NYDCC, 15 OCB2d 31 (BCB 2022)

(Arb.) (Docket Nos. BCB-4483-22 & BCB-4484-22) (A-15909-22 & A-15910-22)

Summary of Decision*:** The City challenged the arbitrability of two grievances alleging that its incentive payments for vaccination against COVID-19 were issued selectively and arbitrarily in violation of various economic agreements, which require uniform and equitable compensation for bargaining unit members. The City argued that there is no nexus between the grievances and the economic agreements because the incentive payments were a targeted effort to achieve a public health goal and were wholly unrelated to wage rates or compensation. The Unions argued that employees received the incentive payments in their paychecks as earnings and therefore relate to the parties' economic agreements. The Board found that the Unions did not establish the requisite nexus. Accordingly, the City's petitions challenging arbitrability were granted, and the Union's requests for arbitration were dismissed. ***(Official decision follows).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK,

Petitioner,

-and-

NEW YORK DISTRICT COUNCIL OF CARPENTERS,

Respondent,

-and-

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 3,

Respondent.

DECISION AND ORDER

On March 29, 2022, the New York District Council of Carpenters ("DCC") and the International Brotherhood of Electrical Workers, Local 3 ("IBEW") (collectively, "Unions") filed

separate requests for arbitration, which were subsequently consolidated, alleging that the City of New York ("City") violated the parties' collective bargaining agreements requiring uniform and equitable compensation for bargaining unit members by selectively and arbitrarily issuing incentive payments for vaccination against COVID-19. On April 20, 2022, the City filed separate petitions challenging the arbitrability of the grievances, which were also subsequently consolidated. The City argues that there is no nexus between the grievances and the economic agreements because the incentive payments were a targeted effort to achieve a public health goal and were wholly unrelated to wage rates or compensation. The Unions argue that employees received the incentive payments in their paychecks as earnings and therefore relate to the parties' economic agreements. The Board finds that the Unions did not establish the requisite nexus. Accordingly, the City's petitions challenging arbitrability were granted, and the Unions' requests for arbitration were dismissed.

BACKGROUND

On August 31, 2021, the Mayor issued Executive Order ("E.O.") No. 78, mandating that by September 13, 2021, City employees be vaccinated against COVID-19 or submit to weekly testing. Thereafter, on October 20, 2021, the Mayor and the City's Commissioner of Health and Mental Hygiene issued separate orders stating that City employees no longer had the option of weekly testing and were instead required to be fully vaccinated. Specifically, employees were required to receive their first vaccine dose by October 29, 2021. Additionally, the Mayor simultaneously announced that employees who were not yet vaccinated would "receive an extra $500 in their paycheck" for receiving the first vaccine dose by October 29, 2021. (DCC Pet., Ex.

4; IBEW Pet., Ex. 3)[1] City employees who received their first vaccine dose prior to October 20, 2021, or after October 29, 2021, received no such payments.

City employees in various titles represented by the DCC and the IBEW were subject to the vaccine mandate and eligible for the $500 incentive payments. Beginning in November 2021, the Unions' bargaining unit members who produced proof of vaccination obtained between October 20 and 29 started receiving the $500 payment in their paychecks. The payment was reflected in the employees' paychecks as "gross pay" and "total earnings," subject to standard payroll tax withholdings and deductions. (*See* Ans., Ex. 2)

DCC Titles

The DCC represents employees in seven titles: Carpenter; Supervisor Carpenter; Ship Carpenter; Supervisor Ship Carpenter; Dockbuilder; Supervisor Dockbuilder; and Rigger. These are prevailing wage titles which, pursuant to the City's Personnel Rules and Regulations, have their wages and benefits established in accordance with New York Labor Law ("L.L.") § 220. L.L. § 220.8(d) provides that the public employer and employee organization "shall in good faith negotiate and enter into a written agreement with respect to [wages] and supplements . . . ." These binding agreements are approved and issued by the Comptroller of the City of New York ("Comptroller") and are known as Consent Determinations. Regarding the DCC represented titles, there are four applicable Consent Determinations. Each Consent Determination notes that it was issued "for the fixation of [the applicable title(s)'] compensation as employees of the City . . . pursuant to [L.L. § 220]." (DCC Pet., Ex. 1; Ans., Ex. 8) Each Consent Determination also explains that the "foregoing basic rates of wages and supplemental benefits are due and payable to

