawyer of the United Food and Commercial Workers (UFCW) Canada, however, stressed that in a period of uncertainty and anxiety, unions had little choice but to follow the guidance of public health officials. “We had to put our faith and trust” in the public health officials appointed by government, he

71. Andréane Chénier, interview by authors, 8 May 2023.

72. Dorothy Wigmore, interview by authors, 19 May 2023.

argued.⁷³ “This is the best advice that we can get, so we’re going to stick to it,” he recalled reasoning at the time.

Criticism of government and employer responses to the pandemic was a common theme among interviewees. “I think I experienced PTSD,” said SEIU Healthcare president Sharleen Stewart. “I was getting it from all ends. I was trying to get the government to weigh in.... Trying to get them to see the warning signs. Trying to get them to protect the workers.”⁷⁴ SEIU members working in long-term care homes saw the deadly impact of the pandemic day in and day out, and their union was one of the loudest critics of provincial governments. “I don’t know where they were getting their advice from, but it was just one disaster after another, and then it became one infected person after another, and then it became one death after another,” Stewart recalled. “It was horrible. Just horrible.” Others, like Ray Geldreich, Health Sciences Association of Alberta (HSAA) senior health safety and wellness adviser, expressed the view that “politics rather than science” drove government pandemic response.⁷⁵ Natasha Luckhardt, director of health, safety, and environment at the Ontario Federation of Labour (OFL), agreed, arguing that governments prioritized the need for profits above protections for workers. “It came down to economics, money,” she said.⁷⁶

In some sectors, however, unions did align with employers to call for restrictions to be eased or lifted in order to preserve jobs and long-term business viability. For example, in August 2020, Unifor echoed the concerns of aviation industry employers when it called on the federal government to lift or modify restrictions on international air travel. “As the world is opening up, countries are coming to realize that blanket travel restrictions no longer make sense and in turn only hurt our economy, especially the travel and tourism sector,” said Barret Armann, president of Unifor Local 7378.⁷⁷ A month later, Jerry Dias called for the reopening of casinos – another sector where Unifor represents thousands of members. “There’s just no sound science that justifies reopening Walmarts, gyms and restaurants while at the same time keeping the casinos closed. There’s no logic behind the decision, and it’s placing a perfectly legal sector in jeopardy,” he argued.⁷⁸ As Stephanie Ross and Larry

73. Sawyer, interview.

74. Stewart, interview.

75. Ray Geldreich, interview by authors, 19 May 2023.

76. Natasha Luckhardt, interview by authors, 16 June 2023.

77. Unifor, “Unifor Pushing Federal Government to Plan for Safe Reopening of Borders,” news release, 25 August 2020, <https://www.unifor.org/news/all-news/unifor-pushing-federal-government-plan-safe-reopening-borders>.

78. Ray Spiteri, “Unifor Calls for Safe Reopening of Casinos across Canada,” *Niagara Falls Review*, 3 September 2020, niagarafallsreview.ca/news/niagara-region/2020/09/03/unifor-calls-for-safe-reopening-of-casinos-across-canada.html.

Savage have noted elsewhere, these sentiments highlight some of the contradictions, limitations, and internal tensions underlying unions' conceptions of solidarity in formulating responses to the pandemic.⁷⁹ Similarly, Simon Black bemoaned unions' focus on limited defensive struggles during the pandemic, arguing that organized labour largely failed to seize the opportunity to prioritize and/or secure wider class-based demands like employment insurance reforms and paid sick days for all workers.⁸⁰ This meant that the workplace, rather than the political arena, remained the key site for workers' struggles related to COVID-19.

