

P.E.R.C. NO. 2014-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2012-011

UNION OF RUTGERS ADMINISTRATORS-  
AMERICAN FEDERATION OF TEACHERS,  
LOCAL 1766, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rutgers, the State University of New Jersey, for a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators-American Federation of Teachers, Local 1766, AFL-CIO (URA-AFT). The grievance contests the assignment of non-unit members to perform boiler checks in the University's heating/cooling plants when unit members are on vacation. The Commission finds that this case does not invoke the unit work doctrine because the record does not support that the boiler monitoring functions were being performed only by unit members. The Commission holds that this case involves Rutgers' non-negotiable managerial prerogative to determine the staffing levels necessary for efficient boiler monitoring services.

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, Office of the Senior Vice President  
and General Counsel (Sarah A. Luke, of counsel)

For the Respondent, Weissman & Mintz, LLC, attorneys  
(Steven P. Weissman, of counsel)

DECISION

On September 28, 2011, Rutgers, the State University of New Jersey petitioned for a scope of negotiations determination.

Rutgers seeks a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators-American Federation of Teachers, AFL-CIO. The grievance contests the assignment of non-unit members to perform boiler checks in the University's heating and cooling plants when unit members are on vacation.

The parties have filed briefs. Rutgers has filed a certification of Kevin Hollman, Manager of Central Plants at the University. The URA-AFT has filed the certification of Thomas

Belloni, a Shift Operations Specialist ("SOS") employed by the University. The following facts appear.

The URA-AFT represents Rutgers' regularly employed, non-supervisory, administrative employees including SOS employees who monitor boilers, elevators, emergency generators, cooling towers, and chillers. Rutgers and URA-AFT are parties to a collective negotiations agreement effective from July 1, 2007 through June 30, 2011. The grievance procedure ends in binding arbitration. Article One is a recognition clause. Article 27 is Overtime/Compensatory Time Benefits. Article 49 is entitled University Policies and Procedures. It provides:

During the life of this Agreement, any change in University regulations, procedures, or in the University Policy Library that constitutes a mandatorily negotiable term and condition of employment for members of the bargaining unit shall be negotiated.

This subject matter of the grievance concerns the assignment of work within the central plants operations on the New Brunswick-Piscataway campus of Rutgers.

Central plants is staffed around-the-clock by Licensed boiler operators represented by the International Union of Operating Engineers, Local 68 who monitor boilers in the central plants and in stand-alone locations throughout the campus. SOS employees monitor equipment - including boilers and additionally respond to calls off-hours with a Supervisor of Utility Operations ("SUO"). SOS employees are represented by URA-AFT.

SOS employees work eight-hour shifts Monday through Friday, 12-hour shifts on Saturdays and Sundays, and 12-hour shifts on holidays. One SOS and one SUO work each shift and respond to calls together. Thus, staffing of the boiler monitoring function prior to October 2010 was accomplished by boiler operators, SOS employees and Supervisors ("SOU"s), who are not involved in this matter.

Prior to October 2010, boiler checks on weekends and holidays were performed by SOS employees. When an SOS was out, another employee worked that shift on overtime. Local 68 employees, although on duty, did not replace absent SOS or SUO employees prior to October 2010. After October 2010, Rutgers started using Local 68 members to replace the URA-AFT members who were absent.

On April 11, 2011, the URA-AFT filed a grievance challenging the use of Local 68 employees to perform work historically performed by SOS employees on overtime. On April 20, the Manager of Central Plants at Rutgers issued a Step 2 grievance answer stating that the Local 68 employees are covering for the SOS employees who are out on vacations, and that it involves work that is similarly done during the day by Local 68 employees. On June 22, the Associate Director of Labor Relations issued a Step 3 grievance response adding that while the Department may have covered vacant SOS shifts in the past by use of overtime, they

are not bound to this expenditure in perpetuity and have an obligation to reasonably reduce expenditures when possible. On June 28, URA-AFT demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404 - 05 (1982) sets forth the following negotiability balancing test:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it

is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405]

Rutgers asserts it has a managerial prerogative to reorganize its operations and assign work to employees based on its operational needs; the assignment of off-hours boiler monitoring duties to Local 68 employees is intended to increase departmental efficiency and performance; the assignment to Local 68 employees has not resulted in a loss of jobs, union membership or change the nature of SOS employees' work.

The URA-AFT responds that disputes regarding the reassignment of overtime work to non-unit employees involves a mandatorily negotiable subject as the issue is which Rutgers employees will perform boiler checks when SOS and SUOs are out.

The University replies that its interest in assigning work to employees based on operational needs prevail over the interests of the SOS employees; the University may unilaterally change work assignments among employees to improve efficiency; the alleged prejudice to the employees is negligible; the use of Local 68 employees eliminates an economically wasteful staffing practice; and the University has a managerial prerogative to determine whether overtime will be worked.

We find that this case primarily involves Rutgers' determination as to the staffing levels necessary for the efficient delivery of the boiler monitoring services, which in turn dictates the amount of overtime which may be necessary. This determination is a non-negotiable managerial prerogative. Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). We do not find that this case invokes the unit work doctrine since the record does not support that the boiler monitoring functions were being performed by SOS employees alone. City of Jersey City v. Jersey City POBA, 154 N.J 555 (1998).

ORDER

The request of Rutgers, the State University for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: December 19, 2013

Trenton, New Jersey