[1] Citations to the City's petition challenging arbitrability in BCB-4483-22 are noted by "DCC Pet." References to the City's petition challenging arbitrability in BCB-4484-22 are noted by "IBEW Pet."

each and every employee of the City . . . who [is] represented by the [DCC]" and apply to "[a]ny new employee who may be hired" during the settlement term. (*Id.*)

Following the issuance of the Consent Determinations, the DCC and the City entered into two subsequent Memoranda of Agreement ("MOAs") "set[ting] forth their agreement on all economic matters," including wage rates, premium pay, annuity contributions, and paid leave. (DCC Pet., Ex. 1) The MOAs continue the terms set forth in the Consent Determinations except as explicitly provided.[2]

The MOAs do not contain a grievance procedure. Accordingly, as employees in prevailing wage titles covered by L.L. § 220, the applicable grievance and arbitration procedure is set forth in Mayoral Executive Order 83 of 1973 ("E.O. 83"). E.O. 83, § 5(b) defines a "grievance," in relevant part, as:

> A. a dispute concerning the application o[r] interpretation of the terms of (i) a written, executed collective bargaining agreement; or (ii) a determination under Section [222] of the Labor Law affecting terms and conditions of employment; and
>
> B. a claimed violation, misinterpretation, or misapplication of the written rules or regulations of the mayoral agency by whom the grievant is employed affecting the terms and conditions of his or her employment . . .
>
> The term "grievant" shall include all grievants in the case of a group grievance.

(DCC Pet., Ex. 2; Ans., Ex. 4)

IBEW Titles

The IBEW represents employees in ten prevailing wage titles: Electrician; Electrician's Helper; Supervisor Electrician; Communication Electrician; Communication Electrician's Helper;

[2] Pursuant to § 12-311(d) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), all expired agreements referenced here that have not been succeeded remain in *status quo*.

Supervisor Communication Electrician; Senior Supervisor Communication Electrician; Stationary Engineer (Electric); Senior Stationary Engineer (Electric); and Supervisor of Mechanics. In a separate bargaining unit, the IBEW represents six titles in the career and salary plan: Apprentice Inspector (Electrical); Inspector (Electrical); Associate Inspector (Electrical); Principal Electrical Inspector; Inspector of Fire Alarm Boxes; and Senior Inspector of Fire Alarm Boxes.

Prevailing Wage Titles

With respect to the ten prevailing wage titles, five Consent Determinations set their wages and benefits. Similar to the DCC's prevailing wage titles, each of these Consent Determination notes that the "foregoing basic rates of wages and supplemental benefits are due and payable to each and every employee of the City . . . who are represented by [the IBEW]," and apply to "[a]ny new employee who may be hired" during the settlement term. (IBEW Pet., Ex. 1; Ans., Ex. 9) Each Consent Determination also explains that it was issued "for the fixation of [the applicable title(s)'] compensation as employees of the City . . . pursuant to [L.L. § 220]." (*Id.*) Following the issuance of the Consent Determinations, the IBEW and the City entered into two subsequent MOAs to establish wage rates, health savings and welfare fund contributions, and certain paid leave benefits and otherwise continue the terms of the expired Consent Determinations except as modified.

In addition to the Consent Determinations and MOAs, the IBEW and the City also negotiated the Electricians' Non-Economic Agreement ("Electricians' Agreement"), which sets forth a grievance procedure for the prevailing wage titles. Article V, § 1 of the Electricians' Agreement defines a "grievance," in relevant part, as:

> a. A dispute concerning the application or interpretation of the terms of this Agreement;
>
> b. A claimed violation, misinterpretation, or misapplication of the rules or regulations, written policy or orders of the Employer

> applicable to the agency which employs the grievant affecting terms and conditions of employment; . . . .

(Ans., Ex. 5) Article V, § 6 provides for the filing of group grievances in circumstances involving the "inequitable application" of the Electricians' Agreement's provisions:

> A grievance concerning a large number of employees and which concerns a claimed misinterpretation, inequitable application, violation or failure to comply with the provisions of this Agreement may be filed directly at S[tep] III of the grievance procedure . . . All other individual grievances in process concerning the same issue shall be consolidated with the "group" grievance.

