

Union vs. New York State

Willowbrook showdown near

By SYDNEY FREEDBERG

Willowbrook Developmental Center, until five months ago an entirely public-run institution, is being "carved up and handed out to the private sector."

That is the position of the state's largest public union and the crux of a complicated lawsuit that, in essence, charges Gov. Carey and his designees with abandoning the cause of handicapped persons by turning their care over to private organizations.

Some decision in the suit, brought by the Civil Service Employees Association and now pending in Brooklyn federal

court, is expected shortly, and the outcome will likely leave the losing side reeling over it for years.

Specifically at issue is the state's surrender last September of seven buildings at Willowbrook to the United Cerebral Palsy Association of New York — a group that has undisputed expertise in dealing with some types of physical afflictions.

But never before has UCP, a so-called not-for-profit group, operated a facility this size, and the transfer of power from the public to private realm was unprecedented.

The seven buildings — one-quarter of Willowbrook's residential facilities — house 625 persons, many of them multi-handicapped, who are under the care of nearly 1,000 privately hired staff.

The takeover directly affected 700 of the institution's 4,000 workers, many of whom were given new assignments in still publicly operated facilities. Morale was — and in some circles remains — at an all-time ebb, with many state employees fearing a loss of jobs. Major changes in organization that followed undeniably had an impact on patient care.

Was it legal? Did the relinquishing of state control over the buildings — and the residents — violate any principle of the state constitution? In making a deal with UCP, did the state violate existing collective bargaining agreements with its union of 135,000 workers?

These questions may soon be answered by Federal Judge John R. Bartels, who has before him thousands of pages of sworn statements, briefs and documents submitted by the CSEA, the state, UCP and other interested parties

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in the dispute.

But before he renders a verdict, Bartels could, if he wanted, order that the entire question of the takeover come to trial, forcing state officials to testify under oath.

And like everything else in this case, the major parties are at odds over whether a trial is called for: The union wants one; the state does not.

On substantive issues, attorneys for the state argue that mental health officials turned over the buildings to UCP because UCP, with its specialized programs and training techniques, could provide better care for the mentally retarded.

But more importantly, state attorneys say, the contract with UCP was the fulfillment of a promise made to parents of Willowbrook's retarded. State attorneys say they went along with a parent plan to turn over the buildings — and agreed to it in a court of law — hoping it would be a partial solution to the institution's lingering woes.

The CSEA, on the other hand, which represents about 4,000 workers at Willowbrook, is seeking to overturn the contract between UCP and the state as illegal and unconstitutional.

The union's attorneys contend that the transfer of responsibilities from the state to the palsy group is no more than an underhanded way to get rid of public employees who, the attorneys add, are unjustly criticized for poor conditions at the institution.

According to one CSEA lawyer, Pauline Rogers, both the state constitution and the Mental Hygiene Law void the contracting out of government functions

to private organizations. The running of institutions such as Willowbrook and the care of the retarded has traditionally been a state function, the union claims.

"If there are layoffs," Ms. Rogers says, "the proof will be abundantly clear that they were a direct result of the contracting out, with nearly 1,000 positions having been picked up by the private sector."

"Willowbrook is being carved up and handed out to the private sector in a fashion that's grossly unfair," she says, citing the post-UCP takeover of buildings on the grounds by different groups as proof that the state is hoping to get out of the business of caring for the mentally retarded.

To this point, mental hygiene officials respond that indeed Willowbrook, by court mandate, must reduce its population, now at 1,625 residents, to 250 Staten Islanders by 1981. This will be accomplished by developing small community residences in each of the five boroughs to be operated by private organizations such as UCP.

In addition, state movement toward decentralization of services has been confirmed by this year's executive budget, which calls for a 50 percent reduction in the Willowbrook staff — to 2,006 workers by March 31, 1979.

Thomas A. Coughlin, acting commissioner of the new Office of Mental Retardation, himself puts a big "if" on the question of layoffs at Willowbrook, vowing that none will occur if the State Legislature gives his office appointing authority at the 18 state-run developmental centers.

The material currently under review by Bartels includes comparisons of funding modes between UCP and the

state: explanations of the types of control exercised by the state over Willowbrook as compared with that over UCP buildings at Willowbrook, and procedures whereby residents in the UCP buildings passed from the custody of Willowbrook to that of UCP.

But perhaps the most important question of all — that is, the performance of UCP at Willowbrook and whether the private group is providing the high-quality services it promised it would — will not be addressed.

And this point, too, is disputed.

The union leadership at Willowbrook continues to charge that serious problems exist in the UCP-run baby complex, and that residents there are being shifted in and out of programs on an "ad hoc basis."

A court-appointed monitor, the Willowbrook Review Panel, notes in a recent report that an "audit of the United Cerebral Palsy buildings revealed a significant level of deficiencies."

Two months after the takeover, according to the panel, "program planning and comprehensive service delivery was not fully implemented," but the report also stated that UCP was attempting to overcome the problems that had been uncovered.

UCP and state officials, meanwhile, take a more sanguine view of the private group's performance.

Dr. Eric Clarke, UCP's associate director, asked about reports of unfavorable conditions, said: "Sure there are some problems. We know that and we're working to correct them. We came into this somewhat unprepared...not expecting what we found...and a two-month judgment is a little premature."