

# **EXHIBIT J**



United Federation of Teachers  
A Union of Professionals

May 6, 2022

*Via E-mail (martin.scheinman@scheinmanneutrals.com)*

Martin F. Scheinman, Esq.  
Scheinman Arbitration and Mediation Services  
322 Main Street  
Port Washington, NY 11050

**Re: September 10, 2021 Award – Process Not Implemented in Good Faith**

Dear Arbitrator Scheinman:

I write to follow-up on our discussion of Wednesday, May 4. I would like to reiterate that if the DOE has the authority at all to unilaterally place UFT-represented employees on a leave without pay while maintaining their benefits, that authority must emanate from your Award dated September 10, 2021 (the “Award”). As you are well aware, the collective bargaining agreement does not authorize such action. A UFT represented-employee cannot be removed from payroll absent probable cause, with very limited exceptions that are not applicable here.

The DOE and the City suggested that their authority arises from the “condition of employment” imposed by the Health Order. Karen Solimando likened this unilateral action to that taken against a member who is not certified, but that analogy is inapt. On the issue of certification, the approval is issued by the state. One is either certified or not, there is not an underlying question of fact to be resolved. Further, a member who is not so certified by the state, but has proven that they have in fact completed all of the necessary coursework will not be terminated by the DOE. This is the opposite of what was done in here. Here, the DOE and City made a unilateral determination, on the basis of what they have been told by another agency, that the individuals in question are not vaccinated. They first removed the individuals from payroll and then allowed them to provide additional evidence that they are in fact vaccinated.<sup>1</sup> Moreover, they themselves acknowledge that the investigation remains ongoing and they have no idea how long these employees would remain in unpaid status before there would be a determination whether charges would be brought, much less substantiated. This problem of being off payroll indefinitely is further compounded by the fact that members placed on this leave without pay are not permitted to work in other employment, per the Award.

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<sup>1</sup> It should also be noted that as of this writing, individuals who have reached out to the DOE to indicate that they believe they have been put on this list in error have had no response from the DOE.

The parties met this afternoon, but the discussion resulted in no change to the DOE's position. Accordingly, we maintain our position that the DOE is improperly invoking your Award and that adverse action cannot be taken against these individuals until the disputed factual issue of their vaccination status is determined through an appropriate process

Sincerely,



Beth A. Norton  
UFT General Counsel

c: Liz Vladeck, DOE General Counsel