

STATE OF INDIANA            )  
  )SS:  
COUNTY OF MONROE        )  
  
THE DON OWENS MEMORIAL        )  
LODGE 88, FRATERNAL ORDER    )  
OF POLICE, INC., THE            )  
BLOOMINGTON METROPOLITAN     )  
INTERNATIONAL ASSOCIATION     )  
OF FIREFIGHTERS, LOCAL 586, and )  
AFSCME LOCAL 2487,             )  
    Plaintiffs,                    )  
  )  
vs.                                    )  
  )  
CITY OF BLOOMINGTON,         )  
  )  
    Defendant.                    )

**VERIFIED COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

Come now the Plaintiffs, the Don Owens Memorial Lodge 88, Fraternal Order of Police, Inc., the Bloomington Metropolitan International Association of Firefighters Local 586, and AFSCME Local 2487, and for their Verified Complaint for Declaratory Judgment and Injunctive Relief against the Defendant, City of Bloomington, Indiana, hereby states as follows:

1. Plaintiff, Don Owens Memorial Lodge 88, Fraternal Order of Police, Inc. (hereinafter referred to as “FOP”), is the duly authorized bargaining agent for police officers employed by the City of Bloomington, Indiana and performing their duties as members of the Bloomington Police Department.

2. Plaintiff, Bloomington Metropolitan International Association of Firefighters Local 586 (hereinafter referred to as “Local”), is the duly authorized bargaining agent for firefighters employed by the City of Bloomington, Indiana and performing their duties as

members of the Bloomington Fire Department.

3. Plaintiff, AFSCME Local 2487 (hereinafter referred to as “AFSCME”), is the duly authorized bargaining agent for civilian municipal employees employed by the City of Bloomington, Indiana.

4. Defendant City of Bloomington, Indiana (hereinafter referred to as “City”) is the employer of all police officers, firefighters and civilian municipal employees of the City of Bloomington.

3. The employment status and benefits of all Plaintiffs with the City is contractual, and the terms and conditions of the employment contracts, including all benefits thereof, are created by the combination of the current contractual obligations between the City and Plaintiffs pursuant to collective bargaining agreements between the parties, relevant statutes and ordinances. (Attached hereto and a made a part hereof as Exhibit “A-1”, “A-2” and “A-3” is a copy of the respective collective bargaining agreements).

#### **COUNT I – DECLARATORY JUDGMENT**

4. On or about December 23, 2021, the City, by and through its agents and representatives, formally notified City employees (including Plaintiffs) that the City plans to implement a Covid-19 Vaccination, Testing and Face Covering Policy. (Attached hereto and a made a part hereof as Exhibit “B” is a copy of the Policy).

5. Pursuant to the Policy, Employees who do not voluntarily submit proof of vaccination against COVID-19 and who are not fully vaccinated must be tested every 7 days and submit a negative COVID-19 test result every 7 days starting the week of January 3rd. Unvaccinated employees who do not comply with this policy will be given Step 1 written warnings through February 8th, even if they have received warnings within the last 12 months.

After that date, unvaccinated employees who do not provide documentation of a COVID-19 test result as required by this policy will be removed from the workplace until they provide a test result. They will not be allowed to use benefit time to cover their related absences; the absence will be unpaid; and appropriate discipline, in accordance with City policies, will be administered. Policies regarding unscheduled absences will be enforced. The Policy applies to all Plaintiffs.

6. The Policy imposes new terms and conditions of employment that the City did not negotiate or reach an agreement over with Plaintiffs.

7. The Policy constitutes a change to the terms and conditions of Plaintiffs employment, to which Plaintiffs did not agree. The City failed to negotiate in good faith with respect to same.

8. The Policy imposes penalties for non-compliance, which are outside the process outlined in the agreements. The Policy also requires employees to pay for the Covid-19 tests.

9. The Policy also imposes a disciplinary process that is outside of the process created by the Collective Bargaining Agreements and in violation of State Law.

10. The Policy violates Ind. Code §§ 16-39-11, which prohibits municipalities from requiring employees to produce an immunization passport and/or information regarding an individual's immunization status.

11. That a controversy has thus arisen between the parties requiring a legal interpretation by this Court.

12. WHEREFORE, the Plaintiffs request that this Honorable Court review the current agreements between the City and the Plaintiffs, as well as applicable statutes and ordinances, to determine the parties' rights, duties, and obligations pursuant to same.