In their study of protocols for COVID-19 prevention among healthcare workers in Ontario, Alan Hall and Eric Tucker found that employers made very limited efforts – and in some cases, no efforts – “to meaningfully involve workers, worker representatives (reps), or union officials in assessing COVID-19 risks and planning protection and prevention measures.”⁸¹ The failure of some employers to consult or negotiate with unions concerning their COVID-mitigation strategies was a clear source of tension, particularly as it pertained to vaccination mandates. Culturally, unions are built to resist and oppose unilateral employer policies on the basis that a failure to do so reinforces and welcomes employer overreach in any number of areas.⁸² Thus, an adversarial response to unilaterally imposed mandates of any kind should not be surprising. As CUPE national health and safety representative Paul Sylvestre explained, questioning authority is ingrained in the DNA of union activists. “They have their radar up there a little bit. They’re there to protect the members, and they don’t like to be told,” he explained.⁸³

Nevertheless, both CUPE and SEIU Healthcare supported mandatory vaccination for members working directly with vulnerable populations, with appropriate allowance only for narrow human rights–based exceptions.⁸⁴ In Canada, nowhere did the impact of the COVID-19 pandemic hit harder than in long-term care homes, where SEIU and CUPE each represents thousands of

79. Stephanie Ross and Larry Savage, “Canadian Labour and COVID-19,” in Ross and Savage, eds., *Rethinking the Politics of Labour*, 25–26.

80. Simon Black, “Essential but Not Empowered: Reflections on the Working Class in Canada under COVID-19,” *Studies in Political Economy* 103, 2 (2022): 130–152, doi:10.1080/07078552.2022.2096781.

81. Alan Hall and Eric Tucker, “Worker Participation in a Time of COVID: A Case Study of Occupational Health and Safety Regulation in Ontario,” *Labour/Le Travail*, no. 90 (Fall 2022): 9.

82. See, for example, Connolly, “COVID Mandates.” There, Unifor Local 25 president Justin Connolly writes, “When corporations can decide which medical treatment is suitable for an employee it could have ramifications for a long time to come. Give an inch, they will end up with the whole block.”

83. Paul Sylvestre, interview by authors, 8 May 2023.

84. Chénier, interview; Stewart, interview.

workers. According to the Canadian Institute for Health Information, over 56,000 residents and 22,000 workers in Canada's long-term care facilities and retirement homes tested positive for COVID-19 between 1 March 2020 and 15 August 2021, resulting in more than 14,000 deaths.⁸⁵

Despite being provided priority access to COVID-19 vaccine, and despite strong evidence that vaccinations significantly reduced rates of infection in the sector, thousands of long-term care and healthcare workers in Canada refused them.⁸⁶ “[Long-term care home workers] would go home after their shift and come back in the morning and eighteen of the residents had died overnight. They saw it live, and still for them to be resisting [vaccination] – that really kind of blew my mind,” acknowledged Sharleen Stewart.⁸⁷

Not all healthcare unions supported mandatory-vaccination mandates, however. The UNA, for example, refrained from endorsing mandatory vaccination, as did a number of healthcare unions in Québec. In the words of UNA occupational health and safety adviser Dewey Funk, “We advocate vaccinations. But it’s an individual’s right to choose.” Funk added that it is the union’s obligation to “represent our members to the fullest.”⁸⁸ One alternative to mandatory vaccination that UNA recommended was to allow unvaccinated workers to staff call centres – a proposal initially rejected by Alberta Health Services (AHS). However, given mounting labour shortages, the AHS gradually exempted healthcare workers in rural settings from mandatory vaccination, before being directed by the provincial government to rescind the mandatory vaccine mandate across the province in March 2022.⁸⁹

When the Québec government announced in April 2021 that healthcare workers in that province would be placed on unpaid leave if they refused COVID-19 vaccination, Jeff Begley, president of the Fédération de la santé et des services sociaux (FSSS-CSN), complained that the province was using “a bazooka to kill a fly.”⁹⁰ Elizabeth Rich, vice-president of workplace health and

85. Canadian Institute for Health Information, “COVID-19’s Impact on Long-Term Care,” 9 December 2021, <https://www.cihi.ca/en/covid-19-resources/impact-of-covid-19-on-canadas-health-care-systems/long-term-care>.

86. Lauren Vogel and Diana Duong, “How Many Canadian Health Workers Remain Unvaccinated?,” *Canadian Medical Association Journal* 193, 32 (2021): 1259–1260.

