

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 2284CV00001

BOSTON POLICE SUPERIOR OFFICERS)
 FEDERATION; BOSTON POLICE DETECTIVES)
 BENEVOLENT SOCIETY; and BOSTON)
 FIREFIGHTERS UNION , LOCAL 781,)
 INTERNATIONAL ASSOCIATION OF FIRE)
 FIGHTERS, ALF-CIO,)
)
 Plaintiffs,)
)
 v.)
)
 MICHELLE WU, in Her Official Capacity as Mayor)
 of the City of Boston and CITY OF BOSTON,)
)
 Defendants.)

E-FILED 1/10/2022

AFFIDAVIT OF TAMMY L. PUST

1. My name is Tammy L. Pust. I am the Director of Labor Relations for the City of Boston (City). I make this affidavit on my personal knowledge and on facts known to me from records kept in the ordinary course of business by the City and communications with representatives of the Plaintiffs in the above-captioned lawsuit.

2. Prior to becoming Interim Director of Labor Relations on October 1, 2021 and Director on December 10, 2021, I was a Senior Advisor in the City’s central Office of Human Resources responsible for, among other duties, employment policy and implementation process development related to Covid-19. Previously, I served as a Senior Advisor at the Boston Public Schools from January through December, 2020, reporting directly to the Superintendent. Since March 2020, I have been responsible for assisting the City and Boston Public Schools in responding to the Covid-19 pandemic from a workforce and operations standpoint.

3. Plaintiffs Boston Police Superior Officers Federation (Federation) is the exclusive bargaining unit for approximately 261 members of the Boston Police Department holding the ranks of Sergeant, Lieutenant and Captain. Plaintiffs Boston Police Detectives Benevolent Society (BPDBS) is the exclusive bargaining unit for approximately 416 members of the Boston Police Department holding the rank of Police Officer, Sergeant, Lieutenant and Captain and having been rated a Detective by the Department, as well as a group of approximately 34 civilian employees who perform forensic services for the Department. Plaintiffs International Association of Fire Fighter (IAFF), Local 718 is the exclusive bargaining unit for approximately 1526 members of the Boston Fire Department including all District and Deputy Chiefs of the City's Fire Department.

4. On or about August 12, 2021, the City, acting upon advice and guidance from the Boston Public Health Commission (BPHC), shared a policy entitled the Vaccine Verification or Required Testing Policy (hereinafter, "August Policy") requiring all City of Boston employees to either provide verification of full Covid-19 vaccination status or submit proof of a weekly negative Covid-19 test. The City's Office of Labor Relations (OLR) provided written notice that same day informing all 20 bargaining units who represent its employees of the City's intent to implement the August Policy with an effective date of September 24, October 7, or October 18, depending on the employee's position and assigned department. As part of that communication, the City offered to meet with its 20 unions to comply with any bargaining obligations that might exist.

5. Thereafter, the City began meeting with the 20 bargaining units representing City employees.

6. On August 30, 2021, the City updated the August Policy based on feedback from the various unions it met with and provided the updated document to the 20 unions. This updated August Policy remained in effect until revised on December 20, 2021.

7. The City conducted meetings with representatives of the IAFF to bargain over the impacts of the August Policy on: (1) August 20, 2021; (2) September 3, 2021; and (3) September 10, 2021. On or about September 10, 2021, the City sent a draft Memorandum of Agreement (MOA) concerning the August Policy to the IAFF. As part of the parties' negotiations, the IAFF requested that the City include a provision to "revisit the agreement." In response, the City added language that states, "[t]he City intends to periodically review the Policy and shall fulfill any impact bargaining obligations associated with any proposed substantive changes." No other bargaining unit requested similar language and, accordingly, this language is not included in any other MOA. The City did not understand this language to create any new obligations, but merely reflected legal requirements that already existed with or without the language. Moreover, the City believed the language was unnecessary. In addition, the Agreement indicates it "shall not be used to demonstrate a practice or create a precedent for any other matter." On October 7, 2021, the City and the IAFF signed the MOA accepting the terms of the August Policy. A true and accurate copy of the MOA appears as Attachment 3 to the Verified Complaint.

8. The City met with representatives of the Federation to bargain over the impacts of the August Policy on: (1) August 24, 2021; (2) September 14, 2021; (3) September 30, 2021; (4) October 1, 2021; (5) October 6, 2021; and (6) October 18, 2021. During the September 14, 2021, meeting the City provided the Federation the same proposed MOA it had initially provided to IAFF on September 10, 2021. This proposal included non-precedent setting language that states, the agreement "shall not be used to demonstrate a practice or create a precedent for any other

matter.” The parties met again on September 30, 2021, during which the Federation made verbal counter proposals, which it submitted in writing to the City on October 8, 2021. The City responded on October 6, 2021 and again on October 18, 2021. A final version of the MOA was provided to the Federation via email on October 29, 2021. On November 26, 2021, the Federation returned the signed MOA. On Tuesday, December 7, 2021, I countersigned the MOA on behalf of the City. The signed MOA contains the above-described language that states, the agreement “shall not be used to demonstrate a practice or create a precedent for any other matter.” A true and accurate copy of the MOA appears as Attachment 4 to the Verified Complaint.

