

**Supreme Court of the State of New York
County of New York**

----- X
POLICE BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK, INC., on behalf of
its members, and PATRICK J. LYNCH, as
President of the Police Benevolent Association
of the City of New York, Inc.,

Plaintiffs,

-against-

CITY OF NEW YORK, ASHWIN VASAN, in his
official capacity as Health Commissioner of the
City of New York, KEECHANT SEWELL, in
her official capacity as Police Commissioner of
the City of New York, NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, NEW YORK CITY POLICE
DEPARTMENT, NEW YORK CITY
DEPARTMENT OF CITYWIDE SERVICES,
DAWN PINCOCK, in her official capacity as
Commissioner of the Department of Citywide
Administrative Services,

Defendants.

----- X
PLEASE TAKE NOTICE that defendants appeal to the Appellate Division of
the Supreme Court, First Department, from the decision and order of the Honorable
Lyle E. Frank, herein dated September 23, 2022 and entered in the office of the Clerk
of New York County on September 23, 2022.

Dated: New York, New York
September 23, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007
(212) 356-2502

By:



Claude S. Platton
Deputy Chief, Appeals Division

To: GOLENBOCK EISEMAN
ASSOR BELL & PESKOE LLP
Jacqueline G. Veit
Matthew C. Daly
Attorneys for Plaintiffs
711 Third Avenue
New York, New York 10017
(212) 907-7300
jveit@golenbock.com
mdaly@golenbock.com

CLERK,
County of New York

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., on behalf of its members, and PATRICK J. LYNCH, as President of the Police Benevolent Association of the City of New York, Inc.,

Plaintiffs,

- against -

CITY OF NEW YORK, ASHWIN VASAN, in his official capacity as Health Commissioner of the City of New York, KEECHANT SEWELL, in her official capacity as Police Commissioner of the City of New York, NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY POLICE DEPARTMENT, NEW YORK CITY DEPARTMENT OF CITYWIDE SERVICES, DAWN PINCOCK, in her official capacity as Commissioner of the Department of Citywide Administrative Services, Defendants.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- Civil Action
- CPLR article 75 Arbitration
- CPLR article 78 Proceeding
- Special Proceeding Other
- Habeas Corpus Proceeding

Filing Type

- Appeal
- Original Proceedings
 - CPLR Article 78
 - Eminent Domain
 - Labor Law 220 or 220-b
 - Public Officers Law § 36
 - Real Property Tax Law § 1278
- Transferred Proceeding
 - CPLR Article 78
 - Executive Law § 298
 - CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input checked="" type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input checked="" type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment
<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court	County: New York
Dated: 09/23/2022	Entered: 9/23/2022
Judge (name in full): Hon. Lyle E. Frank	Index No.: 151531/2022
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Supreme Court issued a decision and order that (a) declared invalid the vaccine mandate for New York City municipal employees "to the extent it has been used to impose a new condition of employment to current [Police Benevolent Association (PBA)] members"; (b) declared the vaccine mandate for New York City municipal employees invalid "to the extent that it seeks to enforce in any other manner than proscribed [sic] by law, namely monetary sanctions"; and (c) ordered "that members of the PBA that were caused to be wrongfully terminated and/or put on leave without pay as a result of non-compliance with the unlawful new condition of employment discussed above are directed to be reinstated to the status they were as of the date of the wrongful action."</p>	

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court erred in declaring the vaccination requirement for municipal employees invalid as to PBA members and ordering reinstatement of PBA members who were terminated or put on leave without pay for failing to comply with the requirement.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.	Plaintiff	Respondent
2	PATRICK J. LYNCH, as President of the Police Benevolent Association of the City of New York, Inc.	Plaintiff	Respondent
3	CITY OF NEW YORK	Defendant	Appellant
4	SHWIN VASAN, in his official capacity as Health Commissioner of the City of New York	Defendant	Appellant
5	KEECHANT SEWELL, in her official capacity as Police Commissioner of the City of New York	Defendant	Appellant
6	NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE	Defendant	Appellant
7	NEW YORK CITY POLICE DEPARTMENT	Defendant	Appellant
8	NEW YORK CITY DEPARTMENT OF CITYWIDE SERVICES	Defendant	Appellant
9	DAWN PINCOCK, in her official capacity as Commissioner of the Department of Citywide Administrative Services	Defendant	Appellant
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Jacqueline G. Veit, Matthew C. Daly / GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP

