

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

25-P-321

Appeals Court

DEPARTMENT OF STATE POLICE vs. STATE POLICE ASSOCIATION OF
MASSACHUSETTS.

No. 25-P-321.

Suffolk. June 11, 2026. - October 13, 2026.

Present: Vuono, Neyman, & Smyth, JJ.

State Police. Police, Authority of police chief, Collective bargaining. Contract, Collective bargaining contract. Labor, Grievance procedure. Arbitration, Collective bargaining. Public Employment, Managerial prerogative. Practice, Civil, Judgment on the pleadings.

Civil action commenced in the Superior Court Department on September 28, 2023.

The case was heard by Robert L. Ullmann, J., on a motion for judgment on the pleadings.

Laurel Kennedy for the defendant.
Daniel Brunelli for the plaintiff.

SMYTH, J. General Laws c. 22C, § 18 (§ 18), inserted by St. 1991, c. 412, § 22, establishes that the colonel of the State police (colonel) "may, in the event of any public emergency, or of any unusual demand for the services of members of the state police . . . or whenever he deems it in the public

interest, require such members to work additional hours of duty and prevent such members from taking time off." The issue in this appeal is whether the colonel may cede authority under § 18 to a collective bargaining agreement (CBA) between the Department of State Police (department) and the State Police Association of Massachusetts (union). A Superior Court judge concluded that the colonel's authority under § 18 to mandate that department members work additional hours and prohibit time off on Independence Day in 2022 was nondelegable because it involved a core managerial function of the colonel that implicated public safety. Based on this conclusion, the judge allowed the department's motion to permanently stay arbitration of a union grievance alleging that the department violated a prior agreement to not strictly enforce § 18.

The union now appeals, arguing that the judge erred in permanently staying arbitration because (1) the union and department expressly incorporated § 18 into the CBA in 1999, and (2) the colonel's authority under § 18 is "conditional and fact-specific, requiring an arbitration record from which to render an opinion as to its viability." Because we conclude that the grant of authority under § 18 is essential to the colonel's public safety mandate, and thus is nondelegable, we affirm.

Background. In 1999, the parties agreed to incorporate into their existing CBA a side letter of agreement (side

letter), which expressly subjected the colonel's authority under § 18 to collective bargaining. The side letter provided, in pertinent part,

"The events associated with Marathon Monday/Patriot's Day¹ and 4th of July holidays, in and of themselves, will not be considered public emergencies, or unusual demands for services, or a need in the public interest

"The provisions of this Side Letter of Agreement shall be subject to the grievance/arbitration provisions of the Employer/Association collective bargaining agreement, and shall be coterminous with the duration of this Agreement"

Beginning in 2013, the colonel issued an annual memorandum informing department members that they could be required to work overtime "for the July 4th Celebration on the Esplanade" in Boston, and further, that all requests for time off on July 3 through July 5 would be denied, with limited exceptions. The annual memorandum stated that this order was necessary "to ensure that the Department is at full operational readiness for July 4th." On May 10, 2022, the colonel issued one such memorandum regarding staffing for Independence Day that year.

On July 25, 2022, the union submitted a grievance, pursuant to article 22 of the parties' CBA, alleging that the department violated the side letter by requiring members to work additional hours and prohibiting time off on July 4, 2022. The grievance

¹ The Boston Marathon, held annually on the third Monday in April, coincides with Patriot's Day.

was scheduled for arbitration on February 6, 2024. However, on September 28, 2023, the department filed a complaint and application in the Superior Court to stay arbitration alleging, inter alia, that the union's attempt to arbitrate the colonel's staffing order pertaining to Independence Day interfered with the colonel's exercise of "nondelegable, statutory authority." The union opposed, asserting as an affirmative defense that its grievance was subject to arbitration. The department subsequently moved for judgment on the pleadings in July 2024. Following a hearing, the judge allowed the department's motion and permanently stayed arbitration after concluding that § 18 grants the colonel the nondelegable authority "to perform the narrow and important public safety function of ensuring that there are enough Department members to handle large crowds at events and other gatherings, in this instance July 4th events at the Esplanade."

Discussion. We review a judgment on the pleadings de novo. See Merriam v. Demoulas Super Mkts., Inc., 464 Mass. 721, 726 (2013).