9. The City met with BPDBS on August 30, 2021. On September 16, 2021, the Office of Labor Relations provided the BPDBS’s counsel a letter with the updated policy and offered to continue to meet. After various communications, on December 16, 2021, the parties agreed to meet again on January 5, 2022 to further discuss the August Policy.

10. On November 2, 2021, Michelle Wu was elected Mayor of Boston. Mayor Wu was sworn in and commenced her mayoral term on November 18, 2022.

11. Starting on December 17 and concluding on December 19, Mayor Wu and I telephoned the City’s 20 unions to notify them of the contemplated change to the City’s August Policy.

12. By letters sent via email dated December 20, 2021, I advised all 20 of the unions representing City employees, including Plaintiff unions, of the modification to the August Policy and indicated that the City would fulfill any bargaining obligations it might have. These letters

are in the form attached to the Plaintiffs' Verified Complaint as Attachments 5a and 5b (referred to by the Plaintiffs as the "Wu Letter.")

13. On December 20, 2021, the City announced a modification to the August Policy. That modification required that all employees verify at least one dose of Covid-19 vaccination by January 15, 2022, and full vaccination by February 15, 2022. A true and accurate copy of the December 20, 2021 Policy (December Policy) is attached as Exhibit A.

14. On December 21, 2021, counsel for the BPDBS's unions responded indicating that the BPDBS full bargaining team could not get together before January 5, 2022. The following day, December 22, 2021, he sent a cease and desist letter asserting that the December Policy was implemented without bargaining. On December 23, BPDBS filed a Charge of Prohibited Practice at the Department of Labor Relations (DLR).

15. On December 22, 2021, counsel for the Federation sent me an email expressing concerns about the December Policy, alleging it was implemented unilaterally and constituted a repudiation of the previously signed MOA. Union counsel also advised that the Federation was willing to meet to discuss the December Policy, but reserved its right to withdraw from such negotiations. The Federation filed a Charge of Prohibited Practice at the DLR on December 27, 2021.

16. On December 29, 2021, counsel for the Federation emailed me requesting dates to bargain, which were coordinated and the parties agreed to meet on Friday, January 7, 2022. That meeting went forward.

17. Like the other Plaintiffs, the IAFF also filed a Charge of Prohibited Practice at the DLR on December 23, 2021. They contacted me on Monday, January 3, 2022, via voicemail,

requesting to meet regarding the December Policy. Thereafter, my office scheduled a meeting and we met on January 6, 2022.

18. As scheduled, I met with the BPDBS bargaining team on January 5, the IAFF bargaining team on January 6, and the Federation's bargaining team on January 7. The parties are scheduled to appear before a DLR-assigned Mediator with respect to the Charges of Prohibited Practice on Tuesday, January 11, 2022. The City intends to continue bargaining in good faith and meet any bargaining obligation it may have regarding the December Policy. The City is currently in the process of providing written information as requested, after which it will schedule future bargaining sessions as requested.

19. Since December 20, 2021, I have also been communicating and/or meeting with the remaining City bargaining units regarding the December Policy, as requested.

20. Throughout the course of the Covid-19 pandemic, the City of Boston and its Mayors have looked to the BPHC for guidance in responding to this unprecedented public health crisis and navigating how best to protect its employees and the citizens it serves.

21. The current Administration has continued to be guided by the BPHC and relies on scientific and real-time data in determining how best to respond to the ongoing pandemic. In fact, upon taking office, a Covid-19 Advisory Committee was immediately established; Dr. Bisola Ojikutu was named the Chair of that Advisory Committee. Dr. Ojikutu also serves as the Executive Director of the BPHC.

22. The City has relied upon guidance from the BPHC on how best to protect its workforce and ensure public services continue to be available. This has resulted in the City's implementation of various employment related policies including the requirement of face coverings and social distancing when reporting physically to a City worksite, screening before

reporting to work, quarantining and isolating after an exposure or positive test, reductions to the City's in-person work force, and requiring those who have not been vaccinated to provide evidence of a negative test on a weekly basis.

23. The number of employees being newly vaccinated began to drop off in the late Fall despite the August Policy and the City's various efforts to incent vaccination, which included the City's providing employees additional leave days for illness related to the virus.

