

In the matter of

United Steelworkers, Local 5696

2022-9, 2022-10

and

Massachusetts Department  
of Transportation

Grievant: [REDACTED] (Reasonable Accommodation)

Appearances:

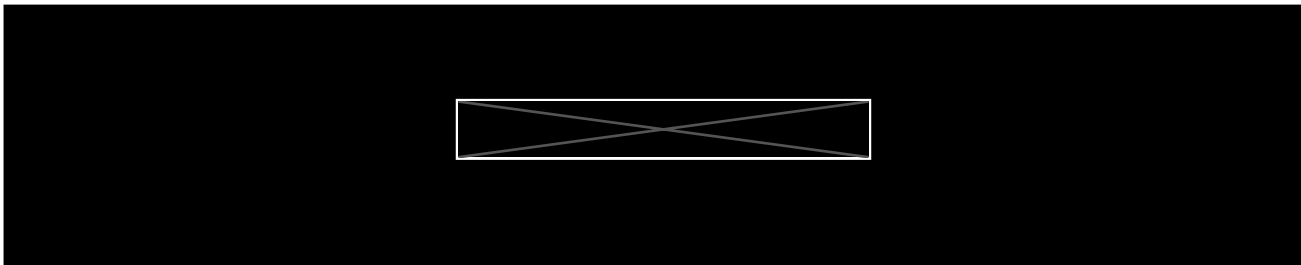
For the Employer- [REDACTED]  
For the Union - Alfred Gordon O'Connell, Esq.

In accordance with the Collective Bargaining Agreement (hereinafter "CBA") between the Massachusetts Department of Transportation (hereinafter "Employer" or "Department" or "DOT") and United Steelworkers, Local 5696 (hereinafter "Union") this matter came before Arbitrator Harvey M. Shrage. The Parties agreed to the following issue:

Did MassDOT deny reasonable accommodation to the Grievant?  
If so, what shall the remedy be?<sup>1</sup>

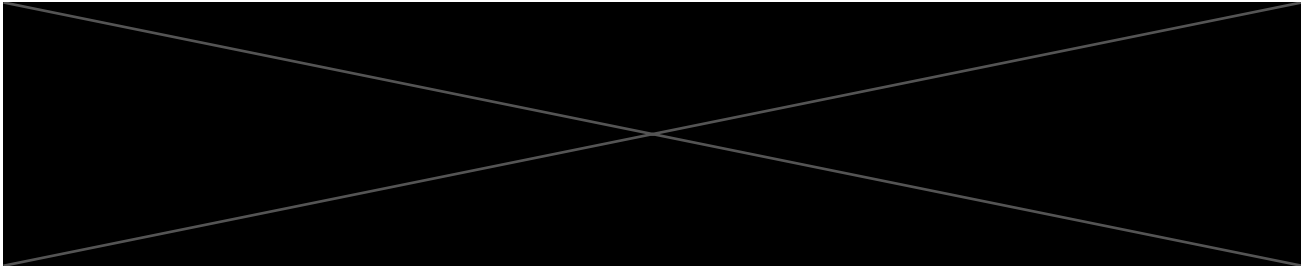
A hearing was held via Zoom<sup>2</sup> on October 19, 2023, at which representatives of the Parties appeared. They had full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Parties submitted post hearing briefs that have been fully considered.