(*Id*.) Article III incorporates the Consent Determinations and MOAs as the economic agreements for employees subject to the Electricians' Agreement.

Career and Salary Titles

The IBEW and the City are also parties to a separate unit agreement for the six Inspector titles who are in the career and salary plan. The Electrical Inspectors' Agreement ("Inspectors' Agreement"), sets forth governing economic terms in Articles III and IV, providing for specific salaries and wage increases for individual employees in each title, including rates for new hires, assignment and service differentials, and contributions to the welfare fund.

The Inspectors' Agreement sets forth a grievance procedure in Article VI, § 1, which defines a "grievance," in relevant part, as:

> a. A dispute concerning the application or interpretation of the terms of this Agreement;
>
> b. A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment . . . .

(Ans., Ex. 6) Article VI, § 6 provides for the filing of group grievances in circumstances involving the "inequitable application" of the Inspectors' Agreement's provisions:

> A grievance concerning a large number of employees and which

> concerns a claimed misinterpretation, inequitable application, violation or failure to comply with the provisions of this Agreement may be filed directly at S[tep] III of the grievance procedure . . . All other individual grievances in process concerning the same issue shall be consolidated with the "group" grievance.

(*Id*.)

The IBEW and the City also entered into two MOAs that incorporated the Inspectors' Agreement and modified specified economic terms, including wage and service increments, health savings, welfare fund contributions, and paid family leave.[3]

Unions' Grievances

On February 16, 2022, the DCC and the IBEW filed separate group grievances with the City's Office of Labor Relations ("OLR") alleging that Mayoral agencies and related City entities selectively paid the $500 vaccine incentive "bonus" to some bargaining unit members in the aforementioned titles, but not others. (DCC & IBEW Pet., Ex. 1) Specifically, the grievances were brought on behalf of members who: (a) were employed by Mayoral agencies or related City entities that paid the $500 bonus between October 20 and 29, 2021; (b) received a first vaccine dose prior to October 20, 2021, or after October 29, 2021; and (c) were not paid the $500 bonus.

The DCC alleged on behalf of its seven titles that:

> By making the aforementioned selective bonus payments, the City and related entities breached, misinterpreted, inequitably applied, violated and failed to comply with the terms of the Consent Determinations of the Comptroller of the City of New York ("Consent Determinations") and Memoranda of Agreement ("MOAs") amending those Consent Determinations governing the affected titles, and the rules, regulations, policies and orders of the City and related entities. *See* Mayoral Executive Order 83 of 1973 ("E.O."), §§5(a)(2), 5(b).
>
> As this grievance concerns a large number of employees and a misinterpretation, inequitable application, violation and failure to

[3] The first MOA covered the period of March 31, 2010, through March 30, 2018 ("2010-2018 MOA"), and the second covered the period of March 31, 2018, through October 30, 2021.

> comply with the relevant Consent Determinations, MOAs, rules, regulations, policies and orders, the Union brings this grievance as a group grievance. Because the group grievance complains of a practice and policy implemented by the Mayor's Office of Payroll Administration and the Mayor's Office of Labor Relations, with Citywide application, the Union commences it at Steps 3/4. *See* E.O 83, §5(a)(2), 5(b).

(DCC Pet., Ex. 1)

The IBEW alleged on behalf of its sixteen titles that:

> By making the aforementioned selective bonus payments, the City and related entities breached, misinterpreted, inequitably applied, violated and failed to comply with the terms of the Electricians' Agreement, the respective Consent Determinations of the Comptroller of the City of New York incorporated therein, and rules, regulations, written policies, and orders of the City. *See* Electricians' Agreement, Art. III, Art. (V)(1)(a), (b) and (6); Inspectors' Agreement, Arts. III and IV, annexed side letters and [2010-2018] MOA; Inspectors' Agreement, Art. VI(1)(a), (b) and (6).
>
> As this grievance concerns a large number of employees and a misinterpretation, inequitable application, violation and failure to comply with the relevant Agreements, Consent Determinations and rules, regulations, written policies, and orders, the Union commences this grievance directly at Step III of the grievance procedure. [*See*] Electricians' Agreement, Art. V(6), and [] Inspectors' Agreement, Art. VI(6).