1. Colonel's authority under § 18. The union argues that the judge erred in ruling that § 18 grants the colonel the nondelegable authority to order department members to work additional hours on July 4, 2022, effectively rendering the side letter a nullity.

General Laws c. 150E, enacted in 1973, protects the rights of public employees to collectively bargain "with respect to wages, hours, standards [of] productivity and performance, and any other terms and conditions of employment." Somerville v. Commonwealth Employment Relations Bd., 470 Mass. 563, 564 (2015). The statute imposes "significant obligations on public employers with respect to" public employees' collective bargaining rights, including the employer's obligation to negotiate those rights in good faith. Board of Higher Educ. v. Commonwealth Employment Relations Bd., 483 Mass. 310, 311 (2019). However, as our courts have long recognized, there is a "tension between the statutory right of public employees to bargain collectively the terms and conditions of their employment with public employers and the Legislature's intent to bestow upon those employers nondelegable managerial responsibilities." Id. at 310. See Chief Justice for Admin. & Mgt. of the Trial Court v. Commonwealth Employment Relations Bd., 79 Mass. App. Ct. 374, 380-381 (2011). Although "there is a strong public policy favoring collective bargaining between public employers and employees over the conditions and terms of employment," (quotation and citation omitted), Board of Higher Educ., supra at 319, when "a negotiation requirement would unduly impinge on a public employer's freedom to perform its public functions, G. L. c. 150E, § 6, does not mandate

bargaining over a decision directly affecting the employment relationship" (citation omitted), Worcester v. Labor Relations Comm'n, 438 Mass. 177, 180 (2002).

Rather, the Supreme Judicial Court has determined that there are "certain types of managerial decisions that must, as a matter of policy, be reserved to the public employer's discretion," and may not be bargained away. Worcester, 438 Mass. at 180-182. The inquiry of whether a managerial decision is exempted from mandatory bargaining is "directed towards defining the boundary between subjects that by statute, by tradition, or by common sense must be reserved to the sole discretion of the public employer so as to preserve the intended role of the governmental agency and its accountability in the political process." Id. at 181, quoting Lynn v. Labor Relations Comm'n, 43 Mass. App. Ct. 172, 178 (1997). In making such determinations, the Supreme Judicial Court has adopted the nondelegability doctrine, which limits the reach of G. L. c. 150E, "in those circumstances where public policy requires that a public employer reserve certain personnel matters to its sole discretion in order to preserve accountability to the public in the performance of the essential functions of government." Dracut v. Dracut Firefighters Union, IAFF Local 2586, 97 Mass. App. Ct. 374, 379 (2020).

One such managerial prerogative is that of police chiefs, or commissioners, to make public safety decisions, which include making determinations about staff assignments. Such core determinations are nondelegable and thus not subject to collective bargaining. See, e.g., Boston v. Boston Police Superior Officers Fed'n, 466 Mass. 210, 215-216 (2013) (police commissioner's authority to assign and transfer officers is nondelegable statutory power); Worcester, 438 Mass. at 182-183 (city has nondelegable authority over "allocation of resources," assignment of officers, and law enforcement priorities); Framingham v. Framingham Police Officers Union, 93 Mass. App. Ct. 537, 545-546 (2018) (police chief's authority to transfer and assign officers is "within [his] exclusive purview . . . pursuant to G. L. c. 41, § 97A, and the doctrine of nondelegability"); Boston v. Boston Police Superior Officers Fed'n, 29 Mass. App. Ct. 907, 908 (1990) (police commissioner not required to bargain over temporary assignments made to meet "demands of public safety"). In fact, this court has recognized that "[t]he protection of a public employer's management prerogative is particularly strong where, as here, the prerogative concerns policy judgments in the allocation and deployment of law enforcement resources." Saugus v. Saugus Pub. Safety Dispatchers Union, 65 Mass. App. Ct. 901, 901-902 (2005). See Dracut, 97 Mass. App. Ct. at 382 n.12.