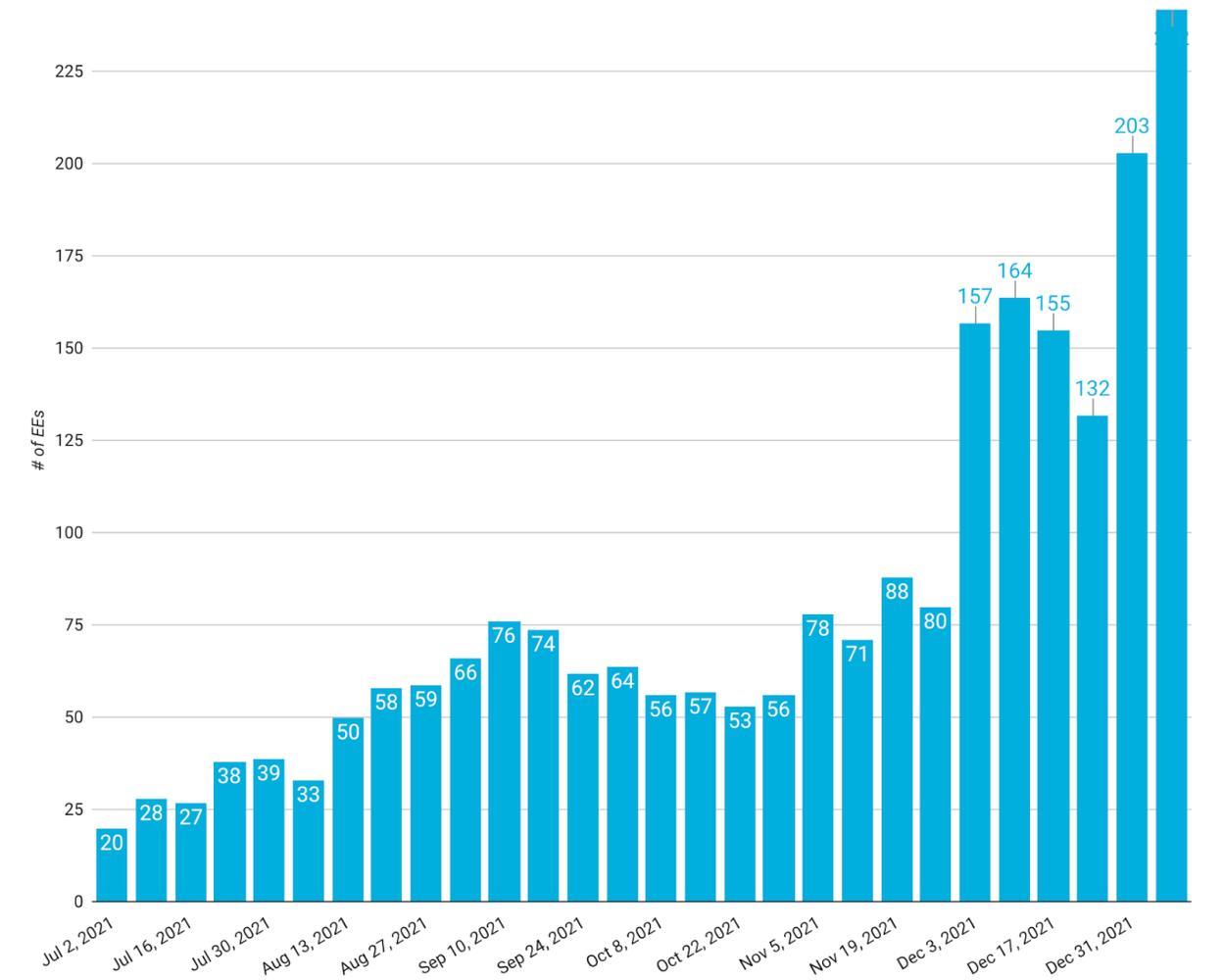
24. On December 31, 2021, I sent written communication to all City unions notifying them that some employees would begin working remotely as soon as Tuesday, January 4, 2022, to reduce the number of people in physical work locations where possible and therefore better prevent spread of Covid-19. I began follow-up conversations with unions on January 1, 2022, which are ongoing.

25. Citizens requiring public services, in particular those provided by the employees that Plaintiffs represent, do not have an option in most instances of whether to seek such services and/or to interact with these City employees. Moreover, these services may require that City employees enter the homes of citizens or come into extremely close contact with citizens, including vulnerable populations such as the elderly, children who cannot be vaccinated, and or citizens who have compromised immune systems.

26. The City's Office of Human Resources has consistently monitored employee absences due to Covid-19. In December, there has been an exponential increase in City employee absences resulting from Covid-19. *See City of Boston Employee Absences/Leaves Due to Covid-19* below. Similarly, and as shown in the second chart below entitled *Police and Fire Absences Due to Covid-19 Illness*, there has been a huge increase in the number of employees absent in both the Police and Fire Departments specifically. The number of

employees out in the Police Department in December 2021 due to Covid-19 was 101 up from 28 in November 2021. Similarly, 105 employees were absent from the Fire Department due to Covid-19 in December 2021 up from 34 in November 2021.

City of Boston Employee Absences/Leaves Due to Covid-19



Police and Fire Department Absences Due to Illness from Covid-19
June 2021 through December 2021

2021	Police Department	Fire Department
June	1	0
July	3	1
August	13	3
September	9	12
October	9	10
November	28	34
December	101	105

Signed under the pains and penalties of perjury this 9th day of January, 2022.



TAMMY L. PUST
Director, Office of Labor Relations
City of Boston