

A Preliminary Overview of Union responses to Workplace Vaccine Mandates in Canada

Introduction

The COVID-19 pandemic thrust the issue of vaccine mandates into the spotlight. In the workplace, such mandates have proven controversial as issues of health and safety are variously pit against workers' privacy concerns. Workplace vaccine mandates have proven both internally divisive and disorienting for unions given the central role labor organizations play in managing workplace disputes and representing the interests of workers, both individually and collectively. Mandates (or their lack) have 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 can report to work with confidence that they will 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. News reports tended to frame the issue as one of significant division for the labor movement, characterizing some unions as 'for' and others as 'against' a vaccine mandate (Freeman 2021; Bernardo 2021; Marowits 2021; Mojtehdzadeh 2021). A closer look, however, reveals the possibility that the actual differences among union positions were more rhetorical than substantive.

Through this project we seek greater clarity about union responses to workplace vaccination mandates in Canada. To understand what considerations informed various unions' internal discussions enroute to developing their respective stances regarding workplace vaccine mandates we intend, in the longer-term, to conduct interviews with key informants, namely elected union officials and hired union staff.

In this initial contribution to that wider project, we conceptualize a typology of union responses to workplace-based vaccine mandates. Based on an overview of news reports, union documents, and arbitral jurisprudence where vaccination policies were challenged in front of a labor arbitrator, we find that, despite differing discursive approaches, it would be more accurate to present these differences in positions as revolving around which *type* of policy (mandatory or voluntary) to accept and/or endorse, rather than the 'for' and 'against' framing that was developed early on. This earlier framing suggested a starker contrast among union positioning than, arguably, was the case. However, the distinction between mandatory-vaccination and voluntary-vaccination policies was often lost in news reports and union documents, leading to confusion about what was actually at issue.

In this paper, we do the following three things: First, we provide some context against which internal union dynamics can be brought into focus. Second, we draw out the indelible aspects of mandatory-vaccination and voluntary-vaccination policies. Third, we explore the disjoint

between the discursive quality of certain unions' positions and what appeared to be their actual position, by highlighting specific examples.

I. Context: Vaccine Mandates' Disorienting Effects

It is well-established that workers have innate privacy interests, which must be appropriately balanced against an employer's legitimate concerns, most relevantly those that are imposed by virtue of occupational health and safety legislation. 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 (Dyer 2018). There, a small handful of "vaccinate-or-mask" policies related to seasonal influenza were challenged by the relevant unions under the, so called, KVP principles, which allow unionized workers in Canada to challenge unilateral employer policies in front of a labor arbitrator. In these cases, labor arbitrators took note of the efficacy of the vaccine to prevent transmission, but also the language of the relevant collective agreement, to determine whether such policies were "reasonable" and thus could be upheld (e.g., *Sault Area Hospital* 2015; *St. Michael's Hospital* 2018). With the emergence of COVID-19 vaccines, mandates quickly became a dominant, if unsettling, concern for the entire labor movement in virtually every industry.

Unions are contradictory organizations: they serve both adversarial and cooperative functions and carry out a multiplicity of roles, some of which conflict with each other (Hodder and Edwards 2015; Hyman 1971). Unions' role in defending workers' individual versus collective interests is an enduring source of tension in unionized workplaces (Hyman 2001). 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 (Haiven 2006). Unions are also extremely complex organizations that feature varied cultures, frames, repertoires, and internal organizational practices based on a range of historical and contextual factors (Ross 2007).

Researchers have typically made sense of this complexity by categorizing union orientations by ideal types: business unionism and social unionism (Schenk and Bernard 1992; Kumar and Murray 2006; Ross 2021). Business unionism is narrowly concerned with securing the best possible economic deal for union members through collective bargaining and workplace representation (Hoxie 1914; Reed 1966). Social unionism offers a far broader understanding of the labor movement's goals and purpose, including a legitimate role for political engagement on behalf of the broader 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 (Kumar and Murray 2006; Ross 2021).