87. Stewart, interview.

88. Dewey Funk, interview by authors, 28 June 2023.

89. Kieran Leavitt, “Could Unvaxxed Workers Fill Alberta’s Health-Care Shortages? Danielle Smith Says So,” *Toronto Star*, 14 October 2022, https://www.thestar.com/news/canada/could-unvaxxed-workers-fill-alberta-s-health-care-shortages-danielle-smith-says-so/article_a57b65cd-0294-5bf6-b91c-3fa16cf3c307.html.

90. Kelly Greig, “Quebec Health Workers Who Refuse Vaccines Can Be Put on Unpaid Leave; Some Caught Off Guard,” *CTV News*, 12 April 2021, <https://montreal.ctvnews.ca/quebec-health-workers-who-refuse-vaccines-can-be-put-on-unpaid-leave-some-caught-off-guard-1.5384432>.

safety at the Fédération interprofessionnelle de la santé du Québec (FIQ), also objected, arguing that vaccine mandates should be voluntary rather than mandatory. “I’m just scared [the labour shortage is] going to be worse if [vaccines are] mandatory,” she told the CBC.⁹¹ Rich was echoing the concerns of many healthcare unions across the country that had long been warning government about staffing shortages in the sector, even prior to the pandemic.⁹² The Québec government appeared to heed FIQ’s warning, dropping the mandatory mandate for existing healthcare workers in November 2021, though it continued to require new hires to be fully vaccinated. Begley seemingly endorsed the government’s position, telling the Canadian Press, “There would have been real consequences to maintaining the mandatory vaccination, and so I think that in the circumstances, when we weigh everything, it was probably the best decision.”⁹³

Dorothy Wigmore of the Canadian Aerosol Transmission Coalition was clearly torn on the issue of mandatory-vaccination mandates. While she maintained that vaccines are no “silver bullet,” she recognized the positive role they play in reducing the rate of transmission in concert with other mitigation measures.⁹⁴ However, Wigmore stressed the importance of worker education, as opposed to discipline, as the key to vaccine uptake. “There are some real serious anti-vaxxers, and then there are people who have doubts for other reasons, and you’ve got to distinguish,” she said. “You can’t just sort of mandate vaccines and then just say, ‘well, if you don’t have it, you can’t come to work’.... I mean, it’s just not fair,” she added.

In developing their respective positions on vaccine mandates, unions could not help but do so in relation to the employers with whom they bargain. Barry Sawyer of UFCW Canada explained that his union’s support for vaccine mandates was contingent on employers meeting the union’s stipulations around notice, worker education, human rights exemptions, and alternative arrangements for unvaccinated members. Essentially, the union backed a voluntary-vaccination mandate, asserting, in Sawyer’s words, that “no one should lose their job” as a result of refusing the vaccine. While UFCW encouraged members to become vaccinated, he explained, “we’re supportive, but our role as a union is to bring all of our members’ wishes forward.... [Y]ou have to

91. Sabrina Jonas, “Quebec Mandates Vaccinations for All Health-Care Workers, Masks in Post-secondary Schools,” CBC News, 17 August 2021, <https://www.cbc.ca/news/canada/montreal/legault-updated-covid-19-aug-17-1.6143862>.

92. Stewart, interview; Funk, interview.

93. Morgan Lowrie, “Disappointment and Resignation as Quebec Drops Health Worker COVID-19 Vaccine Mandate,” *Globe and Mail*, 4 November 2021, <https://www.theglobeandmail.com/canada/article-disappointment-and-resignation-as-quebec-drops-health-worker-covid-19/>.

94. Wigmore, interview.

bring them all forward.”⁹⁵ Sawyer believes the union’s active involvement in the process of developing policies in concert with employers helped to maintain members’ employment while dramatically mitigating the risk of worker illness.