Address: 711 Third Avenue

City: New York

State: NY

Zip: 10017

Telephone No: (212) 907-7300

E-mail Address: jveit@golenbock.com, mdaly@golenbock.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1,2

Attorney/Firm Name: Claude Platton / New York City Law Department

Address: 100 Church Street

City: New York

State: NY

Zip: 10007

Telephone No: 212-356-2500

E-mail Address: cplatt@law.nyc.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 3,4,5,6,7,8,9,

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

POLICE BENEVOLENT ASSOCIATION OF THE
CITY OF NEW YORK, INC., on behalf of its members,
and PATRICK J. LYNCH, as President of the Police
Benevolent Association of the City of New York, Inc.,

Plaintiffs-Petitioners,

-against-

CITY OF NEW YORK, ASHWIN VASAN, in his
official capacity as Health Commissioner of the City of
New York, KEECHANT SEWELL, in her official
capacity as Police Commissioner of the City of New
York, NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE, NEW YORK
CITY BOARD OF HEALTH, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, and DAWN PINNOCK, in her official
capacity as Commissioner of the Department of Citywide
Administrative Services,

Defendants-Respondents.

Index. No. 151531/2022
Hon. Lyle E. Frank

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of a Decision and Order of the Supreme Court of the State of New York, County of New York (Honorable Lyle E. Frank), dated September 23, 2022, duly entered in the New York County Clerk's Office on September 23, 2022.

Dated: New York, New York
September 23, 2022

MICHAEL T. MURRAY
Office of the General Counsel of
the Police Benevolent
Association of the City of New
York, Inc.
125 Broad Street
New York, New York 10004

Of Counsel:
Gaurav I. Shah
Dave Morris
Andrew J. Dempster
Alex Reynoso

Respectfully submitted,

GOLENBOCK EISEMAN ASSOR
BELL & PESKOE LLP

By: /s/Matthew C. Daly
Matthew C. Daly
Jacqueline G. Veit
711 Third Avenue
New York, New York 10017
(212) 907-7300

Attorneys for Plaintiffs-Petitioners

To:

Corporation Counsel of the City of New York
Attn: Lora Minicucci, Assistant Corporation Counsel
100 Church Street
New York, NY 10007

Counsel for Defendants-Respondents

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., ON BEHALF OF ITS MEMBERS, PATRICK J. LYNCH,

Petitioner,

- v -

CITY OF NEW YORK, ASHWIN VASAN, KEECHANT SEWELL, NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY BOARD OF HEALTH, NEW YORK CITY POLICE DEPARTMENT, NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, DAWN PINNOCK

Respondent.

-----X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 14, 15, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

were read on this motion to/for JUDGMENT – DECLARATORY

Petitioners, the Police Benevolent Association of the City of New York (“PBA”) and Patrick J. Lynch, its President, seek an order from this Court to (1) permanently enjoin respondents from enforcing the vaccine mandate (mandate); (2) declaring that the mandate exceeded respondents’ authority; (3) vacating the vaccine mandate as applied to petitioners’ members; and (4) ordering reinstatement of employment backpay, benefits and damages to the PBA members. Respondents oppose the instant petition. The petition is granted to the extent indicated below.

Petitioners allege that the mandate violates the New York City Charter and the New York City Administrative Code, the Department of Mental Health and Hygiene (DOH) Commissioner exceeded his authority when ordering the mandate, the mandate violates administrative

rulemaking requirements, and that the mandate lacks a rational basis. In the light most favorable to the non-moving party, the Court will adopt respondents' position that the mandate is not subject to rulemaking requirements as it was implemented as a new condition of employment. Accordingly, the Court need only address petitioners' contentions of the DOH Commissioners authority to enforce the mandate.