Ideologically, debates within unions over workplace vaccine-mandates have been somewhat disorienting for both 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 conform to the typical business unionist/social unionist dichotomy. For example, *opposition* to mandates has been narrowly cast in business

unionist terms as defending the right of individuals to work regardless of vaccination status, and has also been used to argue *in favor* 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 (Unifor 2021). On the other hand, the call for unions to embrace 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 (SEIU Healthcare 2021), but has been invoked to oppose mandates, as an act of solidarity with those vaccine-hesitant workers who are part of marginalized communities and/or are not afforded the legal protections offered by unionization (Bejan 2021; Newman et al. 2022). The point here – following Ross (2007, 22) – is that established conceptual dichotomies typically fail to appreciate the degree to which labor unions are “complicated hybrids.”

This notion of a complicated hybrid is exemplified where union locals took positions different from that of their parent union. For example, Teamsters Canada (2021) resisted a mandatory-vaccination policy for its members working in air, rail and marine sectors. 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” (Teamster Local 879, Field Staff at SEIU Healthcare 2021). Not only, then, did the local adopt a different stance from the parent union, but, to further complicate matters, SEIU Healthcare as a union, had, itself, demanded a mandatory-vaccination policy to keep its own members safe, but, as an employer, had—up until that point— failed to implement one for its own unionized employees, those represented by the Teamsters local 879 (Teamsters Local 879, Field Staff at SEIU Healthcare 2021). Similarly, Unifor National had in place a mandatory-vaccination policy for its staff despite the fact that that staff was engaged in supporting various Unifor Locals' efforts to challenge at arbitration mandatory-vaccination policies at their members' workplaces (Reynolds 2022).

Additionally, union locals sometimes challenged policies where the parent union took no discernible position. Moreover, some composite locals, like UFCW Local 175, which represents workers at various different workplaces, filed grievances in different workplaces that seemed to moderate the union's position from one grievance to the next (*Coca-Cola* 2002; *Bunge* 2022). It is currently unclear whether this apparent moderation was owing to the union's changing analysis about what it could win in light of newly-developing arbitral case law, or to its analysis of changing pandemic conditions, or something else entirely.

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. These differences have been highlighted through media coverage of unions and vaccine mandates (Bernardo 2021; Marowits 2021; Mojtehdzadeh 2021).

In part, as Doorey (2022) argues, some union responses to workplace-based vaccine mandates are explained by the union’s understanding of the legal framework governing the relationship between unions and the members of the bargaining units that they represent. The “duty of fair representation” imposes upon unions a legal duty to treat all members—including those who refuse to be vaccinated—fairly, without arbitrariness and in a non-discriminatory manner.¹ While concern not to run afoul of the legal duty of fair representation likely explains some union responses to vaccine mandates, it cannot adequately account for all union responses, since not all unions challenged mandatory-vaccination policies. Presumably, those that did not disagreed that the duty of fair representation required them to do so.² Moreover, cognizance of the duty of fair representation cannot, by itself, explain how unions understood themselves to be balancing that duty with a similar responsibility to advocate for the health and safety of their members.

II. *Mandatory-Vaccination vs Voluntary-Vaccination Policies: A Typology*

Importantly, not all workplace vaccine mandates are created equal. And the issue is less about whether a workplace should or should not have a vaccination mandate or policy, but rather whether that policy will be a mandatory-vaccination or voluntary-vaccination one. It follows, that identifying the differences between these two types is integral.

A mandatory-vaccination policy is one whereby workers are required to prove (or attest) that they are vaccinated against COVID-19, or risk either a non-disciplinary unpaid leave, or formal discipline, sometimes including termination. Such policies initially 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 2-dose series or one dose of what was then considered a 1-dose series, depending upon the vaccine and manufacturer (for e.g., Moderna, Pfizer, Astra-Zeneca, and Johnson).³ All such policies require stipulation that employers will undertake their legal duty to follow the accommodation process for those claiming a medical exemption or sincere religious belief that precludes vaccination, consistent with human rights law.⁴

By contrast, a voluntary-vaccination policy is one that would extend accommodation to those who choose not to be vaccinated for “personal” reasons for which there is otherwise no legal human rights basis to compel accommodation. The Ontario Human Rights Commission articulated early on its view that ‘singular beliefs’, for example that the vaccine is

¹ 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 J Doorey chapter 14, in Doorey and Braley-Rattai, 2020.