The union argues, however, that § 18's grant of authority is not beyond the reach of G. L. c. 150E's protection for collective bargaining because (1) the colonel relinquished his power to consider "Marathon Monday/Patriot's Day" and Independence Day as public emergencies, events that cause an unusual demand for services, or events that create a need in the public interest, as those terms are used in § 18, by incorporating the side letter into the CBA, and (2) § 18 is not sufficiently "specific, clear, forceful, and unambiguous" to allow for application of the nondelegability doctrine, and thus should yield to the terms of the CBA. We are not persuaded.

The present case implicates the colonel's authority to fulfill the department's public safety mandate pursuant to the State police statute, G. L. c. 22C. As relevant here, the colonel is, by statute, the "executive and administrative head of the department and shall have charge of the administration and organization thereof." G. L. c. 22C, § 3.² In addition, the

² Pursuant to G. L. c. 22C, § 3, the colonel is authorized "to organize such divisions, bureaus, sections and units as the colonel deems necessary for the effective management of the department and, when the colonel deems necessary for such purpose, may abolish or consolidate such divisions, bureaus, sections or units. The colonel shall, except as otherwise provided, direct all inspections and investigations. The colonel shall make all necessary rules and regulations for the government of the department, for reports to be made by employees of the department and for the performance of the duties of said employees."

colonel is authorized to assign to each of the four divisions of the State police "such uniformed members and other employees . . . as he may deem necessary to carry out its duties." G. L. c. 22C, §§ 4-8. In the context of a police chief assigning certain officers to conduct background investigations, we concluded that the chief's assignment decision implicated public safety, rested in the "exclusive managerial prerogative of the chief," and was not delegable to collective bargaining or subject to arbitration. New Bedford v. New Bedford Police Union, 97 Mass. App. Ct. 502, 507 (2020). Thus, the issue of nondelegability turns on whether § 18 similarly grants the colonel authority to make managerial decisions that are core to the colonel's public safety mandate.

Our decision in Andover v. Andover Police Patrolmen's Union, 45 Mass. App. Ct. 167, 170 (1998), is instructive to our analysis. In that case, we vacated portions of an arbitration award after concluding that a police chief's statutory authority to order mandatory overtime on Independence Day was a core managerial function and thus nondelegable under G. L. c. 41, § 97A.³ Andover, supra. Here, § 18 similarly provides the

³ General Laws c. 41, § 97A, confers on a chief of police "immediate control . . . of the police officers, whom he shall assign to their respective duties and who shall obey his orders."

colonel with a specific managerial directive -- to mandate that union members report to duty "in the event of any public emergency, or of any unusual demand for the services of members . . . or whenever he deems it in the public interest" -- which is core to the colonel's statutory authority and implicates public safety. The nondelegability doctrine requires that the colonel be able to make such decisions when public safety so requires without interference from collective bargaining. See Department of State Police v. Massachusetts Org. of State Eng's & Scientists, 456 Mass. 450, 455, 457, 462 (2010) (colonel's exclusive and nondelegable authority under G. L. c. 22C, § 9, to appoint, transfer, and remove civilian experts and other department assistants would be undermined by arbitration); Worcester, 438 Mass. at 182 (allocation of resources among competing enforcement priorities is reserved to sole discretion of public employer and is not proper subject of bargaining).

We disagree with the union's argument that for § 18 to be nondelegable, it would have to specify "in no uncertain terms that the Colonel can force Association members to work on the Fourth of July." The doctrine of nondelegability does not require such statutory specificity but instead applies to statutory grants, including those that are broadly worded, concerning authority core to the employer's mandate. See Framingham, 93 Mass. App. Ct. at 542 ("Even in the absence of

express legislative language, police chiefs are inherently vested with general managerial authority over employees 'where matters of public safety are concerned'" [citation omitted]). In choosing not to enumerate in § 18 every permissible decision the colonel could make in the "public interest" or in response to an "unusual demand for services," the Legislature has left those decisions to the province of the colonel.

Indeed, the statutory grant authorizing the colonel to assign overtime hours and to prevent employees from taking time off due to public safety needs or an unusual demand for services must be reserved to the sole prerogative of the colonel in order to preserve the colonel's ability to perform his core duties and maintain accountability in the political process. See Lynn, 43 Mass. App. Ct. at 178. The union's argument that an arbitrator should be allowed to determine whether the colonel met the burden of showing that the May 10, 2022, memorandum regarding staffing for Independence Day was supported by an unusual demand for services is thus foreclosed by the Legislature's broad and explicit grant of authority to the colonel as set forth in the State police statute, G. L. c. 22C, §§ 2, 3, 18.

