OLR RESEARCH REPORT

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(Revised)

# SUMMARY OF CASE CHALLENGING NUMBER OF STATE POLICE TROOPERS

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You asked for a summary of the court's decision on the State Police trooper staffing issue in *Connecticut State Police Union v. Commissioner of the Department of Emergency Services and Public Protection* (DESPP).

## SUMMARY

On January 13, 2012, a Superior Court judge ruled that a 1998 state law requiring the Department of Public Safety commissioner (now the DESPP commissioner) to appoint and maintain a minimum of 1,248 state troopers is mandatory, not directory.

The decision came in response to a challenge by the state police union that DESPP's failure to maintain the minimum number of officers violated state law.

The judge, after reviewing the staffing statute and analyzing its history, acknowledged that the language is "not clear and unambiguous," but the most reasonable reading indicates that it is mandatory. Thus, unless the legislature changes the law or an appellate court overturns the ruling, DESPP must maintain at least 1,248 state police officers. The case is on appeal.

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## BACKGROUND

The suit stemmed from allegations by the state police union that (1) the commissioner violated CGS § 29-4 by (a) failing to maintain a minimum of 1,248 state police officers and (b) actively reducing the number of officers through layoffs and (2) the governor ordered the layoffs in violation of his constitutional duty to uphold the state's laws.

The threshold issue was whether the minimum trooper provision in CGS § 29-4 is mandatory or directory. According to the court:

> The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. If, however, the provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory. Linguistically, a statutory provision is considered directory if the requirement is stated in affirmative terms unaccompanied by negative words (*State Police Union v. DESPP Commissioner,* Doc. No. HHD CV 116024776, (2012), p. 7).

### *The State's Arguments*

The state argued that the staffing statute is not a mandate because (1) the purpose of the authorization to appoint a specific number of officers is merely to maintain order and is not the substantive aim of the statute, which is to provide public safety, and (2) it does not include a penalty for noncompliance. Additionally, the state argued that:

1. the legislature was expressing a strong policy preference, but did not see a mandatory injunction as the remedy for noncompliance and

2. to find the provision mandatory, would (a) improperly impinge upon the governor's budgetary powers and (b) allow the actions of one legislature to impermissibly bind a future legislature (*State Police Union* at p. 8).

### *State Police Union's Arguments*

The union countered that:

1. the plain meaning of the statute demonstrates that it is mandatory because the number of troopers to be appointed is "the essence of the thing to be accomplished,"

2. finding the statute discretionary would render it meaningless or superfluous,

3. the statute should supersede the governor's general budgetary powers; and

4. even if the court finds the statute ambiguous, its review of the legislative history and subsequent legislative action would show that it is mandatory (*State Police Union* at pp. 8 & 9).

## FINDINGS

### *Statute's Ambiguity*

CGS § 29-4 states that the DESPP commissioner "shall appoint and maintain a minimum of 1,248 sworn state police personnel to efficiently maintain the operation of the State Police Division." First, the court examined the statute to determine if it is ambiguous.

The court cited a state Supreme Court case that noted that the "use of the word 'shall,' though significant does not invariably establish a mandatory duty" (*Teresa T. v. Ragaglia,* 272 Conn. 734, 744, 865 A. 2d 428 (2005)). It noted that in CGS § 29-4, "shall" is juxtaposed with the action verbs "appoint and maintain," and this is significant because "the statute is not merely providing the commissioner with the authority to maintain a minimum number of officers, but is directing that he take such action. This factor weighs in favor of finding the provision mandatory" (*State Police Union* at p. 11).

But the court also noted that the statute does not contain an explicit penalty provision for noncompliance. It reviewed several cases in which the lack of a penalty provision resulted in a ruling that the provisions at issue were merely discretionary. It concluded that the lack of a penalty provision was just one of the factors that the courts considered. As such, the "lack of a penalty provision may speak to the nature of the statute, but is not dispositive" (*State Police Union* at p. 13).

The court concluded that, for all the above reasons, the statute could be read several ways. Because of this, it examined the legislative history to determine how the legislature intended the courts to interpret the statute.