² The view that the duty of fair representation does not commit the union to challenge mandatory-vaccination policies has ultimately been proven correct. See, for e.g., Bloomfield et al, 2022).

³ Given the effect of the virus’ mutability upon the efficacy of the available vaccines, Canada has revised its definitions: Persons who were previously considered “fully vaccinated” are now defined as having “completed their primary series” (see, Government of Canada, 2022).

⁴ 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, that is separate from a policy grievance challenging the mandate itself.

harmful/ineffective etc...do not enjoy the protection afforded to sincere religious beliefs which form part of a comprehensive and overriding world view (OHRC, 2021).

Common to both types of policy is the requirement to undertake alternative mitigation measures where accommodation is extended, i.e., in lieu of vaccination. Among such measures was almost invariably the need to submit to rapid antigen testing at various intervals. This was the case whether the accommodation was grounded in a legally-recognized human-rights basis as per mandatory-vaccination policies, or the simple preference to remain unvaccinated, as per voluntary-vaccination policies. As a result, and in contrast to earlier ‘vaccinate-or-mask’ policies regarding seasonal flu, COVID-19 vaccination policies have sometimes been referred to as ‘vaccinate-or-test’ policies.

Anti-mandate positions are those whereby the union has opposed the employer’s disclosure requirement, without which it is impossible to operationalize a mandatory-vaccination policy, *and* has also opposed alternative mitigation measures, without which it is impossible to operationalize a voluntary-vaccination policy. Based on this definition, we have not (yet) found any union that could properly be categorized as anti-mandate, understanding the term ‘mandate’ as incorporating both mandatory-vaccination and voluntary-vaccination policies. Clearly, though, many unions did reject mandatory-vaccination policies in favour of voluntary-vaccination policies, whether they made this secondary aspect explicit or not.

Finally, “no position” captures those unions that have taken 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 to thereby have taken a position on the policy, without that fact being readily obvious from a review of news reports, publicly-available union documents, and arbitral jurisprudence.

III. *Rhetorical versus Substantive Differences*

News reporting regarding union responses to vaccine mandates suggested a “fault line” within Canada’s labor movement that, upon closer examination, was overstated (Marowits 2021). There were no clear sectoral patterns, nor was there a clear private/public sector divide amongst unions with regard to how they responded to vaccine mandates. Even within the healthcare sector, unions adopted either mandatory or voluntary-vaccination policy positions (Canadian Press. 2021). In other words, there was variety, but the differences were not nearly as significant as early media reports suggested. It was never substantively about pro-mandate or anti-mandate, even if that way of thinking about the issue became the dominant discourse. Rather, unions’ differing positions revolved around the type of mandate to be introduced.

Police unions, in particular, were targeted as anti-vax. For example, the Toronto Police Association (TPA) opposed a mandatory-vaccination policy imposed upon them, as well as the attendant mandatory disclosure in what, discursively, appeared to be a strong anti-mandate stance (Hayes and Cyr 2021). However, the devil is in the details. A position that rejects

mandatory disclosure but accepts that any worker who does not disclose should be subject to alternative mitigation measures such as rapid antigen testing, is not obviously different from a pro-voluntary-vaccination policy position that accepts a disclosure requirement. In the context of a voluntary-vaccination policy whereby anyone can reject vaccination so long as they are subject to alternative measures, disclosure of status does none of the heavy-lifting. The TPA press release articulating the association’s opposition to mandatory-vaccination and mandatory disclosure mentioned the possibility of “potentially alternative options available to [their] members” (TPA Press Release, 2021). This suggests that the TPA’s position was, in point of fact, consistent with a pro-voluntary-vaccination policy stance, despite the overall discursive quality of the press release in which it announced the union’s opposition to the particular vaccination policy in question.