(IBEW Pet., Ex. 1)

As a remedy, both Unions requested that the $500 incentive bonus be paid to "all bargaining unit members in all affected titles who have received a first COVID vaccination shot at any time." (DCC & IBEW Pet., Ex. 1)

On March 9, 2022, an OLR review officer denied the Unions' grievances in separate decisions. Generally, the review officer found that there was nothing presented in the Unions' various Agreements, Consent Determinations, and MOAs that precluded the City, "during a global pandemic, from providing a $500 incentive payment to some employees who received a

vaccination during a limited time frame." (DCC & IBEW Pet., Ex. 1) Indeed, the review officer found that the cited documents and provisions are "silent on the issue" and contain no provision relevant to the incentive payments. (*Id.*) Moreover, the review officer explained that to the extent the Unions argued that the payments violated unspecified "rules, regulations, policies, and orders of the City," such a broad allegation, without identification of the specific policies violated, precluded review.[4] (*Id.*)

Subsequently, on March 29, 2022, the Unions filed separate requests for arbitration of their grievances. Specifically, the DCC alleged that the "selective award of the vaccine bonus breached, misinterpreted, misapplied, inequitably applied, violated and failed to comply" with the Consent Determinations, the MOAs, and the City rules, regulations, written policies, and orders "governing uniform and equitable compensation of bargaining unit members." (DCC Pet., Ex. 1) The DCC asserted that its demand for arbitration constituted a grievance within the meaning of E.O. 83, § 5(b)(A)-(B).

Similarly, the IBEW alleged with respect to its prevailing wage titles that the "selective award of the vaccine bonus breached, misinterpreted, misapplied, inequitably applied, violated and failed to comply" with the Electricians' Agreement, including Article III and the incorporated Consent Determinations, and the City rules, regulations, written policies, and orders "governing uniform and equitable compensation of bargaining unit members." (IBEW Pet., Ex. 1) The IBEW asserted that its demand for arbitration constituted a grievance under Article V, §§ 1(a)-(b) and 6 of the Electricians' Agreement. With respect to its career and salary titles, the IBEW alleged that

[4] In both denials, the review officer also found that the Unions' requested remedy fell outside the scope of the applicable agreements. Assuming *arguendo* that the Unions' claims did possess a nexus to the agreements, the review officer explained that the appropriate remedy should be a "recoupment of the $500 incentive payment from those employees that received same." (DCC & IBEW Pet., Ex. 1)

the conduct complained of violated the Inspectors' Agreement, including but not limited to Articles III and IV, the 2010-2018 MOA, and the City rules, regulations, written policies, and orders "governing uniform and equitable compensation of bargaining unit members." (IBEW Pet., Ex. 1) The IBEW asserted that its demand for arbitration constituted a grievance under Article VI, §§ 1(a)-(b) and 6 of the Inspectors' Agreement.

As a remedy, the Unions both repeated their requests that the $500 incentive bonus be paid to "all bargaining unit members in all affected titles who have received a first COVID vaccination shot at any time." (DCC & IBEW Pet., Ex. 1)

POSITIONS OF THE PARTIES

City's Position

The City argues that the requests for arbitration must be dismissed because the Unions have failed to establish the requisite nexus between the grievances and the cited provisions of the Agreements, Consent Determinations, and MOAs. Indeed, the City asserts that there is no provision in any of the cited agreements that addresses individual employee participation in a vaccine incentive program, the purpose of which was to accelerate compliance with a lawful order designed to combat the spread of COVID-19.

The City contends that to the extent the Unions alleged violations of the various Consent Determinations and subsequent MOAs, they failed to articulate the specific nature of the violations. However, inferring that the alleged violations relate to the wages and supplements set forth in those agreements, the City avers that any payments as part of the vaccine inventive program are separate from, and wholly unrelated to, compensation paid to employees as part of wages and supplements. Similarly, the City avers that the incentive payments do not affect the wages and supplements set forth in Articles III and IV of the Inspectors' Agreement. The City

argues that the payments are not "transform[ed]" into wages simply because the payroll system was used to distribute them. (Rep. ¶ 21) To the contrary, the City asserts that although the payroll system was the most direct and efficient means for effectuating the incentive payments, they do not impact or otherwise implicate current or future wage rates, supplements, or any other salary adjustments provided for in the various agreements.[5]