Sawyer acknowledges that negotiating pandemic-based precautions with employers produced “a mixed bag” of results. UFCW members working at the Cargill meat plant in High River, Alberta, were thrust into the media spotlight when member after member fell ill in the early months of the pandemic. In fact, Cargill was the site of the largest COVID-19 workplace outbreak in Canada. At least three workplace deaths were attributed to COVID-19, and nearly half of the company’s 2,000 workers tested positive for the virus.⁹⁶ According to Sawyer, multinational meat-processing companies were less receptive and harder to work with than grocery retail employers. Sawyer argues that multinational meat-processing companies, like Cargill, fiercely resisted the union’s push to reduce line speeds in order to help with physical distancing. “Our ideas cost them money,” Sawyer explained.⁹⁷

The UFCW fought the post-outbreak reopening of the plant in May 2020, alleging the company and the provincial government had not taken adequate protective measures on behalf of the workers. The outbreak and subsequent struggle at Cargill put a spotlight on the need for better protective measures for workers more generally and the important role unions play in representing workers’ interest through consultation and negotiation with employers. While several interviewees confirmed that work refusals proved inadequate as a mechanism to resist employers’ seeming lack of attention to worker health and safety,⁹⁸ the potential for strike action did appear to have an impact. In the fall of 2021, the UFCW leveraged an overwhelming strike mandate from Cargill workers to persuade the company to substantially boost base wages and secure “significant contract provisions to facilitate a new culture of health, safety, dignity, and respect in the workplace.”⁹⁹

The desire to develop mutually agreeable conditions that would allow unions to accept vaccine mandates was a theme we heard from several interviewees. The HSAA, for example, put forward conditions that included the need for

95. Sawyer, interview.

96. Joel Dryden and Sarah Rieger, “Inside the Slaughterhouse,” *CBC News*, 6 May 2020, <https://newsinteractives.cbc.ca/longform/cargill-covid19-outbreak/>.

97. Sawyer, interview.

98. Chénier, interview; Sylvestre, interview; Sara Mojtehdzadeh, “Many Ontario Workers Are Trying to Refuse Work due to COVID-19 Fears – but the Government Isn’t Letting Them,” *Toronto Star*, 27 April 2020, https://www.thestar.com/business/many-ontario-workers-are-trying-to-refuse-work-due-to-covid-19-fears-but-the/article_940cc236-b7e3-584c-875a-741f7904ab06.html.

99. Canadian Press, “Cargill, Union Reach Tentative Deal That Could Avert Strike at High River Meat Plant,” *CityNews*, 1 December 2021.

direction from public health authorities, consultation on the content of the policy, respect for Charter rights, and the need for other virus transmission control measures, like masking and physical distancing, to be maintained. When conditions were not met, the union grieved. According to HSAA's Ray Geldreich, the vast majority of members strongly supported vaccine requirements, but a "very vocal minority of our members" were opposed. "I'd never seen that level of animosity directed toward the union," he said.¹⁰⁰ Despite the fact the union filed grievances on behalf of unvaccinated members who were not granted human rights-based exemptions, HSAA members opposed to vaccine mandates organized for a resolution to be debated at the union's June 2023 convention that read, in part, "HSAA will: Never again endorse forced medical procedures, including vaccination, on anyone for any reason, as a condition of employment." The resolution, however, was unanimously rejected by delegates.¹⁰¹

Interviewees did occasionally harness business unionist or social unionist frames to advance their respective positions on vaccination policies, appealing to both individual and collective interests in support of or in opposition to particular policies. Overall, however, the social unionism versus business unionism dichotomy provided little insight in terms of explaining individual union response to mandatory-vaccination policies. Rather, most unions lived up to the "complicated hybrid" descriptor offered by Ross, articulated above, in her assessment of union orientations.¹⁰² This was perhaps best exemplified where union staff were subjected to different policies than the union was advocating for its own members. For example, Teamsters Canada resisted a mandatory-vaccination policy for its members working in air, rail, and marine sectors.¹⁰³ However, Teamsters Local 879 members, who work as field staff for SEIU Healthcare, were unequivocal in their demand that their employer, SEIU, "implement a mandatory vaccine policy to keep [them] safe."¹⁰⁴ Not only did the Teamsters local adopt a different stance from its parent union, but, to further complicate matters, SEIU Healthcare as a union had itself supported a mandatory-vaccination policy to keep its own members safe, but as an employer