Background

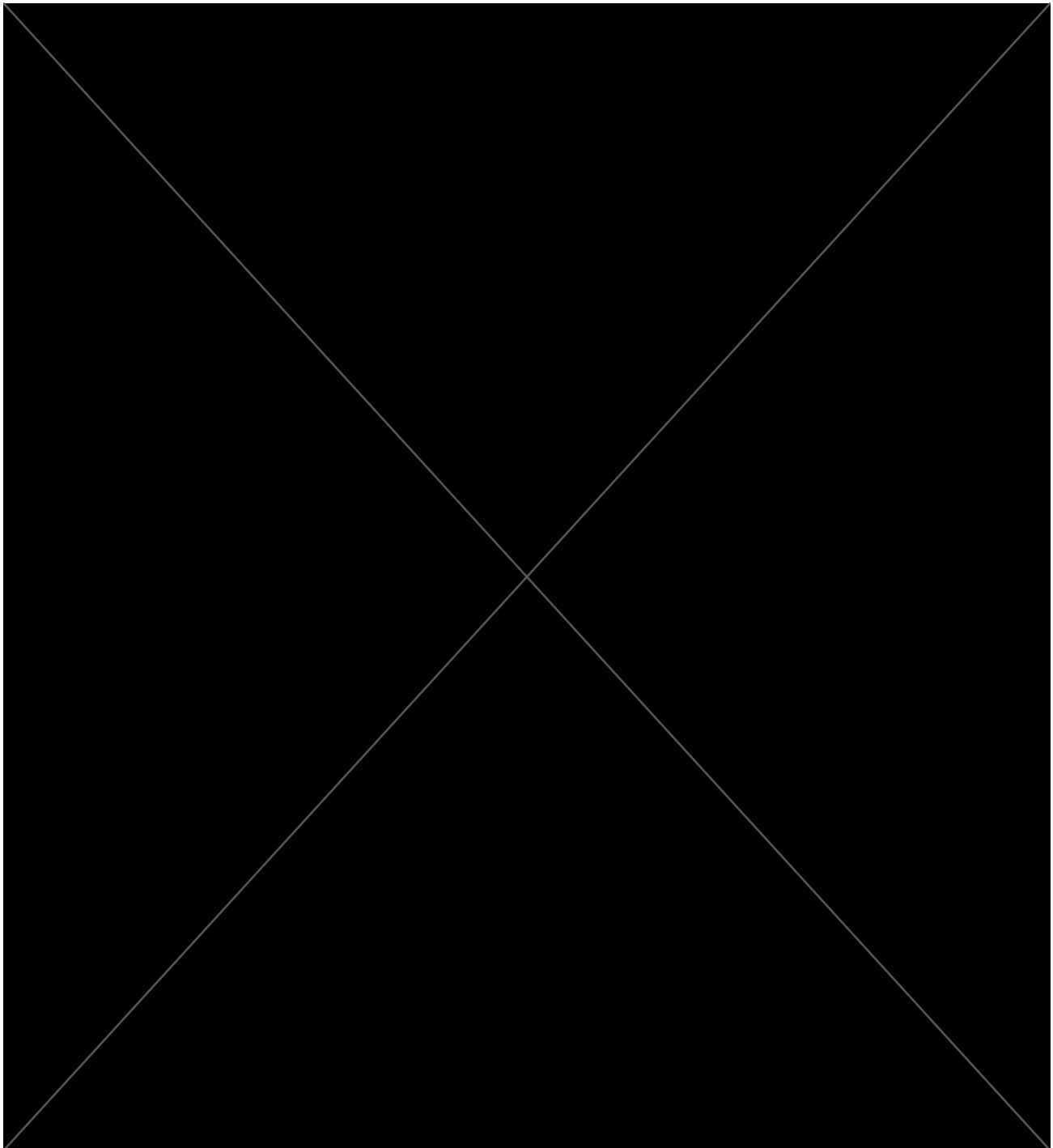


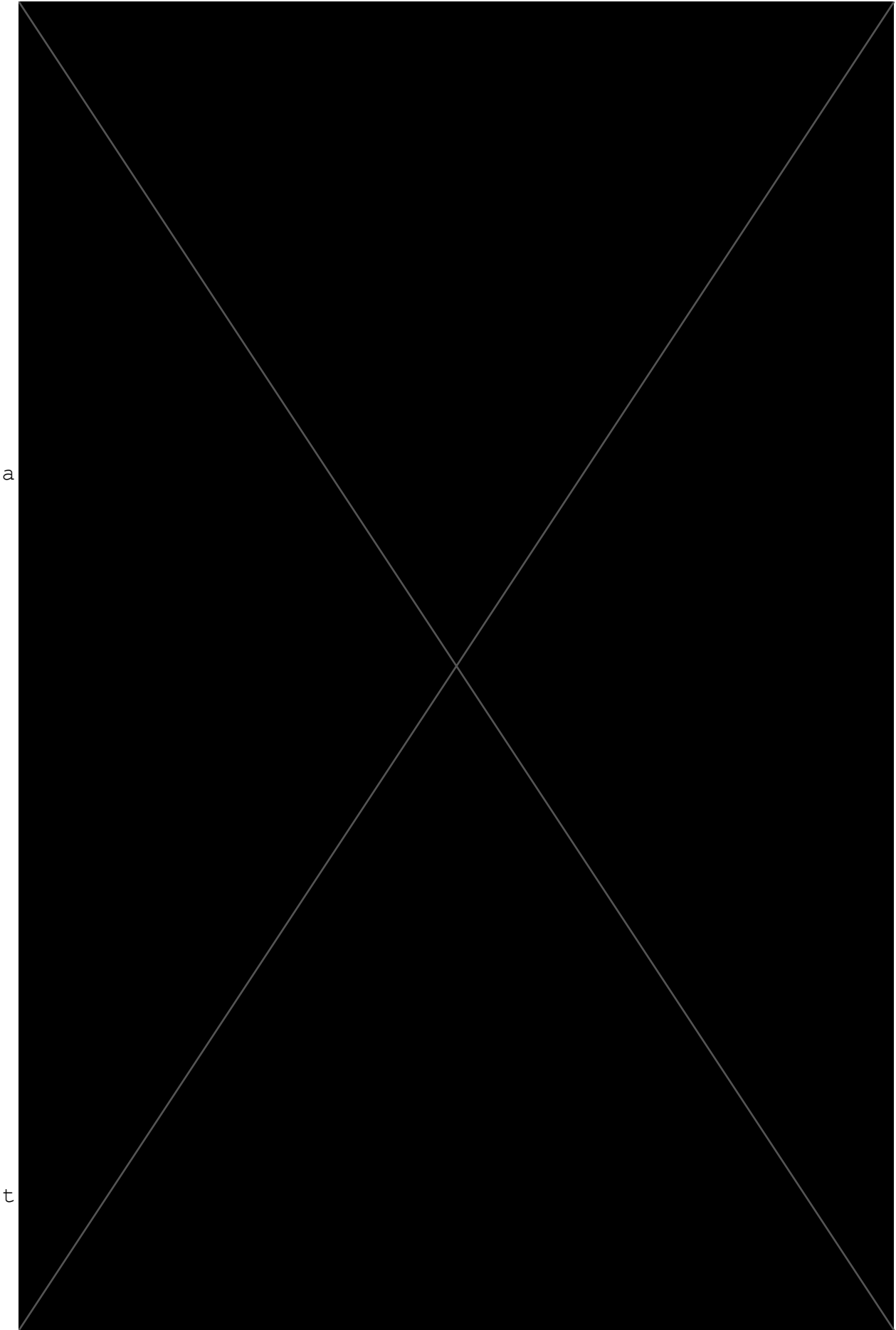
<sup>1</sup>The Parties stipulated that the DOT is not challenging the sincerely raised religious belief of the Grievant.

<sup>2</sup> The hearing was held via Zoom by mutual agreement of the Union and Employer.