## **COUNT II – PRELIMINARY INJUNCTION**

13. The Plaintiffs hereby incorporate by reference of paragraphs 1 through 12 contained within Count I of this Complaint.

14. Plaintiffs contend that based upon the allegations set forth in its request for declaratory judgment, this Court should enjoin the City from implementing the Covid-19 Vaccination, Testing and Face Covering Policy.

15. Plaintiffs seek immediate preliminary injunctive relief to protect the rights of their respective members all of whom are employees of the City of Bloomington until all issues currently in dispute can be determined after full examination and hearing.

16. Unless restrained by this court, the defendant will continue to perform the acts sought to be enjoined.

17. The actions of the defendant will result in immediate and irreparable harm to the plaintiff as is more fully described in Count I.

18. The harm to plaintiffs, if injunctive relief is not granted, outweighs any harm to the defendant if this request for preliminary injunction is granted.

19. Plaintiff has no adequate remedy at law, and the interests of the public will not be disserved by granting plaintiff's request for preliminary injunction.

20. A preliminary injunction is necessary to preserve the status quo until the issues raised by plaintiff's complaint can be finally determined, and is appropriate because plaintiff is likely to prevail on the merits of his claim.

21. This request for a preliminary injunction is being sought with notice as the undersigned has notified the Office of Corporation Counsel of the City Bloomington of the filing of this Complaint.

22. For the reasons set forth above, and on the basis of any further evidence the Court may hear and incorporate in its finding and judgment, Plaintiffs hereby requests that the Court determine the parties rights, duties, and obligations pursuant to the contracts currently in place, and request a preliminary injunction and permanent injunction against the City, for all of the above allegations.

WHEREFORE, the Plaintiffs respectfully request that a prompt hearing be set with notice on their request for preliminary injunction be issued; and that the Court enjoin the City from implementing the Covid-19 Vaccination, Testing and Face Covering Policy upon Plaintiffs' members who are employees with the City, and all other proper relief.

Respectfully submitted,

RUCKELSHAUS KAUTZMAN BLACKWELL  
BEMIS DUNCAN & MERCHANT, LLP

/s/ Edward J. Merchant  
Edward J. Merchant, #26882-49

KOCH McAULEY & BAILEY P.C.

/s/ Eric A. Koch  
Eric A. Koch, # 14870-38

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been duly served upon the following by First Class United States mail, postage prepaid this 4<sup>th</sup> day of January, 2022:

John Hamilton  
Mayor  
City of Bloomington  
401 N Morton St  
Bloomington, IN 47404

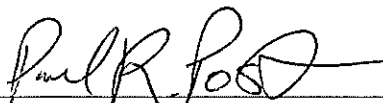
Michael Rouker  
Corporation Counsel  
City of Bloomington  
401 N Morton St  
Bloomington IN 47404

Nicole Bolden  
Clerk  
City of Bloomington  
401 N Morton St  
Bloomington IN 47404

/s/ Edward J. Merchant  
Edward J. Merchant, #26882-49

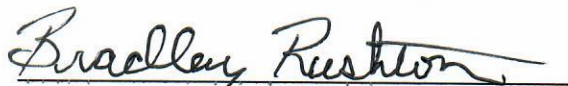
Edward J. Merchant, #26882-49  
RUCKELSHAUS KAUTZMAN BLACKWELL  
BEMIS DUNCAN & MERCHANT, LLP  
135 N. Pennsylvania, Ste. 1600  
Indianapolis, Indiana 46204  
(317) 634-4356

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.

A handwritten signature in black ink, appearing to read "Paul R. Post", written over a horizontal line.

Paul Post, President  
Don Owens Memorial Lodge 88,  
Fraternal Order of Police, Inc.

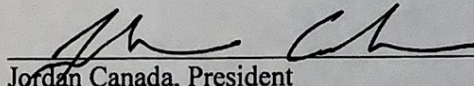
I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.

A handwritten signature in cursive script that reads "Bradley Rushton". The signature is written in black ink and is positioned above a horizontal line.

Bradley Rushton, President  
AFSCME Local 2487



I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.

  
\_\_\_\_\_  
Jordan Canada, President  
Bloomington Metropolitan International  
Association of Firefighters Local, 586