

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ALASKA CORRECTIONAL
OFFICERS' ASSOCIATION,

Defendant.

COPY
Original Received
AUG 09 2013

Clerk of the Trial Courts

CASE NO. 3AN-13-08761 CI

COMPLAINT TO VACATE ARBITRATOR'S AWARD

The State of Alaska files this complaint to obtain relief from the opinion and awards of Arbitrator Janet Gaunt, dated April 20, 2013, May 16, 2013 and August 5, 2013, In The Matter of the Arbitration Between the Alaska Correctional Officers' Association and the State of Alaska, (opinion and awards attached as Exhibits A – C to this complaint) on the grounds that these awards violate the public policy of the State of Alaska, were the result of gross error, and exceeded the arbitrator's authority. The State of Alaska alleges the following in support of the complaint:

1. The Alaska Department of Corrections ("DOC" or "Employer") is the public agency of the State of Alaska responsible for maintaining the correctional institutions within the state and it employs correctional officers to carry out that function.

2. Beginning in May, 2012, DOC implemented a change in staffing schedules at seven out of its twelve institutions statewide in order to conserve State

1
2 funds while continuing to safely and effectively provide correctional services for the
3 benefit of Alaska's convicted criminals, correctional facility staff, and the public.

4
5 3. All employees affected by the change in staffing schedule are members of
6 a recognized bargaining unit under the Alaska Public Employees Relations Act,
7 represented by the Alaska Correctional Officers' Association ("ACOA"). The ACOA
8 filed a grievance under the collective bargaining agreement (the "CBA") then in effect
9 alleging that the change in staffing schedule violated the collective bargaining
10 agreement.

11
12 4. The ACOA and the State selected Arbitrator Janet Gaunt to hear the
13 grievance on January 29-30 and February 22, 2013.

14 5. Arbitrator Gaunt issued a decision on April 20, 2013 in which she found
15 ambiguous the CBA language authorizing DOC to set work shifts, assign work, and set
16 the hours of operation, and thus considered extrinsic evidence of past practices in
17 deciding DOC had violated other provisions of the contract by failing to first negotiate
18 the staffing schedule change.

19
20 6. Arbitrator Gaunt sustained the grievance, directing the employer to "make
21 whole" all employees affected by the shift change, and requiring the State to provide
22 notice to ACOA before changing shift assignments. Arbitrator Gaunt reserved
23 "jurisdiction to resolve any disputes regarding what is required to comply with (the)
24 Award." Exhibit A.

25 7. In a May 16, 2013 addendum to the April 20, 2013 decision, Arbitrator
26

1
2 Gaunt further ordered that all "security Correctional Officers" be restored to "the 84-
3 hour schedule from which they were moved." Arbitrator Gaunt ordered ACOA to
4 provide a list of each employee entitled to a remedy and the remedy requested, and
5 offered to assist in resolving disputes by written argument or remedial hearing.
6
7 Exhibit B.

8 8. In an August 5, 2013 addendum to the April 20, 2013 decision, Arbitrator
9 Gaunt ruled that: "affected correctional officers be restored to the 84 hour work
10 schedule and the 12 hours shifts encompassed therein;" found "the assertion that the
11 DOC might need to hire additional officers does not excuse compliance with the
12 specified remedy or establish an impossibility defense;" found it not "necessary" to hold
13 a hearing or take any additional evidence on the subject of the cost of 12-hour shifts;
14 and, found that "the State has received a reasonable period of time to begin restoring
15 security officers to the 84 hours schedule." Exhibit C.
16

17 The State challenges both the merits and the remedy ordered in Arbitrator
18 Gaunt's decisions.
19

20 Challenges to the Decisions' Merits:

21 9. Arbitrator Gaunt committed an obvious and significant mistake when she
22 found ambiguous the CBA's management rights clause, which reserves to the employer
23 the right to operate and manage its affairs unless specific provisions provide otherwise
24 regardless of the frequency of exercise, and Article 22, which authorizes DOC to
25 change the shift assignments in accordance with the needs of the employer. Arbitrator
26

