

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF LOWELL

-and-

LOWELL POLICE ASSOCIATION

ARB-22-9566

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Ann Marie Noonan, Esq. - Representing City of Lowell

Jordan Burke, Esq. - Representing Lowell Police Association

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The grievance is not substantively arbitrable, and the grievance is denied.



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Timothy Hatfield, Esq.  
Arbitrator  
July 8, 2024

**INTRODUCTION**

On September 15, 2022, the Lowell Police Association (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on October 11, 2023.

The parties filed briefs on November 8, 2023.

**THE ISSUES****Issue:**

- 1) Is the grievance substantively and procedurally arbitrable?
- 2) If so, does the Department's continued use of the "to be forced" list violate Article 10 of the parties' Agreement? If so, what shall be the remedy?

**RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

**ARTICLE V**  
**PAID DETAILS**

...  
Section 3.

E. Records shall be kept and posted monthly of numbers of details worked. ...

**ARTICLE X**  
**OVERTIME**

...

**Section 2.**

All overtime will be distributed fairly and equally and there will be a record kept similar to the record described in Article V, Paid Details.

...

**FACTS<sup>1</sup>**

The City of Lowell (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The Union is the exclusive bargaining representative for all full-time and regular part-time police officers employed by the City in the grade of patrol officer, including detectives and school resource officers.

The City's police department is comprised of 230 sworn officers, 173 of which are members of the bargaining unit represented by the Union. 110 of these officers are assigned to patrol functions and 60 are assigned to specialty functions. Officers assigned to patrol functions perform day-to-day police functions such as walking beats, bike assignments, and patrolling via car. They respond to emergency calls and provide services throughout the City as needed.

The patrol officers' schedules cover 24 hours a day, 7 days a week through three shifts known as Platoons. Platoon 1 is scheduled from 11:30 p.m. to 7:30 a.m. or 12:30 a.m. to 8:30 a.m. Platoon 2 is scheduled from 7:30 a.m. to 3:30 p.m.

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<sup>1</sup> By agreement between the parties and the arbitrator, the issue of procedural and substantive arbitrability was argued prior to proceeding to the merits of the case. The parties were directed to address the issue of arbitrability first in their respective post-hearing briefs. Based on my ruling in this matter, I have included only the facts and arguments in this decision related to substantive arbitrability.

or 8:30 a.m. to 4:30 p.m. Platoon 3 is scheduled from 3:30 p.m. to 11:30 p.m. or 4:30 p.m. to 12:30 a.m.

Since 1982, the collective bargaining agreement has included an Overtime article. Article X, in pertinent part, states that overtime will be distributed “fairly and equally” and that a record “similar to the record described in Article V, Paid Details” be kept. Overtime required for patrol functions has been offered first to patrol officers who are assigned to the car and Platoon on which the vacancy occurs but are on a day off. Next, the overtime is offered to any patrol officers in the Platoon on which the vacancy occurs, and then broadly to any patrol officer assigned to patrol functions. Only if no patrol officer volunteers are such opportunities offered to officers assigned to the specialty units. Overtime to perform specialty functions has been exclusively offered to officers assigned to the specialty units, and specifically those assigned to the sub-specialty unit requiring overtime.

Since 2017, the Department has maintained three “to be forced” lists, one for each Platoon, which are used in the event that there are no volunteers to fill patrol function overtime. Each list contains the Platoon officers listed in inverse seniority. The lists have never included specialty officers. Patrol officers get the right to patrol overtime first and specialty officers get specialty overtime exclusively, whether mandatory or voluntary.

On November 12, 2021, the Union filed a grievance that patrol overtime was not being distributed “fairly and equally” as required by Article X of the collective bargaining agreement because specialty officers were not being included on the “to be forced” lists. This grievance was denied at all Steps of the grievance procedure, resulting in the instant arbitration.

**POSITIONS OF THE PARTIES****Arbitrability****THE EMPLOYER**

The grievance is not substantively arbitrable. Massachusetts case law is well-established and unequivocal on this point. The authority of a Police Chief to assign police officers and allocate law enforcement resources is an inherent, non-delegable managerial right that cannot be subjected to collective bargaining or to the opinion of an arbitrator. This authority is particularly strong in relation to a Chief's decision to order mandatory overtime as required by public safety.

In *Town of Andover v. Andover Police Patrolmen's Union*, 45 Mass. App. Ct. 167, 170 (1988), the court vacated an arbitration award. There, the arbitrator ruled that the police chief's decision to staff certain events in the town by ordering mandatory overtime was invalid and that those events should have resulted in paid details. On appeal, the court ruled that the award "infring[ed] on the exclusive managerial prerogative of the police chief over the deployment of police officers on an overtime basis, if in his judgment, the public safety so requires." *Id.* at 168.