The City contends that the Board has previously sustained petitions challenging the arbitrability of grievances that were grounded in "conclusory allegations" that its actions violated contractual wage and salary provisions. (DCC Pet. ¶ 44; IBEW Pet. ¶ 48) Similarly, in this case, the City avers that there is no reference to vaccine incentives or language related to the payment of incentives in any of the cited wage or salary provisions of the agreements. The City argues that to the extent the Unions allege that the vaccine incentive payments amount to a modification of the collectively bargained salary schedules or unilaterally establish an economic benefit in the absence of bargaining, such a claim does not state a contract violation.

Additionally, the City asserts that the vaccine incentive program is not a policy of general applicability but is instead a targeted effort to achieve a public health goal, aimed specifically at unvaccinated employees. Accordingly, the City contends that the vaccine incentive program is not a rule, regulation, written policy, or order of the employer "that is required to establish an obligation to arbitrate." (DCC Pet. ¶ 40; IBEW Pet. ¶ 43) Moreover, it avers that the Unions have not cited any relevant rule, regulation, written policy, or order that implicates the vaccine incentive because none exists.

[5] Notwithstanding its assertion that the incentive payments are not contractual wages or salaries, the City also alleges that the Board has rejected broad arguments that all disputes regarding wages are arbitrable.

Unions' Position

The Unions argue that the petitions challenging arbitrability should be denied. Regarding the first prong of the Board's two-part test to determine whether a dispute is arbitrable, the Unions assert that it is undisputed that the parties have agreed to submit certain disputes to arbitration via E.O. 83, § 5(b), Articles V, §§ 1 and 6 of the Electricians' Agreement, and Article VI, §§ 1 and 6 of the Inspectors' Agreement. The Unions maintain that the scope of their agreements to arbitrate includes the inequitable application of City policies.

Regarding the second prong of the Board's test, the Unions contend that there is a nexus between their challenge to the vaccine incentive program and the parties' economic agreements providing for uniform compensation to each employee. Indeed, the Unions aver that no matter how the City attempts to characterize the vaccine incentive payments, the payments are earnings, count towards gross pay, and were taxed as earned income. Accordingly, the Union argues that by paying "additional gross pay" selectively to some bargaining unit members who got vaccinated, but not to others, the City's vaccine incentive program violated the parties' Agreements, Consent Determinations, and MOAs governing economic compensation. (Ans. ¶ 116) Moreover, the Unions assert that the selective payments constitute a misapplication, inequitable application, and misinterpretation of the policy within the agreements that compensation is to be "applied uniformly to each bargaining unit member."[6] (*Id.*)

The Unions contend that the vaccine incentive payments directly relate to the parties' economic agreements, and therefore the City's reliance upon prior Board decisions sustaining petitions challenging the arbitrability of grievances grounded in conclusory allegations is

[6] As evidence of this alleged policy, the Unions cite the Consent Determinations' common language that they were issued "for the fixation of compensation," with the basic rates of wages and supplemental benefits "due and payable to each and every employee," applying to "[a]ny new employee who may be hired." (Ans. ¶ 116)

misplaced. The Unions aver that in this case there is nothing vague or conclusory about the nexus between direct payments of earned, taxable gross income and the parties' economic agreements, which detail "uniform wages and benefits to be paid to each employee in a title." (Ans. ¶ 119) The Unions argue that the incentive payments have a concrete impact on gross income, and, thus, have a direct nexus to the parties' respective economic agreements. Indeed, the Unions assert that the Board "routinely finds that 'disputes related to earned wages and the payment thereof are arbitrable.'" (*Id.* at ¶ 110)

The Unions also aver that insofar as the City's petitions challenging arbitrability raise factual questions as to whether the vaccine incentive payments constitute "wages," "total earnings," or "gross pay," or questions of contractual interpretation regarding whether the payments violated the uniform compensation provisions of the Agreements, Consent Determinations, or MOUs, such factual disputes and questions of contract interpretation are for the arbitrator to decide. Accordingly, the Unions contend that the petitions challenging arbitrability should be denied.