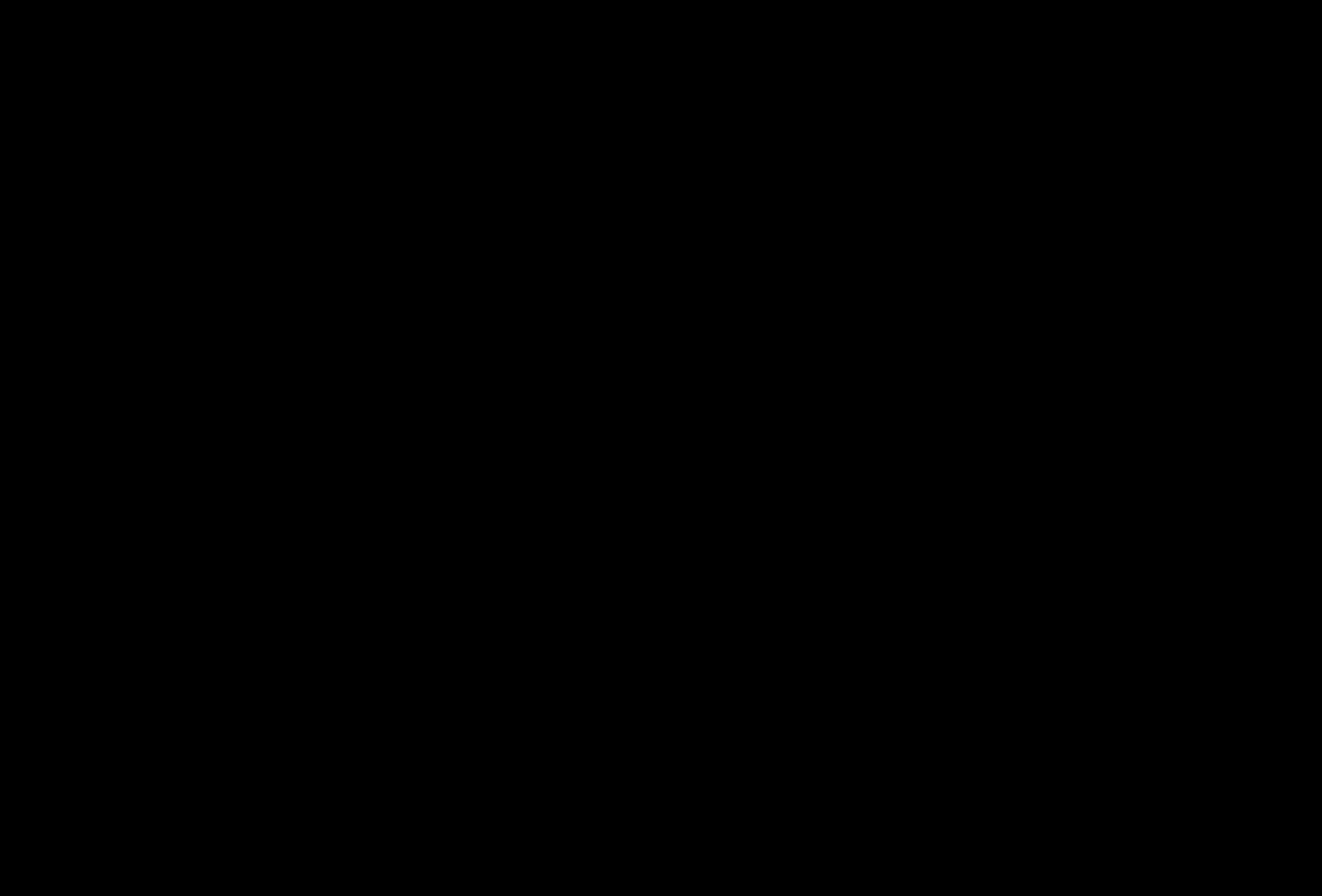
The job description for the Grievant's position states in relevant part:





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In March 2020 a state of emergency was declared due to the outbreak of Covid. Although a significant portion of Mass DOT's in-person operations were shut down, [REDACTED] continued its operations. DOT implemented policies to limit the spread of COVID. Those steps included creating split shifts, splitting units, adjusting schedules, implementing contact tracing, social distancing, issuing personal protective equipment, reducing capacity in its buildings, and upgrading ventilation systems. These steps increased costs to the DOT.

In August 2021 an Executive Order was issued requiring all Executive Department employees to provide proof of vaccination against the COVID-19 virus on or before October 17, 2021. The Executive Order allowed an employee to request a medical exemption as well as an exemption "where a reasonable accommodation can be reached for any employee . . . who is unwilling to receive COVID-19 vaccination due to a sincerely held religious belief."

Subsequent to the issuance of Executive Order 595 MassDOT required employees to show proof of COVID-19 vaccination as a condition of employment or submit a request for an exemption. An e-mail dated September 29, 2021, from Secretary Tesler to DOT employees stated in part:

It is important that every MassDOT Team Member understand what will happen should you choose not to meet the requirements of the Vaccine Mandate (Executive Order #595) - all MassDOT employees must demonstrate proof of vaccination by October 17.

- For managers, failure to meet this requirement will result in a five day suspension without pay. Continued failure to meet this requirement will then result in termination of employment.
- For bargaining unit members, the progressive discipline track will begin with a five day suspension without pay. Continued non-compliance will result in an additional ten day suspension without pay. Failure to meet this requirement after the ten day suspension will result in the termination of employment.

On September 28, 2021, the Grievant requested a religious exemption from the COVID-19 vaccination requirement. In the space provided for ██████ to "describe the accommodations" he was seeking, ██████ simply wrote: "Religious Exemption." He attached to his request a letter from his religious leader.

