

P.E.R.C. NO. 2016-38

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
ROWAN UNIVERSITY,

Petitioner,

-and-

Docket No. SN-2015-030

COMMITTEE OF INTERNS AND  
RESIDENTS SEIU HEALTHCARE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Committee of Interns and Residents SEIU Healthcare's (CIR) motion for reconsideration of P.E.R.C. No. 2016-6, 42 NJPER 108 (¶30 2015). In that decision, the Commission granted the State of New Jersey, Rowan University's request for a restraint of binding arbitration of CIR's grievance contesting the University's termination of a physician resident from the urological surgery residency program. The Commission reiterates that the University's decision implicated its academic freedom and finds that CIR has not demonstrated extraordinary circumstances that would warrant reconsideration.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, John J. Hoffman, Acting Attorney  
General of New Jersey (Brian M. Scott, of counsel and  
on the brief)

For the Respondent, Weissman & Mintz, LLC, attorneys  
(Ira W. Mintz, of counsel and on the brief)

DECISION AND ORDER ON MOTION

On August 13, 2015, the Public Employment Relations  
Commission (Commission) issued its Decision in the above-  
captioned Scope of Negotiations proceeding. State of New Jersey,  
Rowan University, P.E.R.C. No. 2016-6, 42 NJPER 108 (¶30 2015).  
In that decision, the Commission granted the State of New Jersey,  
Rowan University's (University) request for a restraint of  
binding arbitration of a grievance filed by the Committee of  
Interns and Residents SEIU Healthcare (CIR). The grievance  
challenged the University's decision to terminate the training of  
a medical resident in a urological surgery residency program at

its School of Osteopathic Medicine. Applying the balancing test required by Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Commission concluded that the predominate interest in dispute was the University's right to academic freedom or, as the Supreme Court described in a similar context, an academic and medical decision-making process and "the right to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." University of Med. & Dentistry, 144 N.J. 511, 533 (1996).

On September 21, 2015, CIR filed a motion for reconsideration pursuant to N.J.A.C. 19:13-3.12 along with certifications and exhibits.<sup>1/</sup> The exhibits consist of excerpts of testimony given during the arbitration proceeding before the Commission's decision was issued. One certification, dated January 20, 2015, is from an attending physician for residents in the urological surgery residency program. In the certification, the physician denies that misconduct occurred during a surgery in which the resident assisted.

CIR argues that its motion presents extraordinary circumstances, as required by N.J.A.C. 19:13-3.12, because the Commission appeared to misunderstand the reason for the resident's termination, improperly placed the burden of proof on

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<sup>1/</sup> CIR requested and received extensions of time to file its motion as did the University with respect to its opposition to the motion.

CIR, and improperly resolved a factual dispute without the benefit of an evidentiary hearing. It asks that we permit the arbitrator to complete the hearing and resolve the factual dispute as to whether the resident performed the unauthorized procedure as the University had found.<sup>2/</sup>

On October 16, 2015, the University filed a letter brief opposing the motion for reconsideration. The University contends that CIR's motion fails to present extraordinary circumstances warranting reconsideration, that the Commission already considered and rejected the arguments made by the CIR in its motion, and that rather than resolve the parties' factual dispute, the Commission considered the abstract issue of negotiability as required by Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). The University also objects to consideration of CIR's exhibits and certifications supporting its motion given that they are not part of the record.

After careful consideration of the parties' submissions with regard to this matter, the Commission determines that CIR has not demonstrated extraordinary circumstances that would warrant reconsideration. Rather, it primarily restates its arguments in

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<sup>2/</sup> We note that neither party requested an evidentiary hearing pursuant to N.J.A.C. 19:13-3.7, which makes the failure to file a timely request for such a hearing a waiver of any right to same.

opposition to the University's scope petition, in particular, its claim that the resident denied engaging in the unauthorized medical procedure - the deliberate misplacing or positioning of ureteral stents - and was not terminated for saying that he had. Contrary to CIR's motion, the Commission was aware, and noted in its decision, that the resident denied intentionally misplacing stents. Our comment that the resident "never denied saying that he performed the procedure" did not constitute resolution of a factual dispute; it was simply an acknowledgment of evidence in the record, specifically, that pertaining to the resident's statement about the procedure during a social gathering and the role it played in his removal from the training program. Indeed, it was not necessary that we decide whether the resident made the statement or whether the University relied upon it, if made, in determining whether the removal decision was an exercise of the University's medical or academic judgment and, therefore, a managerial prerogative that an arbitrator may not review.

Since we do not decide whether the facts are as alleged by the grievant in a scope proceeding, we also decline the invitation to grant CIR's motion and alter our determination based upon the portions of the arbitration testimony and certification that CIR provided with its motion. We note, however, the University's position that (1) the arbitration testimony provided by CIR does not conflict with the

certifications the University filed with its scope petition, and (2) the certification and partial testimony of one attending physician would not foreclose a finding that the resident actually engaged in unauthorized medical procedures.<sup>3/</sup>

Regardless of which party's view is correct on these points, we are satisfied that the University's decision implicated its academic freedom and that CIR has not demonstrated extraordinary circumstances that would warrant reconsideration. Accordingly, its motion is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioners Bonanni and Wall were not present.

ISSUED: November 19, 2015

Trenton, New Jersey

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<sup>3/</sup> As noted above, the attending physician's certification is dated January 20, 2015. CIR provided no explanation why it did not provide the certification to the Commission prior to the issuance of the scope determination.