100. Geldreich, interview.

101. Ray Geldreich, email communication to authors, 7 June 2023.

102. Ross, "Varieties of Social Unionism," 22.

103. Stéphanie Meunier, "Statement on Vaccine Mandate for Air, Rail, and Marine Transportation Workers," Teamsters Canada, news release, 13 August 2021, [teamsters.ca/blog/2021/08/13/statement-on-vaccine-mandate-for-air-rail-and-marine-transportation-workers](https://www.teamsters.ca/blog/2021/08/13/statement-on-vaccine-mandate-for-air-rail-and-marine-transportation-workers).

104. Teamster Local 879, Field Staff at SEIU Healthcare 2021, "The Steward Committee has formally requested that SEIU Healthcare implement a mandatory vaccine policy to keep us safe. Despite our call for a policy, our employer has yet to act....," Facebook, 2 October 2021, <https://www.facebook.com/seiufieldstaff/posts/pfbid034SPfWsymtHsiLFxqvWVKceth9A2ZdpuuvnPtA4vTCgyasi3fRXUNwp9yRCm5CVal>.

had – up until that point – failed to implement one for its own unionized employees, those represented by the Teamsters Local 879.¹⁰⁵ Similarly, Unifor National and UFCW Canada had in place mandatory-vaccination policies for their respective employees despite the fact that staff from both unions were engaged in supporting the efforts by various locals to challenge at arbitration mandatory-vaccination policies at their members' workplaces.¹⁰⁶

Despite these developments, in the end, very few unions adopted a pro-mandatory-vaccination policy position, and none adopted an anti-mandate position as understood by our typology. Instead, most appeared to adopt a voluntary-vaccination position, despite the rhetoric and frames that individual unions used to explain their positions.

Conclusion

BY MAPPING OUT A TYPOLOGY of union responses to workplace-based vaccine mandates in Canada, we find that different union positions revolved around which *type* of mandate (mandatory or voluntary) to endorse, rather than the “for” and “against” framing that became popular in media reporting. Such framing suggested much deeper divisions in union positioning than the evidence reveals.¹⁰⁷ Voluntary-vaccination policy positions were more popular among unions than mandatory-vaccination policies, but no union seemed to adopt an anti-mandate position, at least not in substance. This is not dissimilar from the situation that existed within the US labour movement, where vocal union opposition to vaccine mandates in some quarters belied overall support for voluntary vaccination.¹⁰⁸

In fact, US-based research has found a positive correlation between union coverage and vaccination rates. Todd E. Vachon, Michael Wallace, and Angran Li credit unions for boosting COVID vaccination rates through member education and internal organizing.¹⁰⁹ This function, however, was overshadowed by a media focus on union resistance to mandatory vaccine mandates that

105. Teamster Local 879, Field Staff at SEIU Healthcare 2021, “The Steward Committee....”

106. Christopher Reynolds, “Growing Number of Companies End Mandatory Vaccination as COVID-19 Restrictions Ease,” OrilliaMatters.com, 17 June 2022, <https://www.orilliamatters.com/national-business/growing-number-of-companies-end-mandatory-vaccination-as-covid-19-restrictions-ease-5490911>; Sawyer, interview.

107. Bernardo, “What’s a Union’s Role”; Marowits, “Growing Vaccine Mandates”; Mojtehdzadeh, “Vaccine Mandates.”

108. Jeffrey Hirsch, “Why So Many Unions Oppose Vaccine Mandates – Even When They Actually Support Them,” *The Conversation*, 9 November 2021, <https://theconversation.com/why-so-many-unions-oppose-vaccine-mandates-even-when-they-actually-support-them-170067>.