DISCUSSION

"The policy of this Board, as is made explicit by § 12-302 of the NYCCBL . . . is to favor and encourage arbitration to resolve grievances." *OSA*, 7 OCB2d 28, at 8 (BCB 2014) (quoting *OSA*, 1 OCB2d 42, at 15 (BCB 2008)) (internal quotation and editing marks omitted).[7] In

[7] Section 12-302 of the NYCCBL provides:

> It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract

recognition of this policy, we have long held that "the presumption is that disputes are arbitrable, and that doubtful issues of arbitrability are resolved in favor of arbitration." *DC 37, L. 420*, 5 OCB2d 4, at 12 (BCB 2012) (quoting *CEA*, 3 OCB2d 3, at 12 (BCB 2010)) (internal quotation marks omitted).

The Board applies a two-pronged test to determine whether a dispute is arbitrable. This test considers:

> (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so (2) whether the obligation is broad enough in its scope to include the particular controversy presented. In other words, whether there is a nexus, that is, a reasonable relationship between the subject matter of the dispute and the general subject matter of the Agreement.

DC 37, L. 420, 5 OCB2d 4, at 12 (quoting *UFOA*, 4 OCB2d 5, at 8-9 (BCB 2011)) (citations and internal quotation marks omitted). The Board lacks jurisdiction to enforce contractual rights, and therefore, it will generally not inquire into the merits of the parties' dispute. *See DC 37, L. 420*, 5 OCB2d 4, at 12 (citations omitted); *see also* N.Y. Civ. Serv. Law § 205(5)(d).

In this case, it is undisputed that the parties have agreed to submit certain disputes to arbitration. E.O. 83, § 5(b), Articles V, §§ 1 and 6 of the Electricians' Agreement, and Article VI, §§ 1 and 6 of the Inspectors' Agreement contain grievance procedures providing for final and binding arbitration. Moreover, Articles V, § 6 of the Electricians' Agreement and Article VI, § 6 of the Inspectors' Agreement provide for the arbitration of group grievances regarding the "inequitable application" of the agreements' provisions. The City does not argue the existence of any court-enunciated public policy, statutory, or constitutional restrictions on these obligations.

> negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

See OSA, 13 OCB2d 16, at 12 (BCB 2020) (citing *SSEU, L. 371*, 9 OCB2d 10, at 9 (BCB 2015)). Therefore, the first prong of the arbitrability test has been established.

Regarding the second prong, in order to establish a nexus, "a party need only demonstrate a *prima facie* relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration." *PBA*, 4 OCB2d 22, at 13 (BCB 2011) (quoting *PBA* 3 OCB2d 1, at 11 (BCB 2010)) (internal quotation marks omitted). This showing "does not require a final determination of the rights of the parties in this matter; such a final determination would in fact constitute an interpretation of the agreement that this Board is not empowered to undertake." *OSA*, 1 OCB2d 42, at 16 (BCB 2008) (quotation omitted); *see also* CSL § 205.5(d). If the Union's interpretation is plausible, "the conflict between the parties' interpretations presents a substantive question of interpretation for an arbitrator to decide." *Local 3, IBEW*, 45 OCB 59, at 11 (BCB 1990) (citations omitted); *see also PBA*, 3 OCB2d 1, at 11 (BCB 2010).

As an initial matter, we note that although the City contends that the vaccine incentive payments should not be characterized as "wages" within the meaning of the various agreements, the record reflects that the payments were issued as compensation in employee paychecks as part of "gross pay" and "total earnings" and were subject to standard payroll tax withholdings and deductions. The Board has generally held that "disputes related to earned wages and the payment thereof are arbitrable." *CEA*, 79 OCB 17, at 11 (BCB 2007) (quoting *Local 30, IUOE*, 77 OCB 7, at 15 (BCB 2006)) (quotation marks omitted). However, "[t]he mere fact that the parties were required to and in fact did bargain regarding wages does not mandate, absent a claimed violation of the agreement reached in that bargaining process, that the bargained-for arbitration remedy applies to any claim the union subsequently chooses to bring concerning renumeration." *CEA*, 3 OCB2d 3, at 15 (BCB 2010) (citing *SBA*, 2 OCB2d 41, at 9-10 (BCB 2009); *SBA*, 79 OCB 15, at 7-8 (BCB 2007)).