Moreover, the colonel cannot relinquish authority granted under § 18 to collective bargaining. Boston Police Superior Officers Fed'n, 466 Mass. at 216 ("a nondelegable authority may not be delegated to an arbitrator, even with the parties'

consent"). Boston v. Boston Police Patrolmen's Ass'n, 41 Mass. App. Ct. 269, 270 n.3 (1996) ("The fact that the city agreed to arbitrate the grievance is of no legal consequence if the issue is beyond the authority of the arbitrator"). Cf. Boston Firefighters Union, Local 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. Boston, 491 Mass. 556, 566 (2023) (city "not free to bargain away certain elements of [its] nondelegable authority and responsibility to act for the public health, safety, and welfare, because the public interest . . . impose[s] a necessary limitation upon the collective bargaining process" [quotations and citation omitted]).⁴ Accordingly, the colonel may not be bound by the side letter because it would compromise the statutory grant of authority to allow the colonel to assign officers to meet the demands of public safety.

We further note that "where there is a conflict between a statute and the parties' collective bargaining agreement, the collective bargaining agreement shall prevail if the statute is one that is enumerated [in G. L. c. 150E, § 7 (d)]" (quotation

⁴ We note that the public interest in allowing the colonel to pursue the State police mandate by enforcing § 18 overrides any equitable considerations arising from the colonel unilaterally revoking the side letter agreement. See Municipal Light Co. of Ashburnham v. Commonwealth, 34 Mass. App. Ct. 162, 167 (1993) ("Generally, the principles of estoppel are not applicable against the government in connection with its exercise of public duties, particularly when the government is acting in the public interest and safety, as its duly constituted officials see that interest").

and citation omitted). Somerville, 451 Mass. at 496. Contrary to the union's argument, there is a conflict between the side letter to the CBA and § 18 because the former compromises the colonel's "freedom to perform [his] public functions" (citation omitted). Worcester, 438 Mass. at 180. Where, as here, a statute, not enumerated in G. L. c. 150E, § 7 (d), authorizes a public employer to perform specific functions, the public employer's explicit statutory authority to perform its functions cannot be undermined by the terms of a CBA or subject to arbitration. See Andover, 45 Mass. App. Ct. at 170 ("nothing in § 7 [d] purports to displace the general authority vested in a police chief by § 97A to order his officers to a mandatory overtime deployment when, in his judgment, the public safety so requires").

2. Permanent stay of arbitration. The union argues that the judge's permanent stay of arbitration was premature because the claim sought to be arbitrated states a controversy covered by the CBA. For the reasons articulated above, we disagree. As relevant here, a judge may stay an arbitration proceeding after finding "that the claim sought to be arbitrated does not state a controversy covered by the provision for arbitration and disputes concerning the interpretation or application of the arbitration provision are not themselves made subject to arbitration." G. L. c. 150C, § 2 (b). See Department of State

Police, 456 Mass. at 455. Although the side letter incorporates an agreement to arbitrate, "[a]n agreement to arbitrate a dispute which lawfully cannot be the subject of arbitration [is] equivalent to the absence of a controversy covered by the provision for arbitration." Massachusetts Coalition of Police, Local 165, AFL-CIO v. Northborough, 416 Mass. 252, 256 (1993), quoting Dennis-Yarmouth Regional Sch. Comm. v. Dennis Teachers Ass'n, 372 Mass. 116, 119 (1977). See Framingham, 93 Mass. App. Ct. at 544, citing Massachusetts Coalition of Police, Local 165, AFL-CIO, supra at 255 ("even if the CBA provided otherwise, it could not abrogate the police chief's authority to transfer, assign, and deploy officers according to the police chief's discretion").

We thus conclude that because the colonel's authority to order department members to work additional hours on Independence Day could not legally be the subject of arbitration, the judge did not err in staying arbitration of the union's grievance.

Conclusion. The judgment allowing the department's motion and permanently staying arbitration is affirmed.

So ordered.