On October 12, subsequent to the Grievant filing his request for an exemption, he was interviewed by ██████ ██████, (hereinafter "█████") the Director of EEO Programs. The Department introduced a form entitled questions "to ask when determining whether there is a sincerely held belief." The document included five questions relating to the Grievant's religious beliefs as it related to the Covid vaccine. There were no questions included regarding possible accommodations.

█████ ██████, Assistant Secretary of ODCR (hereinafter "█████") testified that at the October 12, 2021, interview, ██████ spoke with the Grievant about his "sincerely held religious belief" and how his beliefs conflicted with the vaccine requirement. ██████ did not participate in the interview. ██████ stated that the Grievant did not make a request for a specific accommodation during the meeting. ██████ stated that to his knowledge, no one asked the Grievant about other qualifications he had that might have allowed him to fill another position. He agreed that he did not call anyone in management at the ██████ to discuss a possible accommodation.

█████ testified that he received a call from ODCR regarding his views regarding ██████ working from home. He testified that he did not know how the ██████ would work off a home internet

connection. He noted that it was his view that it would be very difficult if not impossible to have him work from home. However, he agreed that he did not know the bandwidth requirements and he did not ask anyone. [REDACTED] noted that having to call the Grievant with an issue if he was working from home would delay the response to [REDACTED]. According to [REDACTED], one situation that would require real-time in-person communication between multiple [REDACTED] He agreed a [REDACTED] was a rare occurrence. He noted that in 6 years in his job there was not one such occurrence. [REDACTED] did not recall being asked whether any offices were available on site that could have accommodated the Grievant.

[REDACTED] agreed that early in the pandemic one employee with a medical issue was allowed to work from home handling paperwork. With regard to this employee, [REDACTED] noted that he came back to work two days a week wearing a mask and social distancing working in a cubicle doing paperwork. He noted that at the time of the Grievant's request such work was not available.

The Grievant's request for an exemption was denied. The ODCR issued [REDACTED] the following e-mail dated October 20, 2021:

This letter is in response to your request for a reasonable religious accommodation that would exempt you from the COVID-19 vaccination as mandated by Executive Order 595. For your reference, MassDOT provides reasonable accommodation in accordance with the Title VII of the Civil Rights Act and Massachusetts General Law Chapter 151B. MassDOT has reviewed and given full consideration to your request to be exempt from receiving the COVID-19 vaccine as a religious accommodation, and your request must be denied.

There is overwhelming medical and scientific evidence that the COVID-19 is a very serious and highly transmissible communicable disease. In the Commonwealth of Massachusetts alone, there have been more than 750,000 reported cases and over 18,500 deaths due to COVID-19 and although progress has been made in curtailing, transmission, community spread of the virus remains substantial in many areas of the Commonwealth. It is also proven that immunization is a highly effective means of preventing the spread of the virus and that vaccinated individuals are much less likely to become seriously ill or spread the virus than those who have not been vaccinated.

For the following reasons, MassDOT has determined that granting your request would impose an undue hardship:

1. Substantial Health and Safety Risk. MassDOT is unable to accommodate employees in certain job categories due to the

nature of their responsibilities. For those job categories that require direct interactions with the public, MassDOT would face an undue hardship accommodating alternatives to the vaccination requirement. Such accommodations would compromise MassDOT's ability to safely provide direct services to the public in an operationally efficient manner. As a [REDACTED] the essential functions of your job require you to work in regular close contact with your co-workers in an indoor setting. As MassDOT moves towards a hybrid/remote work model, you and your co-workers will be expected to report to work in person on a regular basis. Some of your co-workers remain at risk of illness from COVID-19 infection due to age or underlying medical conditions even though they have been vaccinated, while others may be asymptomatic carriers of the virus and pose a serious risk to your health because you are not vaccinated. For these reasons the agency cannot adequately protect you or your co-workers from possible exposure to COVID-19 with social distancing, masking, regular testing and/or other alternative measures.

2. Operational Impacts. Under current CDC guidance any unvaccinated person who is in close contact with a person who has COVID-19 should quarantine at home for at least 14 days. Individuals who contract COVID-19 may need to quarantine for up to 20 days after symptoms first appear. As an unvaccinated individual, you are at a significantly greater risk of having to quarantine due to an exposure to a person who has COVID-19 or due to contracting COVID-19. Due to the critical nature of your job duties, any unplanned extended absence from work would have a significant negative operational impact on your department and create an undue hardship.

3. COVID-19 Exposure Risk. As an unvaccinated employee, you are at a greater risk than vaccinated employees of contracting COVID-19. The risk that you could become seriously ill or incapacitated due to a work-related exposure to the COVID-19 virus creates a creates an undue hardship.

Please know that MassDOT is not challenging the sincerity of your religious or spiritual beliefs. In fact, MassDOT explored the possibility of transferring or reassigning you to a vacant position, but no alternative assignments are available at this time.

We are committed to continuing to collaborate with you and welcome the opportunity to discuss any other avenues you may feel would reasonably accommodate you without causing undue hardship to MassDOT's business operations and/or our service to the public.

If you are aggrieved by this decision, you may file a written appeal within 3 business days. Your appeal must be based on errors of fact, law, or an error in the interpretation of the vaccine mandate. Please submit your appeal to:

██████████ ██████████.

...

Sincerely,

██████████ ██████████, Director

Affirmative Action Compliance & EEO Programs - MassDOT/MBTA  
Office of Diversity & Civil Rights

On November 5, 2021, Mr. ██████████ submitted his appeal. In his appeal the Grievant stated:

I appreciate the opportunity to make this appeal.

Kindly note that I am so thankful for the opportunity to serve the DOT since 2012 where I started as a toll collector and now serve under the able leadership of Mr. ██████████ ██████████, Mr. ██████████ ██████████ and Mr. ██████████ ██████████ as a ██████████ ██████████. The leadership team and my colleagues past and present at the ██████████ have made my career growth possible and I look forward to many more years of service at the DOT.