In this case, the Unions broadly assert that there is a reasonable relationship between the City's selective issuance of vaccine incentive payments and the parties' economic agreements that makes the issue subject to arbitration. However, we find that no such nexus exists. Although the Unions allege that the economic agreements collectively require that compensation is "applied uniformly to each bargaining unit member," we conclude that they have failed to provide support for this assertion. (Ans. ¶ 116)

The Unions averred in their requests for arbitration that the incentive payments violated the Consent Determinations and MOAs governing prevailing wage titles and Articles III and IV of the Inspectors' Agreement and MOAs applicable to the career and salary plan titles. Notably, these agreements do not contemplate or provide for incentive payments for employees who vaccinate. Further, the Unions did not point to any wage rate, salary schedule, differential, adjustment, or other contractual benefit that the City failed to provide. Indeed, the Unions did not allege that the payments violated any particular section or provision within the agreements. Instead, they argued that the agreements require uniform compensation for all employees in each title and therefore all employees who vaccinated should have received the $500 payment regardless of when they were vaccinated. The agreements clearly provide that the City must apply the terms uniformly. However, the agreements contain a variety of provisions that set compensation terms that apply only in certain circumstances and only to some employees, such as wage and salary premiums and differentials and annuity fund contributions dependent on days/hours worked, assignment classification, time served, etc. Therefore, the assertion that the agreements require uniform compensation to be paid to all bargaining unit members is without support.[8]

[8] The Unions also cite the common language in the Consent Determinations that they were issued "for the fixation of compensation," with the basic rates of wages and supplemental benefits "due and payable to each and every employee," applying to "[a]ny new employee who may be hired."

Moreover, the Unions argued generally that the City inequitably applied the agreements by making the selective incentive payments. However, they failed to allege any provisions that were inequitably applied. As we have previously stated, the mere fact that the complained of act concerns compensation, a term covered by the parties' agreements, is insufficient to establish a nexus.[9] *See CEA*, 3 OCB2d 3 (finding no nexus between compensation reduction upon promotion to new title and the agreement); *SBA*, 79 OCB 15. Further, to the extent the Unions sought to arbitrate the alleged violation of additional unidentified City rules, regulations, written policies, and orders "governing uniform and equitable compensation of bargaining unit members," such claims, without citation to specific City rules, policies, and orders, are too vague to be considered.[10] *See SBA*, 79 OCB 15, at 7-8.

Accordingly, we find that no nexus exists between the Unions' grievances and the parties' economic agreements. Therefore, the City's petitions challenging arbitrability are granted, and the Unions' requests for arbitration are denied.

(Ans. ¶ 116) Similarly, we do not find that this language supports their assertion that employees are entitled to uniform compensation.

[9] To the extent the Unions suggest that it is a violation of the agreements to provide economic benefits outside the scope of the agreements, we note that the Board has long contemplated the existence of economic benefits outside the scope of the contract, as evidenced by our decisions holding that it may be a violation of NYCCBL § 12-306(a)(4) and (5) to discontinue a past practice providing for a non-contractual benefit without bargaining. *See, e.g.*, *UFADBA*, 13 OCB2d 15, at 12 (BCB 2020) (holding that the FDNY violated the NYCCBL by unilaterally discontinuing its practice of providing the three most senior employees in a title with take-home vehicles for commuting); *Local 621, SEIU*, 2 OCB2d 27, at 13 (BCB 2009).

[10] To the extent the Unions suggest that the selective eligibility for the payments violated the terms of the incentive program itself, we note that although the vaccine mandate was generally applicable to all City employees, the Mayor's announcement of the incentive payments explained that only employees who received their first vaccine dose between October 20, 2021, and October 29, 2021, were eligible for the payments.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petitions challenging arbitrability filed by the City of New York, docketed as BCB-4483-22 and BCB-4484-22, are hereby granted; and it is further

ORDERED, that the requests for arbitration filed by the New York District Council of Carpenters and International Brotherhood of Electrical Workers, Local 3, docketed as A-15909-22 and A-15910-22, are hereby dismissed.

Dated: September 28, 2022
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

I dissent. CHARLES G. MOERDLER
MEMBER

I dissent. PETER PEPPER
MEMBER