Similarly, a number of Amalgamated Transit Union (ATU) locals appeared to take militant anti-mandate positions. In Hamilton, Ontario, ATU Local 107 strongly opposed an employer-initiated vaccine mandate, asserting in a press release that “science has proven vaccinations have done little to stop the spread, or to keep others safe” (ATU Local 107 Hamilton 2022). Similarly, the ATU’s largest Canadian local, Local 113 in Toronto, made headlines by urging members to not confirm their vaccine status in the face of a mandate by the Toronto Transit Commission (Spurr 2021). Two days after the Ontario Superior Court denied Local 113’s 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 Transit CEO Rick Leary and a local city councillor, to angrily demonstrate against the mandate along with forty or so members, some of whom were unmasked contrary to Transit Commission policy. The group wanted Leary to answer for what they perceived to be an unfair double standard – that transit operators needed to be vaccinated, but their riders did not (Spurr 2021). 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 (Landau 2021). 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.⁵ That said, the local’s position rather than that of a handful of its members, was that it was seeking testing as an alternative to vaccination, in other words, it supported a voluntary-vaccination policy (Postmedia News 2021).

On the other hand, those who appeared to adopt a strong pro-mandatory vaccination stance may also have landed on a more nuanced position in reality. For example, Ontario’s elementary and secondary school teachers’ unions issued a press released 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 belied elsewhere in the release by what appears to be endorsement of a softer, voluntary-vaccination policy, one in which additional precautions should be expected of those “who are exempted for reasons due to statements of conscience, or

⁵ In January 2022, the Transit Commission terminated hundreds of unvaccinated workers in accordance with its mandatory vaccination policy. The union grieved the policy and terminations (ATU 113 Toronto 2022).

are not vaccinated.”⁶ It is unclear, then, whether “conscience” here, refers to religious conscience or mere objection to being vaccinated, just as 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 OSSTF President Karen Littlewood had stated OSSTF’s rejection of mandatory-vaccination in favour of voluntary-vaccination a few weeks earlier (Goudge 2021), a position that generated plenty of backlash and debate in social media forums about what position the union was actually taking (for example, see Imgrund 2021). The overriding point here is that positions staked 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 are important, if often overlooked by the media 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 upheld as reasonable/unreasonable at arbitration, tells us very much about the union’s position. Rather, we need to know the specific basis of the grievance and the rationale for the outcome. For example, a union challenging the possibility of termination for a failure to be vaccinated and arguing that ongoing unpaid leave should be substituted instead, should not be viewed as challenging the vaccine mandate itself. Indeed, the ongoing uncertainty about ‘how long’ vaccination measures are even beneficial and their subsequent abandonment, suggests that provisions regarding termination may have been premature. In some cases, employers are now seeking to re-hire workers terminated over the past failure to comply with a now outdated mandatory-vaccination policy (Rider, 2022). 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 asking that rapid antigen testing take place on company time, is not properly a challenge to a vaccine mandate itself.

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. Rather, most appeared to adopt a voluntary-vaccination position, despite the rhetoric and frames individual unions used to explain their positions. This is not to say that there are not important differences between a mandatory-vaccination policy and a voluntary-vaccination policy. Moreover, further research is necessary to reveal the extent to which unions quietly accepted a mandatory-vaccination policy, since that would mostly be observed in the absence of challenging such policies at arbitration.

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. Media framing suggested much deeper divisions between union positioning than the evidence reveals. 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

⁶ Notably, COVID vaccine policies in Ontario never did include schoolchildren as the unions were seeking. See, for e.g., Braley-Rattai 2022.

not in substance. This is not dissimilar from the situation that existed within the U.S. labor movement, whereby vocal union opposition to vaccine mandates in some quarters belied overall support for voluntary-vaccination mandates (Hirsch 2021).

Understanding how unions responded to workplace-based vaccine mandates is key to making sense of long-term strategic thinking within unions and the labor relations concerning future pan/epidemics. 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 vaccine mandates.

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