I appreciate the medical and scientific evidence that Covid-19 is a very serious and highly transmissible disease that has led to severe cases and deaths across the world and especially here in Massachusetts. I would consider an FDA approved vaccine and or medicine that does not contain fetal cells, or in any other way is contrary to my religious beliefs, should one come to the market. For now, I am following to the best of my ability the CDC guidelines which keep changing and the SOPs to lower my risk of contracting the disease and for the benefit of those vaccinated and those not vaccinated.

I request you reconsider these errors of fact;

To have factual objections about the contents of some vaccines that is contrary to religious freedom is not to be in total opposition to vaccinations and or medicines nor denying the seriousness of Covid 19 as a disease.



My role category is up for a hybrid/remote work model or to work in a separate space [REDACTED] or any DOT facility. In a good faith interactive process, this would mean I can work remotely and not be in direct physical interaction with the public nor asymptomatic colleagues and this would not affect operational efficiency as it has been considered as a viable way to work across the board but even more so by MassDOT. It is known among my colleagues and management that I am among the top three [REDACTED]. That will not change in a remote location.

While working remotely, I will continue to exercise the same discipline, social distance, masking, and nutritional support, to ensure that I stay as healthy as possible. I am also open to regular testing.

With regards to Covid19 Exposure risk, while it is true that unvaccinated employees especially operating in the office without social distance are at a greater risk, this risk does not always create undue hardship any more than when a fully vaccinated employee with underlying causes or not becomes seriously ill or incapacitated as breakthrough cases have been proven. Thankfully [REDACTED] and that may help limit the spread.

While the courts are deciding the errors in the interpretation of the vaccine mandate visa-a-vis religious and medical exemptions, I am thankful and continue to appreciate that MassDOT is not challenging the sincerity of my beliefs. I am committed to the mission of connecting the Commonwealth's residents and communities safely by providing high quality service. I hope in the interim, remote working and or working in a separate space at the [REDACTED] building can be a reasonable avenue to accommodate me without causing undue hardship to the operations plus our service to the public. Our work stations [REDACTED] and so far we have managed as a team through these trying periods.

I am among the top performing [REDACTED]. I still have more years to help the DOT achieve its mission. The Bible says in 1 Corinthians 6:19 "Don't you realize that your body is the temple of the Holy Spirit, who lives in you and was given to you by God? You do not belong to yourself, for God bought you with a high price. So you must honor God with your body." I do my best to honor God by honoring His Unconditional Love for myself, my colleagues and all the stakeholders of the DOT regardless of belief systems. Once

an approved FDA vaccine and or medicine that does not conflict with my religious beliefs, and is safe to take is available, I will not be opposed to it.

I hope the worst of this pandemic is behind us and we can all collaborate to ensure that we keep it that way despite our unique individual situations.

██████ testified that on appeal he would review the original request, the notes of the intake interview, and the initial decision to determine if the employee was raising any new evidence in the appeal or if there was a substantial mistake of fact or law in the original decision. The Grievant's appeal was denied. The Grievant was informed:

November 16, 2021

Dear Mr. ██████,

We are in receipt of your appeal of MassDOT's denial of your request for accommodation to be exempted from the COVID-19 vaccination mandate due to your religious belief(s). For the reasons provided below, your appeal is DENIED.

As you know, you submitted a request for a religious accommodation on September 29, 2021, seeking an exemption from the vaccination mandate due to your objection to the use of fetal line stem cells in the testing of the COVID-19 vaccines. MassDOT denied your request on October 20, 2021, because the requested accommodation could not be granted absent an undue hardship due to the nature of your job duties. On November 5, 2021, you submitted your appeal stating that the grounds for the appeal were that accommodation could be given without undue hardship.

As stated in your denial letter, appeals must be based on 1) new evidence not available at the time of the initial exemption request or 2) a substantial mistake in the facts, the interpretation of the law or interpretation of the Governor's order that if it had not been made would result in a different decision.

I have reviewed your appeal letter and the grounds you provided for your appeal, as well as MassDOT's initial denial and supporting documentation related to your request. You have not provided any new or differing information, or any evidence of a mistake of fact or interpretation of law or policy, that would alter MassDOT's initial denial of your request for exemption.

While MassDOT does not dispute the sincerity of your beliefs, the requested accommodation would be an undue burden on the agency for the reasons provided in the initial denial.

Therefore, I concur with the previous decision to deny your request for exemption from the vaccination mandate and your appeal is denied.<sup>1</sup>

With this denial of your appeal, MassDOT considers your request for an exemption to be closed. As a result, you are now in non-compliance and may be subject to immediate suspension as a result, as determined by Human Resources. If you intend to get vaccinated, we strongly encourage you to do so immediately, and to contact [REDACTED] [REDACTED] at [\[REDACTED\]@dot.state.ma.us](mailto:[REDACTED]@dot.state.ma.us) to indicate your intention to do so, and to provide details of your vaccination appointment.

Sincerely,

[REDACTED]  
Assistant Secretary, MassDOT Office of Diversity & Civil Rights

[REDACTED] testified that he was not presented with any new information justifying granting the appeal. He noted that if the Grievant were allowed to have contact while unvaccinated it would have had a serious operational impact if another employee became infected and was out of work for 14 days. Further, he testified that the nature of the Grievant's work required the type of equipment that could not be duplicated for him to work remotely. He noted that there were questions of equipment requirements as well as connectivity concerns for remote work. [REDACTED] noted that the costs for setting up remote work would have been exorbitant. However, he testified that cost was not the issue, and he did not look at the specific cost of creating a remote situation. He stated that he was focused on the health and safety issues. [REDACTED] agreed that he did not inquire as to whether the software used at [REDACTED] could be used outside [REDACTED]. With regard to transferring the Grievant to another position, [REDACTED] stated that a transfer was considered but few open positions existed and the one open position he was aware of was in another bargaining unit and would have also required the Grievant to have contact with others. He also noted that DOT was not hiring at that point. [REDACTED] agreed that he did not see any discussion of [REDACTED]'s qualifications in the file.