Moreover, the courts have found that a "public employer need not defend" the merits or logic of such public policy choices because those decisions are not properly subject to bargaining or to arbitration. *Worcester v. Labor Relations Commission*, 438 Mass 177, 183, (2002) *Town of Saugus v. Saugus Police Superior Officers Union*, 64 Mass. App. Ct 916, 917 (2005). Instead, a Chief's decision is only subject to arbitrable review if it clearly does not implicate matters of "deployment of personnel, ... or anything else that relates to public safety and the efficiency with which the department runs." *Boston v. Boston Police Superior*

*Officers Fed.*, 29 Mass. App. Ct. 907, 908-909 (1990). As the Appeals Court ruled in *New Bedford v. New Bedford Police Union*, 97 Mass. App. Ct. 502, 507 (2020), “[b]inding precedent holds that an arbitrator, however well intentioned, exceeds his or her authority by substituting his or her judgement for that of a chief of police in assigning and deploying police officers.”

Lowell’s Police Chief must ensure that patrol functions, i.e., the day-to-day needs of the Department and the City, are met and are sufficient to prevent crime or respond to crime as it is occurring. The Police Chief must also ensure the Department is able to efficiently respond to particularly serious incidents, such as homicides, assaults and batteries, and missing persons; that certain ongoing criminal issues are handled appropriately, such as executing warrants, responding to gang violence and activity, conducting surveillance, and meeting neighborhood needs. To do this, the Chief must determine how, when, and where to deploy the personnel he has available to him.

Here the Union challenges that decision as it relates solely to the assignment of officers to fill vacancies that occur on patrol shifts and in the Chief’s determination that shift must be filled for public safety reasons. The Chief’s decision to order officers to work overtime when, in his judgment, failure to fill a shift would cause a public safety risk is squarely within his non-delegable core managerial rights. See *Saugus supra*, 64 Mass. App. Ct. at 916. The grievance therefore must be dismissed because it is not substantively arbitrable.

## **THE UNION**

The City’s Contention That Managerial Rights Allow Preclusion Of Specialty Positions From The Force List Is Inapposite And Unavailing

The application of contractual overtime is a mandatory subject of bargaining. Overtime implicates both wages and hours of work, thereby necessitating parties to delineate how it will be applied by the CBA. The distribution of overtime is done via reverse seniority. This represents yet another long-standing customary collective bargaining value. Disregarding these fundamental principles of employee organizations would run contrary to the purposes of M.G.L. c. 150E.

The Association certainly recognizes the Chief's right of assignment and ability to place individuals within these specialty positions. That will not change, nor is it the purpose of this grievance. But the insinuation that having all bargaining unit members on the overtime force list somehow infringes on the Chief's right of assignment is misplaced. When the Department needs a shift filled via the forced list, the spot falls on whoever is next in line. There is no particular choice made by the Department in filling overtime via the forced list. In other words, everyone on that list is capable of filling in. The Association contends that all officers in its bargaining unit are equally capable, including those that happen to be assigned to specialty positions during their regular shifts.

### **OPINION**

The issue before me is:

- 1) Is the grievance substantively and procedurally arbitrable?
- 2) If so, does the Department's continued use of the "to be forced" list violate Article 10 of the parties' Agreement? If so, what shall be the remedy?

For all the reasons stated below, the matter is not substantively arbitrable, and the grievance is denied.

The scope of an arbitrator's authority is not unlimited. Most of an arbitrator's authority is derived from the parties collective bargaining agreement, but in some instances, it is bound by court precedent. In this instance, the facts of this case fall squarely into well-established boundaries that the courts have found to be nondelegable.

Decisions by the Chief of Police that are fundamentally core managerial decisions are beyond the scope of arbitration, even if the issues were collectively bargained. Here, the Chief's decision to allocate resources, and assign mandatory overtime to only certain patrol officers is a nondelegable managerial right not properly before an arbitrator.

Specifically, in *Town of Andover v. Andover Police Patrolmen's Union*, 45 Mass. App. Ct. at 170, the Court found that the Police Chief has the exclusive managerial prerogative over the deployment of police officers on an overtime basis, if in his judgement the public safety so requires. The facts of this case are analogous. Here, the Chief has decided that specialty officers shall not be included in the forced mandatory patrol overtime lists, so they may be available to perform their specialty duties as needed throughout the City. The Court has decided that this decision, which in the Chief's opinion affects the public safety of the City, is beyond my authority to review as an arbitrator.



As such, the Chief's decision to not include specialty officers in the forced overtime list of patrol officers is a core managerial right that is not subject to arbitrable review.

**AWARD**

The grievance is not substantively arbitrable, and the grievance is denied.



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Timothy Hatfield, Esq.  
Arbitrator  
July 8, 2024