109. Todd E. Vachon, Michael Wallace, and Angran Li, “Unions, Democracy, and Trump: Deconstructing the COVID-19 Vaccination Crisis of 2021,” *Social Science Research* 115 (September 2023): Article 102918.

distorted perceptions about the role of unions during the pandemic.¹¹⁰ We saw a similar dynamic unfold in Canada. As our research demonstrates, union resistance was largely confined to unilateral imposition of mandates by employers, rather than opposition to vaccination. The vast majority of Canadian unions strongly supported vaccination efforts while simultaneously guarding against mandatory elements of vaccination policies that infringed on the collective bargaining process, members' human rights, or the collective agreement. Given the unique circumstances of different workplaces, combined with the constantly evolving nature of the virus, unions were concerned with ensuring policies struck the right balance between collective health and safety and individual bodily autonomy.

The difficulty in deciphering differences in union positions was not just a problem experienced by media. Some labour activists and leaders themselves also struggled to parse the nuances of different union positions, as evidenced by the number of conflicting accounts and interpretations we heard from interviewees concerning the positions of other unions and of central labour organizations like the OFL.¹¹¹

The work of untangling the various factors that influenced unions' internal position on mandates is complicated by the number of personal versus structural dynamics at play: for example, accounting for the personal views of union leaders, the level of trust between specific employers and specific unions, different levels of concern for legal liability, sector-specific considerations, and the extent to which members of a particular union articulated a preference, either in favour of or against mandates, and with what degree of intensity.

While divisions among unions were largely overstated, tensions unquestionably linger in many workplaces where mandatory-vaccination mandates were imposed. The IAMAW's Michael Corrado says that unvaccinated workers were unfairly "stigmatized" as a result of mandatory mandates, while the UFCW's Barry Sawyer conveyed that "there are still members now who don't talk to each other because [of] how each one of them acted and reacted during COVID.... [I]t's a sad situation."¹¹² CUPE's Andréanne Chénier expressed a similar sentiment, explaining that "there are a lot of people who are off on sick leave and extended sick leaves for mental health problems, from long COVID, and from

110. Todd E. Vachon, "Unions Bring a Surprising Side Effect – Higher Vaccination Rates," *Scientific American*, 16 November 2023, <https://www.scientificamerican.com/article/unions-bring-a-surprising-side-effect-higher-vaccination-rates/>.

111. For example, the OFL's policy statement – "Follow the science. Enforce the law. Protect workers" – was variously interpreted as pro-mandatory mandate and pro-voluntary mandate by several interviewees. See Ontario Federation of Labour, *Follow the Science. Enforce the Law. Protect Workers*, n.d., <https://ofl.ca/wp-content/uploads/2021.06.04-FollowTheScience-COPE.pdf>.

112. Corrado, interview; Sawyer, interview.

workplace harassment from all of the things that happened.”¹¹³ The health, social, and economic effects of the pandemic are far-reaching for workers. “I think it’s a mistake to think about COVID just as a pathogen,” explained Robin Whitaker, president of the National Union of the Canadian Association of University Teachers. “I think you can’t really think about it separately from all these other questions about how we use resources..., how we move around, how we share space,” she added.¹¹⁴ Like many of our interviewees, Whitaker saw the experience of the pandemic as a lost opportunity for governments to tackle larger economic and political questions. In particular, many of the occupational health and safety specialists we interviewed bemoaned the lack of progress on paid sick days in most provinces and the lack of investment for improved ventilation to keep workers and vulnerable populations safe.¹¹⁵

Overall, understanding how unions responded to workplace-based vaccine mandates is key to making sense of long-term strategic thinking within unions and the labour relations community concerning future pandemics/epidemics. Beyond the need to negotiate better preparedness provisions in collective agreements, it will also force unions, employers, and governments to rethink current responses to more common public health concerns as they relate to the workplace, such as seasonal flu, and the re-emergence of previously eliminated vaccine-preventable diseases. Such debates will undoubtedly be fraught, as evidenced by the societal polarization that took place over the desirability of COVID-19 vaccine mandates. However, by separating the discursive arguments from the substantive ones, we hope to bring much-needed clarity about what we are talking about when we talk about workplace-based vaccine mandates.

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113. Chénier, interview.

114. Robin Whitaker, interview by authors, 22 August 2023.

115. Chénier, interview; Luckhardt, interview; Wigmore, interview.