[REDACTED] [REDACTED] (hereinafter "[REDACTED]") has held the position of Director of Human Resources since 2023 and has held positions

in human resources with the DOT since 2017. ██████████ testified that there were approximately 100 applications for exemptions filed by MassDOT employees. He was not sure if they were all religious exemption requests. ██████████ did not recall accommodations being granted for religious exemptions.

On November 22, 2021, the Grievant was suspended for five days. On November 29, 2021, he was suspended for ten days for refusing to become vaccinated. On December 14, 2021, the Grievant was terminated. for failing to comply with the vaccine policy.

██████████ testified that as a result of decreasing transmission rates and the increased level of vaccinations DOT determined it could accommodate the Grievant and offered him reinstatement. On October 18, 2022, MassDOT offered to reinstate ██████████ to his former position. As a result, the Grievant returned to work.

### Position of the Parties

#### Employer<sup>3</sup>

The Employer argues that there is no evidence of discrimination in their decision to deny the Grievant a religious accommodation for exemption from the mandatory COVID-19 vaccination requirement. It argues that the Grievant's request was denied because DOT "reasonably determined that [The

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<sup>3</sup> The Employer filed a reply brief dated January 25, 2024. On January 27, 2024, the Union filed a Motion to Strike Employer's Improper Reply to Union's Post-Hearing Brief. In 1 Labor And Employment Arbitration § 3.05 Matthew Bender & Company, Inc (2024) it states with regard to the filing of a reply brief:

In the courts, reply briefs are common. In arbitration, they are not, because they are too often redundant of opening briefs, delay issuance of the arbitrator's award, and add to a party's costs. Some parties agree between themselves that reply briefs should be filed. In that event, the arbitrator abides by their agreement. If one party wishes to file a reply brief and the other objects, the arbitrator has broad authority to grant or deny permission to file and to fix a date for submission.

In the instant case, the Employer did not request leave to file a reply brief. Further, it did not seek the agreement of the Union to file a reply brief. Additionally, the Employer has not provided a reason that the Arbitrator's review of the facts presented at hearing, and the brief submitted by the Employer would not have allowed the Arbitrator to fully consider and analyze the instant case. Therefore, the Union's Motion to Strike is GRANTED.

Grievant's] unvaccinated status would pose a substantial health and safety risk to fellow employees and therefore represented a substantial burden on MassDOT's services to the traveling public."

The Employer asserts that it engaged in an individualized assessment of the Grievant's request and that "any claim [otherwise] is contrary to facts." It notes that after consideration of the request it determined that there could not grant the exemption because the Grievant's essential duties "unavoidably required that he be in close contact with other [REDACTED]." The Grievant's accommodation request was submitted in the fall of 2021, which was when there was a surge in the Delta variant and "COVID-19 safety was [The Employer's] highest safety and infection control priority." It notes that it had instituted safety provisions in the office, including staggering shift times so that less people were in the office and had some people work from the back-up location, but the employees still had to interact with each other in-person and coordinate operations. The Employer explained that as part of the essential functions of the Grievant's job, he had "to work in-person and interact with other employees in a dynamic, safety-sensitive environment." Thus, it argues that the "[The Grievant] could not have performed the essential functions of the [REDACTED] role unvaccinated without risk to himself, his colleagues, and the traveling public" which the Employer argues is a plain undue hardship.

Further, the Employer argues that it could not provide any accommodation to the Grievant to perform his job remotely, because "it is not possible for [REDACTED] remotely" and even if they could "that would not alleviate the technical, coordination and collaboration issues." The Employer explains that the complexities of their [REDACTED] and the demand of [REDACTED] are not possible in a work-from-home environment. The office is "equipped with [REDACTED] in order to prevent cataclysmic system failures that could cripple MassDOT's ability to [REDACTED]." DOT emphasizes the importance of timing, collaboration, and real-time critical problem-solving skills as necessary aspects of the Grievant's job and that the "loss in response time could likely have a significant negative effect on [REDACTED]." Additionally, the Employer contends that the Grievant "would not be able to perform his essential, [REDACTED] duties if he worked remotely [and] those duties by necessity would fall on other workers in [REDACTED], which would be unduly burdensome on [REDACTED] given the risk to other employees."

With regard to alternative positions, the Employer asserted "that there were not alternative open positions to which [the Grievant] could [have been] appropriately assigned." It notes that although there were a few open positions available, those positions also required similar in-person interaction with other employees, like the position the Grievant was already in.

Moreover, the Employer noted that beyond the operational issues, "sickness or lengthier quarantine periods for unvaccinated workers further bolsters the determination" that the Grievant's accommodation request was a substantial hardship on the Employer's operations.

### The Union

The Union argues that the termination of the Grievant was imposed without just cause, in violation of the collective bargaining agreement. Although it agrees that proof of vaccination against COVID-19 was required under Executive Order 595, it contained an exemption for individuals with a sincerely held religious belief, provided they submit the requisite form by October 8, 2021. Employees who did not receive an exemption and did not get vaccinated were given notice that they would be disciplined and, if still non-compliant, discharged from employment. It argues that after submission of the exemption request form, employees were to be interviewed about whether and how reasonable accommodations might be provided for them. Employees who were denied a religious exemption could appeal the decision. The Union argues that the DOT failed to ask the Grievant during its interview of the Grievant about accommodations. In its brief, the Union states, "Ultimately, the fact that the Department granted precisely zero accommodations raises a huge red flag about whether the Department paid any real attention to its statutory (and Constitutional) obligation to respect the religious liberty of its employees."

