

P.E.R.C. NO. 89-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT OF
HUMAN SERVICES, GREYSTONE PARK
PSYCHIATRIC HOSPITAL),

Petitioner,

-and-

Docket No. SN-89-21

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1040,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances filed by Communications Workers of America, Local 1040 against the State of New Jersey (Department of Human Services, Greystone Park Psychiatric Hospital). The grievances allege that the employer has violated contractual commitments to provide a safe work place. Although staffing levels are not mandatorily negotiable, the contractual commitment to provide a safe work place is. The Commission notes that any arbitral award could not order an increase in staffing, but does not speculate about what other remedies might or might not be lawful if a violation is proved.

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Appearances:

For the Petitioner, Cary Edwards, Attorney General
(Richard D. Fornaro, Deputy Attorney General)

For the Respondent, Steven P. Weissman, Esq.

DECISION AND ORDER

On October 11, 1988, the State of New Jersey filed a Petition for Scope of Negotiations Determination. The State seeks a restraint of binding arbitration of grievances filed by employees represented by the Communications Workers of America, Local 1040 ("CWA"). The grievances allege that the employer has violated contractual commitments to provide a safe workplace at the Greystone Park Psychiatric Hospital.

The parties have filed briefs and exhibits. Those facts appear.

CWA and its affiliates represent four units of State employees: (1) administrative and clerical employees, (2) professionals, (3) primary level supervisors, and (4) higher level

supervisors. The current agreements guarantee "a reasonably safe and healthful place of employment for all employees" and prohibit requiring employees "to work under conditions which are unsafe or unhealthful." Safety includes "a concept of reasonable personal security and protections which shall be maintained to assure employees against physical harm." The grievance procedure ends in binding arbitration of contractual disputes.

On October 16, 1987, a supervisor of nursing filed a group grievance alleging that unsafe working conditions at Greystone Park Psychiatric Hospital violated the contractual guarantees. The grievance specified that the unsafe conditions resulted from: "A. gross overcrowding of patients; and/or B. chronic patterns of inadequate staffing." The grievance added that the employees were worried about the patients' safety as well as their own. Similar group grievances were filed by a head nurse and a training technician. A clerk transcriber filed an individual grievance.

On February 4, 1988, an employer-designated hearing officer conducted a hearing on all four grievances. CWA argued that the hospital had not complied with the staffing requirements of either a consent order in a 1977 New Jersey Supreme Court case, Doe v. Klein, or a handbook of the Division of Mental Health and Hospitals; this lack of compliance allegedly endangered lives. Several witnesses testified that psychiatric patients became agitated when left unattended or when recreational programming was cancelled. Management representatives asserted that Greystone has increased the number of authorized positions, but has had trouble filling them.

On March 10, 1988, the hearing officer concluded that the contractual safety guarantees had not been violated. She found, in part, that the consent order and the handbook did not establish safety standards.

On March 28, 1988, CWA demanded arbitration. This petition ensued.

The employer asserts that the grievances predominantly challenge staffing levels and are thus non-negotiable. CWA agrees that the staffing levels are non-negotiable, but argues that an arbitrator may still declare that the safety provisions have been violated.


We have previously held that a dispute under the contractual safety clauses was legally arbitrable. State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985). There a CWA grievance asserted that ending security guard services made the Hoboken Unemployment Office unsafe. The State argued that the dispute predominantly involved its decision to eliminate security guard services and CWA conceded that staffing levels were not negotiable. But it asserted, and we agreed, that the contractual commitment to provide a safe workplace was mandatorily negotiable and that challenges to any remedy awarded should be raised in post-arbitration proceedings under N.J.S.A. 2A:24-8 et seq.

State of New Jersey controls this case.^{1/} We note that any arbitral award could not order an increase in staffing since determination of staffing levels is a managerial prerogative. Local 195, IFPTE v. State, 88 N.J. 393 (1982). But we will not speculate about what other remedies might or might not be lawful if a violation is proved.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
February 10, 1989
ISSUED: February 14, 1989

^{1/} Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd App. Div. Dkt. No. A-4851-79 (7/15/81), certif. den. 88 N.J. 476 (1981) are inapt. They involved provisions setting minimum staffing levels rather than provisions guaranteeing workplace safety.