While petitioners do not concede that the specific mandate, as issued in October 2021, was appropriate, it is undisputed that the DOH has the authority to issue vaccine mandates, that is not before this Court. The issues before this Court are narrow and are whether the DOH can impose adverse employment actions to enforce those mandates and even taking it a step further, whether it is lawful for the DOH to implement conditions of employment to members of the PBA.

Petitioners contend, that within its lawful authority to mandate vaccinations, its enforcement measure is limited to monetary fines. Health Code §3.01(d); §3.11(a). Respondents contend, without any citations to relevant legislative history, case law or even DOH internal memorandum, that the statute does not in fact limit enforcement to monetary penalties, thus DOH's conduct of unilaterally creating a condition of employment is improper. Respondents do not point to any instance where the DOH sought enforcement of a lawfully ordered mandate by creating a new condition of employment as to all City employees. To say that this Court should read into the statute that enforcement of a vaccine mandate is enforceable by exclusion from the workplace, suspension, leave without pay and ultimate termination would be a gross overstatement of the DOH Commissioner's powers.

In support of its contention that the DOH Commissioner can unilaterally create employment conditions, respondents cite to holdings of recently decided federal cases and trial

court decisions. This argument too is unpersuasive. Respondents cite a multitude of cases where this Court, as well as others, have denied petitions based on vaccination being a condition of employment, however in those instances the City and the respective union collectively bargained to include the vaccination mandate as a new condition of employment, that is not the case here.¹

As it is clear by the conduct of the City in its dealings with other municipal unions, namely the United Federation of Teachers, Local 237, Teamsters, among others, it is obvious to this Court that the unilateral imposition of a condition of employment is not something that either the DOH or the Mayor can do without collective bargaining. Should this Court give any credence to the City's argument that it can impose whatever conditions of employment it deems necessary pursuant to a DOH issued mandate that position is in clear contrast to its practice on the same issue.

To be unequivocally clear, this Court does not deny that at the time it was issued the vaccine mandate was appropriate and lawful, the Court however does not see, nor have respondents established a legal basis or lawful authority for the DOH to exclude employees from the workplace and impose any other adverse employment action as an appropriate enforcement mechanism of the vaccine mandate.

Respondents contend that the DOH Commissioners order that created a new condition of employment is "similar to the residency requirement for all non-uniformed civil service employees found in NYC Administrative Code 12-120 or in New York Public Officers Law § 3(1), the Vaccine Mandate is another example of a lawfully created condition of employment." This Court disagrees. What is missing from respondents' recitation of that legal argument is

¹ What is also not before the Court is whether disciplinary hearings are required pursuant to applicable law. The Court agrees with the other Courts that have addressed this issue that such hearings are not required. As noted, the Court finds the vaccine mandate a condition of employment, not a disciplinary issue.

statutory authority, unlike the residency requirements that are codified in the Administrative Code, the authority to impose a condition of employment by the DOH is not supported by any statute, rule or regulation cited by respondents. Accordingly, it is hereby

ORDERED that the vaccine mandate is invalid to the extent it has been used to impose a new condition of employment to current PBA members; and it is further

ORDERED that the mandate is invalid to the extent that it seeks an enforcement in any other manner than proscribed by law, namely monetary sanctions; and it is further

ORDERED that members of the PBA that were caused to be wrongfully terminated and/or put on leave without pay as a result of non-compliance with the unlawful new condition of employment discussed above are directed to be reinstated to the status they were as of the date of the wrongful action.

20220923135654LFRANK423A7EF3C934322A4C51E7552480037


9/23/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>			<input type="checkbox"/>	
	<input type="checkbox"/>			<input type="checkbox"/>	
	<input type="checkbox"/>			<input type="checkbox"/>	