The Union notes that the Grievant received a form letter denial to his requested exemption that contained "no discussion of the feasibility of an alternative worksite, such as a work-from-home setting or another workspace." Although the denial letter stated that the Department explored the possibility of transferring the Grievant to a vacant position, the Union contends that no one reviewed [REDACTED]'s resume or seemed to be aware that he holds an M.B.A. It is the position of the Union that "The fact that the Department granted no accommodations to any employees despite the existence of other open positions makes clear that the Department was merely giving lip service to its obligations."

The Union cites the Supreme Court decision in *Groff v. DeJoy*, 600 U.S. 447 (2023) that "an employer does not satisfy its obligation merely by assessing whether a particular accommodation might be reasonable; the employer must actually accommodate the employee absent an actual undue hardship." In this regard, it contends that to determine whether a particular accommodation imposes an undue hardship, typically an interactive process between the employer and employee is used, and requires consideration of all relevant factors, including the practical impact to the employer. The Union argues that "the Department failed to undertake the kind of case-by-case inquiry required by law to protect ██████'s religious liberty and that the process it did undertake was no more than a cursory review of particular accommodations." It argues that the Department seemed to consider only remote work as a possible accommodation, but in denying said accommodation based on a general concern about internet connectivity and bandwidth that was not tailored to the individual employee's circumstances, failed to bear its burden of proving said accommodation was not viable. Further, the Union contends that the issue of cost to the Department is immaterial as a matter of law because, as the employer, it failed to conduct a meaningful discourse with ██████ or to assess any potential accommodations.

The Union requests that the Department make ██████ whole and to be found to have failed in its obligation to reasonably accommodate ██████'s sincerely held religious belief and to have subjected him thereon to discipline and discharge without just cause, in violation of the collective bargaining agreement.

### Discussion

In March 2020 a state of emergency was declared as a result of the outbreak of Covid. Although a significant portion of Mass DOT's in-person operations were shut down, ██████ continued its operations. DOT implemented policies to limit the spread of COVID.

In August 2021 an Executive Order was issued requiring all Executive Department employees to provide proof of vaccination against the COVID-19 virus on or before October 17, 2021. The Executive Order allowed an employee to request a medical exemption as well as an exemption "where a reasonable accommodation can be reached for any employee . . . who is unwilling to receive COVID-19 vaccination due to a sincerely held religious belief." Subsequent to the issuance of Executive Order 595 MassDOT required employees to show proof of COVID-19 vaccination as a condition of employment or submit a request for an exemption. On September 28, 2021, the Grievant requested a religious exemption from the COVID-19 vaccination requirement. In

the space provided for [REDACTED] to "describe the accommodations" he was seeking, [REDACTED] simply wrote: "Religious Exemption." The parties stipulated that the Grievant holds a religious belief that prevents him from receiving the COVID-19 vaccine.

On October 12, subsequent to the Grievant filing his request for an exemption, he was interviewed by the Director of EEO Programs. The Department introduced a form entitled questions "to ask when determining whether there is a sincerely held belief." The document included five questions relating to the Grievant's religious beliefs as it related to the Covid vaccine. There were no questions included regarding possible accommodations. [REDACTED] testified that at the October 12, 2021, interview, [REDACTED] spoke with the Grievant about his "sincerely held religious belief" and how his beliefs conflicted with the vaccine requirement. [REDACTED] stated that the Grievant did not make a request for a specific accommodation during the meeting. [REDACTED] did not participate in the interview. [REDACTED] stated that to his knowledge, no one asked the Grievant about other qualifications he had that might have allowed him to fill another position. He agreed that he did not call anyone in management [REDACTED] to discuss a possible accommodation.

[REDACTED] testified that he received a call from ODCR regarding his views regarding [REDACTED] working from home. He testified that he did not know how [REDACTED] would work off a home internet connection. He noted that it was his view that it would be very difficult if not impossible to have him work from home. However, he agreed that he did not know the bandwidth requirements and he did not ask anyone. [REDACTED] noted that having to call the Grievant with an issue if he was working from home would delay the response [REDACTED]. He did not recall being asked whether any offices were available on site that could have accommodated the Grievant.

As noted above, [REDACTED] testified that one situation that would require real-time in-person communication between multiple [REDACTED]. He agreed a [REDACTED] was a rare occurrence. He noted that in 6 years in his job there was not one such occurrence.

As fully described above, the Grievant's request for an exemption was denied. The letter informing him of the decision noted that "MassDOT explored the possibility of transferring or reassigning you to a vacant position, but no alternative assignments are available at this time." The letter ended by stating that DOT was "committed to continuing to collaborate with you and welcome the opportunity to discuss any other avenues you may feel would reasonably accommodate you without causing undue



hardship to MassDOT's business operations and/or our service to the public."

Under the DOT policy, the Grievant filed an appeal to the denial of his exemption request. As fully described above in his appeal the Grievant, stated that he could "work remotely and not be in direct physical interaction with the public nor asymptomatic colleagues and this would not affect operational efficiency as it has been considered as a viable way to work across the board but even more so by MassDOT," He also noted that he was open to regular testing, and that "each [REDACTED] and that may help limit the spread." In addition, the Grievant mentioned that he could work "in a separate space at [REDACTED] or DOT building" as an accommodation.

