

SCHEINMAN ARBITRATION MEDIATION SERVICES

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In the Matter of the Arbitration

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between

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LEGAL SERVICES NYC

X

"Employer"

Re: Order

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-and-

X

LEGAL SERVICES STAFF ASSOCIATION  
NOLSW/UAW 2320, AFL-CIO

X

"Union"

X

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**BEFORE:** Martin F. Scheinman, Esq., Arbitrator

## OPINION

The parties were at impasse regarding a requirement employees attend, beginning mid-October, certain in-person court proceedings as ordered by the unified court system. In essence, the Union asked for the ability for certain employees it represents to be able to apply for a medical accommodation so they not have to appear in-person based upon concerns about unvaccinated or high risk individuals in an employee's household. Pursuant to their Collective Bargaining Agreement, I was designated to hear the matter on an expedited basis. The hearing was scheduled for October 1, 2021.

In anticipation of the hearing, the parties' requested a conference call to discuss the procedures for our hearing. During the conference call both parties explained the nature of the dispute and the time sensitivity of having a decision or resolution. Given my familiarity with the subject matter, the parties accepted my suggestion we use the scheduled arbitration to try to resolve the matter, or at least to narrow the issues in dispute.

A mediation session took place on October 1, 2021. While there was an excellent discussion regarding the issues and concerns, and a narrowing of the parties' differences, a full resolution was not reached.

Thereafter, I received notice the parties had finalized an understanding. I reviewed it and determined I was comfortable issuing this SO ORDERED which I have done below.

The Agreement is as follows:

**Policy Regarding In Court Work During the COVID Pandemic**

Staff members will make in-person appearances and conduct other in court work as needed unless a reasonable accommodation or medical exemption is provided as described below.

It is understood that advocates are working to, and will continue to work to, resolve cases virtually to the extent it is possible and is in the client's best interest.

This policy remains in effect until March 31, 2022. This date may be extended by consent of both parties.

**Reasonable Accommodation Application**

LSNYC shall distribute this agreement and application materials to all LSNYC employees by Monday, October 4 at 5pm. LSNYC will consider a reasonable accommodation ("RA") on a case-by-case basis for those who assert they are unable to perform work in court and other advocacy forums (hereinafter "in court work"), including employees whose medical provider advises against receiving any COVID-19 vaccination due to medical contraindication and employees deemed "more likely" to become severely ill from COVID despite vaccination, per Centers for Disease Control and Prevention guidance. An employee seeking an RA must submit an initial

application to HRSupport@lsnyc.org no later than ten (10) business days from the distribution of this agreement and all application materials to all employees. ("Deadline to Apply"). Any request received after the Deadline to Apply will only be considered based upon information unknown to the employee prior to the Deadline to Apply or based upon a change in circumstance. Any new hire must request an RA for work in court and other advocacy forums within ten (10) business days of their start date. Employees are encouraged, but not required, to submit supplemental documentation of the basis for their RA claim with their initial application to expedite processing of their application. The employer guarantees that submission of an application by an employee will not prejudice the employee or otherwise result in any adverse employment action.

#### **Medical Exemption Application**

LSNYC shall distribute this agreement and application materials to all LSNYC employees by Monday, October 4 at 5pm. LSNYC will consider a medical exemption ("ME") on a case-by-case basis for those employees who live with people who have a high-risk health condition as defined by the CDC and are unable to be vaccinated, or who are deemed "more likely" to become severely ill from COVID despite vaccination, per Centers for Disease Control and Prevention guidance. An employee seeking an ME must submit an initial application to HRSupport@lsnyc.org no later than ten (10) business days from the distribution of this agreement and all

application materials to all employees ("Deadline to Apply"). Any request received after the Deadline to Apply will only be considered based upon information unknown to the employee prior to the Deadline to Apply or based upon a change in circumstance. Any new hire must request an ME for work in court and other advocacy forums within ten (10) business days of their start date. Employees are encouraged, but not required, to submit supplemental documentation of the basis for their ME claim with their initial application to expedite processing of their application. The employer guarantees that submission of an application by an employee will not prejudice the employee or otherwise result in any adverse employment action.

#### **Processing of Applications**

Applications will be processed on a rolling basis. As claims are submitted, the employer will prioritize the processing of the claims based upon the date an individual must do in court work.

Employees who apply for either an RA or an ME may, for the pendency of the application period, be temporarily excused from in court work, if the volume of applications allows for sufficient coverage and the initial application indicates a likelihood that the employer will grant the RA or the ME upon subsequent receipt of supplemental documentation.

### **Appeal of a Reasonable Accommodation or a Medical Exemption Denial**

Within ten (10) days of the receipt of a denial of an RA or an ME request, the union may appeal the denial of the RA or the ME by submitting a statement of position and all supporting documents to both the LSNYC Executive Director and Scheinman Arbitration and Mediation Services ("SAMS") for a final decision. LSNYC's responsive documents, if any, to be submitted within five (5) days of the union's filing of an appeal. SAMS shall issue a final and binding decision either granting or upholding the denial of the RA or ME within five (5) days of the receipt of position statements and supporting documents from both parties. Either party may submit additional information in support of their position even if not considered in the original decision. The parties are encouraged to continue to engage in the collaborative process pending the issuance of a final decision.

### **LSNYC to Support Virtual Appearances**


LSNYC shall continue to advocate for remote appearances in courts and other advocacy forums in which LSNYC employees appear.

### **Arbitrator's Continued Jurisdiction**

Given the ongoing and ever-changing nature of the COVID pandemic, the parties agree that the Arbitrator shall continue to maintain jurisdiction over the implementation of this plan.

SO ORDERED:


October 4 , 2021.

  
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Martin F. Scheinman, Esq.

STATE OF NEW YORK    )  
                              )    ss.:  
COUNTY OF NASSAU    )

I, MARTIN F. SCHEINMAN, Esq. do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Order.

October 4 , 2021.

  
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Martin F. Scheinman, Esq.