

## Mass. Police Union Can't Halt Vax Mandate For Bargaining

By **Brian Dowling**

Law360 (September 24, 2021, 2:33 PM EDT) -- A Massachusetts state court judge on Thursday denied a bid by the state's police union to block Gov. Charlie Baker's vaccine mandate for executive branch employees, saying the public health benefits outweigh any need to stay the policy pending further bargaining.

Suffolk Superior Court Associate Justice Jackie Cowan rejected the State Police Association of Massachusetts' request for a preliminary injunction, one week after the union sued the state over the mandate.

The union has an interest in bargaining over the mandate's terms, the justice said, but that is outweighed by the public's interest in addressing the pandemic through the state's chosen means of increasing vaccinations.

"Suspending the deadline for union members to obtain full vaccination would be against the public interest which the defendants are charged with protecting," Justice Cowan said.

The union's injunction bid claimed the state rushed implementation of the vaccine mandate for troopers even though it had an obligation to bargain over the policy. The union of about 1,800 members wanted the court to delay the mandate while it pursues an administrative review of the bargaining before the Department of Labor Relations.

Without more time for that review, the union said, troopers would be forced to choose between getting the shot, or shots, and potentially losing their job.

"There will be no remedy to unvaccinate a member who was forced under the threat of termination to be vaccinated," the union said. "This is clearly a case of justice delayed is justice denied."

Justice Cowan disagreed that the situation was that dire.

Troopers can miss the deadlines to be fully vaccinated in order to get the vaccine of their choice, and they can also refuse the vaccine altogether until negotiations are over, the court said.

"Of course, either of these actions may subject the employee to discipline, up to and including termination, under the policy," Justice Cowan said.

But if the policy is later overturned, discipline can be rescinded and back pay can be awarded — making the harms far from irreparable, as required to get an injunction, the court said.

The troopers' union sued on Sept. 17, just over a month after Gov. Baker issued the order requiring all executive branch employees to be fully vaccinated by Oct. 17 and maintain full vaccination going forward.

The union immediately demanded to bargain over the terms of the policy that would implement the order, and it sought a handful of changes including allowing members to engage in weekly testing and wear a mask instead of getting a vaccine, pushing back the deadline, and making COVID-19 illness a line of duty injury, entitling a trooper to certain benefits.

Despite the state offering some concessions in mid-September, including paid time off to get the vaccine, the government said the deadline for full vaccination would remain Oct. 17. The union responded by filing a charge under the public employee collective bargaining law before the Department of Labor Relations, as well as with the current lawsuit.

Representatives for the state government and the union were not immediately available for comment on Friday.

The union is represented by Paul T. Hynes of Angoff Goldman Manning and Hynes PC.

The state government is represented by Christine Fimognari and Jennifer Ellen Greaney of the Massachusetts Attorney General's Office.

The case is State Police Association of Massachusetts v. Commonwealth of Massachusetts et al., case number 2184-CV-02117, in the Suffolk County Superior Court of Massachusetts.

--Editing by Philip Shea.