1
2 Gaunt committed gross error when she concluded the employer has authority to change
3 shifts only if it does not result in changing workweek schedules, mistakenly considered
4 extrinsic evidence in deciding Article 22 was ambiguous, and failed to consider a statute
5 that reserves to the DOC commissioner the power and authority to operate the state's
6 correctional facilities. AS 33.30.011.
7

8 10. Arbitrator Gaunt exceeded the scope of authority granted her in the CBA
9 to decide the grievance when she "added or changed" the terms of the CBA by adding
10 classifications called "administrative Correctional Officer" and "security Correctional
11 Officer" and added a "security shift" which she assigned to the 84-hour work schedule
12 despite the absence of such language in the CBA. State of Alaska/ACOA 2009-2012
13 CBA Article 16.6.
14

15 11. Arbitrator Gaunt's opinion and award violates public policy by requiring
16 the State to return all "security Correctional Officers to 84-hour work schedules and the
17 12-hour shifts encompassed therein," in that it requires that correctional facility posts
18 that are not presently staffed 24-hours per day now be staffed for 24-hours per day. The
19 Alaska Constitution provides that criminal administration shall be based upon the need
20 for protecting the public, and the Commissioner of the Department of Corrections has
21 the statutory and contractual authority to protect the public by determining the hours of
22 operation of correctional facilities and assigning the work shifts accordingly, thus the
23 arbitrator's decision violates public policy. Alaska Const. art. I §12; AS 33.30.011, State
24 of Alaska/ACOA 2009-2012 CBA Art. 4, 22.
25
26

Challenges To the Decisions' Remedy:

12. Arbitrator Gaunt committed an obvious and significant mistake in concluding that "an assertion that the DOC might need to hire additional officers does not excuse compliance with the specified remedy" that the State must return all "security Correctional Officers" to "the 84-hour work schedules and the 12-hour shift encompassed therein" when she declined to receive additional information on the substantial projected cost and the fact that statute requires a legislative appropriation to fund the cost of the award. AS 23.40.215(a); 23.40.250(4).

13. Arbitrator Gaunt exceeded the scope of the arbiter authority under the CBA by ordering DOC to return all "security Correctional Officers" to "the 84-hour work schedules and the 12-hour shift encompassed therein" because the projected cost of assigning correctional officers to 24-hour posts that are presently staffed at 18-hours is so great as to result in an attempt to supercede the constitutional and statutory authority of the Commissioner of DOC and intrude on core management rights of the Commissioner to expend the public funds in accordance with the laws of the State.

PRAYER FOR RELIEF

WHEREFORE, the State of Alaska requests the court to enter judgment in its favor and to grant the following relief:

1. For a declaratory award that the opinion and awards by Arbitrator Gaunt directing the State to return all "security Correctional Officers" to "the 84-hour work schedules and the 12-hour shift encompassed therein" and make whole all correctional

officers affected by the shift change all security posts were contrary to and in violation of the public policy of the State of Alaska.

2. For a declaratory award that the opinion and awards by Arbitrator Gaunt directing the State to return all "security Correctional Officers" to "the 84-hour work schedules and the 12-hour shift encompassed therein" and make whole all correctional officers affected by the shift change were the product of gross error.

3. For an order directing that Arbitrator Gaunt's opinion and awards directing the State to return all "security Correctional Officers" to "the 84-hour work schedules and the 12-hour shift encompassed therein" and make whole all correctional officers affected by the shift change be vacated.

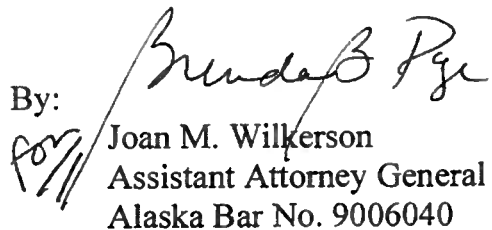
4. For an award of all costs, disbursements, expenses and reasonable attorney's fees incurred by the State of Alaska as a result of the actions complained of in this complaint and the prosecution of this lawsuit; and,

5. For any further appropriate relief which the court deems just and equitable.

Dated this 9th day of August, 2013.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:


Joan M. Wilkerson
Assistant Attorney General
Alaska Bar No. 9006040