***Legislative History***

Prior to 1973, CGS § 29-4 specified the number of state police officers the commissioner had to appoint and maintain. A 1973 act replaced the specific number of officers with a direction that the commissioner "may appoint an adequate number of state police personnel to efficiently maintain the operation of the division in keeping with budgetary allowances" (PA 73-374). A 1998 act amended the statute to read: "By July 1, 2001, the commissioner of public safety shall appoint and maintain a minimum of one thousand two hundred forty-eight sworn state police personnel to efficiently maintain the operation of the division" (PA 98-151).

According to the court, the fact that the legislature took specific action to replace the word "may" with "shall" and set a specific number of appointed troopers, weighs in favor of finding the statute mandatory (*State Police Union* at p. 14).

The court found further support for the position that the minimum staffing specified in the statute is not mandatory from statements made during the floor debate. Asked if the number was mandatory, Representative Dargan, who brought out the bill in the House responded:

> I think that's going to be a hard question to answer. . .This is a figure we would like to see enacted by the year 2001. . .I'm sure if he or she, whoever the commissioner is at that time is a little underneath that staffing level, we ask them to try to keep that at that level because this was the staffing level that the commissioner would like to see (*State Police Union* at p. 15).

The court noted that after this exchange, the House defeated an amendment that would have allowed the commissioner to fill the staffing "to the best of his ability" (*State Police Union* at p. 15). The court reasoned that "if the statute was intended to leave the number of officers to the discretion of the commissioner or governor, it would not have been necessary to propose the amendment. And if the legislature wished to leave the commissioner with staffing discretion, it would have adopted the amendment" (*State Police Union* at p. 15).

The court also considered a 2003 law that postponed the effective date of the minimum staffing provision from January 1, 2003 to January 1, 2006 (PA 03-6). It stated that the postponement would have been unnecessary if the statute was merely discretionary, and not mandatory. It again cited floor debate on the bill to support this position. As a preface to a question on future troop levels, Representative McClusky stated . . . . We're saying that right now the current law is that the commissioner of public safety shall have the minimum of 1,248 and we're going to eliminate that requirement and delay it until January 1, 2006" (*State Police Union* at p. 16).

The court concluded, in light of Representative McClusky's uncontested statement, that "it is difficult to read the statute as anything other than an acknowledgement that the minimum staffing requirement of 1,248 troopers is mandatory. If it was not, it would have been unnecessary to suspend the statute for a three year period" (*State Police Union* at p. 17).

***Governor's Budgetary Authority***

The court refuted the state's contention that finding the statute to be mandatory impinges upon the governor's budgetary powers. It cited long-established case law that says "the provisions of one statute which specifically focus on a particular problem will always, in the absence of express contrary legislative intent, be held to prevail over provisions of a different statute more general in its coverage" (*State Police Union* at p. 18, *citing Housatonic Railroad Co. v. Commissioner of Revenue Services, supra*, 301 Con. 302 (2011)). The judge in the DESPP case said:

> The text of § 29-4 does not express legislative intent to make the more general provision—the governor's power to submit a budget-supersede this specific provision relative to state police staffing. A finding that § 29-4 is mandatory does not create a legally absurd or unworkable outcome in relation to the governor's general budgetary power. Therefore, this factor also does not weigh against finding the statute mandatory (*State Police Union* at p. 18).

***Binding a Future Legislature***

The court dismissed the state's argument that finding the staffing statute mandatory would have the effect of binding future legislatures. It reasoned that the 2003 amendment and a 2011 technical amendment showed that the original bill had not bound future legislatures. It stated that:

had the legislature chosen, they could have suspended the operation of the statute as they did in 2003, or even returned to the pre-1998 language, which gave more discretion to the commissioner. The legislature took no such action (*State Police Union* at p. 17).

**RULING**

According to the court, "to find that CGS § 29-4 is directory would require a strained reading of the statute and its legislative history" (*State Police Union* at p. 18). "The most reasonable reading of the statute and its history indicates that the statute is mandatory (*State Police Union* at pp. 18 & 19).

**ATTACHMENTS**

A copy of the decision is attached.
http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=4354455

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