With regard to the appeal, [REDACTED] testified that he would review the original request, the notes of the intake interview, and the initial decision to determine if the employee was raising any new evidence in the appeal or if there was a substantial mistake of fact or law in the original decision. [REDACTED] testified that he was not presented with any new information justifying granting the appeal. He noted that if the Grievant were allowed to have contact while unvaccinated it would have had a serious operational impact if another employee became infected and was out of work for 14 days. Further, he testified that the nature of the Grievant's work required the type of equipment that could not be duplicated for him to work remotely. He noted that there were questions about equipment requirements as well as connectivity concerns for remote work. [REDACTED] noted that the costs for setting up remote work would have been exorbitant. However, he testified that cost was not the issue, and he did not look at the specific cost of creating a remote situation. He stated that he was focused on health and safety issues. [REDACTED] agreed that he did not inquire as to whether the software used at [REDACTED] could be used outside [REDACTED]. With regard to transferring the Grievant to another position, [REDACTED] stated that a transfer was considered but few open positions existed and the one open position he was aware of was in another bargaining unit and would have also required the Grievant to have contact with others. He also noted that DOT was not hiring at that point. [REDACTED] admitted that he did not see any discussion of [REDACTED]'s qualifications in the file. [REDACTED] denied the Grievant's appeal.

[REDACTED] testified that there were approximately 100 applications for exemptions filed by MassDOT employees. He was not sure if they were all religious exemption requests. [REDACTED] believed that there were no accommodations approved in religious exemption cases.

On November 22, 2021, the Grievant was suspended for five days. On November 29, 2021, he was suspended for ten days for refusing to become vaccinated. On December 14, 2021, the Grievant was terminated for failing to comply with the vaccine policy. On October 18, 2022, MassDOT Offered to reinstate [REDACTED] to his former position. The Grievant accepted the position.

In this case, the Employer is not challenging the sincerely raised religious belief of the Grievant. The issue in this case is whether the MassDOT denied the Grievant a reasonable accommodation. Once the DOT concluded that the Grievant had sincerely held religious beliefs, the DOT had the responsibility to provide a reasonable accommodation to the Grievant unless the accommodation was so burdensome as to give rise to an undue hardship on the employer.

At the outset, it must be recognized that the pandemic and the vaccine requirement triggered a significant number of requests for medical and religious exemptions. As we also know it created challenges to maintain essential services and at the same time safeguard the health and safety of employees and the public. I have no doubt that this created enormous pressure on those responsible to fully consider the requests and make decisions on each request. However, the unusual circumstances and number of requests did not relieve the DOT from investigating possible accommodations for each employee that had a sincerely held religious belief.

It is clear that the Grievant's position requires interaction with personnel in [REDACTED], and his support of personnel in [REDACTED] in a "[REDACTED] environment." It is also expected that in his position the Grievant be able to respond quickly to [REDACTED]. It may well be that finding accommodations for the Grievant would be difficult or might not have been possible. However, the DOT had a responsibility to consider possible accommodations and make a determination as to whether an accommodation was possible based upon the gathering of substantive information.

The DOT contends that it engaged in an interactive process with the Grievant to consider accommodation options. However, the questions asked of the Grievant during his interview were focused entirely on the Grievant's religious beliefs. The fact that the Grievant did not bring up the issue of possible accommodations did not relieve the DOT of its responsibility to consider possible accommodations or to continue the interactive process with the Grievant. Further, although there was testimony that there were no open positions, no open office space to provide the Grievant with a separate space, and that remote work

was not possible, each of these conclusions were only supported by conclusionary statements offered at hearing. There is insufficient evidence that anyone looked into lists of vacant positions, or lists of vacant rooms available, or the specifics of what was needed for the Grievant to work remotely. ██████ stated that, to his knowledge, no one asked the Grievant about other qualifications he had that might have allowed him to fill another position. He agreed that he did not call anyone in management at ██████ to discuss possible accommodations. ██████ testified that he received a call from ODCR regarding his views regarding ██████ working from home. He testified that although he believed that it would be very difficult if not impossible to have the Grievant work from home, he did not know the bandwidth or software requirements and he did not ask anyone. Further, ██████ did not recall being asked whether any offices were available on site that could have accommodated the Grievant.

Further, although DOT suggests that the cost of any changes to allow the Grievant to work remotely would be significant, ██████ testified that cost was not the issue, and he did not look at the specific cost of creating a remote situation. He stated that he was focused on health and safety issues. Further, he agreed that he did not inquire as to whether the software used at ██████ could be used outside ██████.

The evidence in the instant case, indicates that possible accommodations included the Grievant working remotely from home, working at a separate workspace at ██████, or moving into a vacant position that would allow the Grievant to work remotely or in a separate space. Although the Employer argues that it looked into each of these options, the evidence supports the conclusion that any investigation into each of these options was cursory and not sufficient to meet its burden.

### Award

As noted above, the Grievant was previously returned to work.

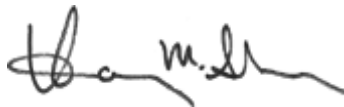
The Grievant shall receive full back pay, including seniority rights and all benefits retroactive to the date he was placed on suspension without pay to the date he returned to work. Such back pay shall be reduced by the amount of any earnings from other employment received by the Grievant during the period that back pay accrued.<sup>4</sup> Such back pay

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<sup>4</sup> The Grievant and the Employer shall comply with all statutory requirements that may apply regarding the reimbursement of unemployment compensation that may be applicable as a result of this award. In the event that applicable law does not require that unemployment compensation be reimbursed, the amount of

shall be subject to the Grievant's duty to mitigate, so far as reasonable, the amount of the loss.

The Undersigned retains jurisdiction for sixty days (60) from the date of this decision with regard to the remedy directed in this case.



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Harvey M. Shrage  
Arbitrator

April 2, 2024

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unemployment compensation received by the Grievant shall be deducted from the Grievant's back pay entitlement.