P.E.R.C. NO. 96-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY

Petitioner,

-and-

Docket Nos. SN-94-60
SN-94-61

AFSCME, COUNCIL 52, LOCAL 888,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of two grievances filed by AFSCME, Council 52, Local 888 against Rutgers, the State University. The grievances assert that the employer violated the parties' collective negotiations agreement when it barred custodians from using certain lounges at Rutgers-Camden Law School and required custodians to report to work already in uniform instead of providing facilities where they could change into their work uniforms. The Commission holds that the lounge grievance pertains to a mandatorily negotiable term and condition of employment. In the absence of any showing of a significant interference with Rutgers' educational mission, the Commission finds no basis to hold that Rutgers could not have legally agreed to permit custodians to use staff facilities. The Commission further holds that whether employees must change into their uniforms during work time or on their own time relates to employee work hours and is mandatorily negotiable. Whether the employer must provide changing areas predominately relates to employee work conditions and is also mandatorily negotiable and legally arbitrable.

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, Christine B. Mowry, Office of Employee Relations

For the Respondent, Szaferman, Lakind, Blumstein, Watter and Blader, attorneys (Sidney H. Lehmann and Jennifer Weisberg Milner, of counsel)

DECISION AND ORDER

On January 3, 1994, Rutgers, the State University petitioned for two scope of negotiations determinations. Rutgers seeks to restrain binding arbitration of two grievances filed by AFSCME, Council 52, Local 888. The grievances assert that the employer violated the parties' collective negotiations agreement when it barred custodians from using certain lounges at Rutgers-Camden Law School (SN-94-60) and required custodians to report to work already in uniform instead of providing facilities where they could change into their work uniforms (SN-94-61).

The parties have filed affidavits, exhibits, and briefs. These facts appear.

Local 888 represents the University's non-supervisory service and maintenance employees. Rutgers and Local 888 were parties to a collective negotiations agreement effective from July 1, 1992 to June 30, 1995. The grievance in SN-94-61 arose under the parties' predecessor agreement in effect from July 1, 1989 to June 30, 1992. The contractual grievance procedure in both agreements ends in binding arbitration.

SN-94-61

On September 1, 1992, the Director of the Physical Plant at the Camden campus, Martin Rogers, issued a memorandum to supervisors stating that employees must report to work in their uniforms with their ID badges attached. Before Rogers assumed his present position in 1988, employees reported to work in personal work clothes. Employees were then issued work uniforms and identification badges. According to a third step grievance report, Rogers had expected that all employees would be in uniform before punching in and receiving keys, but a few employees (8-10) had been changing into the uniforms after their shifts started and back into street clothes before their shifts ended and had been taking 20-30 minutes at each end to do so.

Local 888 filed a grievance alleging that Rogers' memorandum changed the past practice under which employees were allowed to punch in, report to their work sites and then change into

their work uniforms. The grievance asserted that the directive violated Article 27, paragraph 5, regarding the establishment of rules and regulations, and Article 15 governing work hours. The grievance demanded that the alleged past practice be restored or that employees be given places where they could change into their uniforms before punching in. The third step grievance report stated that a bathroom located close to the employees time clock was an area where employees could change clothes before punching in. AFSCME asserts that the directive bars custodians from using the bathroom as a changing facility.

After Rutgers denied the grievance, AFSCME demanded arbitration. Petition No. 94-61 ensued.

SN-94-60

Several employees assigned to the law school building work a 5 p.m. to 1 a.m. shift. A meal break takes place from 9 p.m. to 9:30 p.m. The law school has staff lounges on the third and sixth floors, and a student area, snack bar and cafeteria in the basement.

Rogers received complaints from the assistant dean of the law school that equipment in the lounges had been damaged; food stored by other employees had disappeared; and some custodians had been using the lounges while they were supposed to be on duty. The dean told Rogers that he wanted the lounges reserved for the use of law school faculty and staff and their guests. Rogers so advised the employees. He told them that they could use the facilities in the basement or facilities in other buildings on the Camden campus where custodians assigned to those buildings take their meal breaks.

On September 15, 1992, AFSCME filed a grievance alleging that the directive violated the agreement. AFSCME asserted that custodians are staff and should be able to use the staff lounges since custodians assigned to other university buildings are permitted to use staff lounges in those facilities and especially since their duties include cleaning the lounges. AFSCME asserts that no employees have been disciplined for misusing the facilities or their break times.

After Rutgers denied the grievance, AFSCME demanded arbitration. Petition No. 94-60 ensued.

The employer argues that it has a managerial prerogative to determine how its facilities will be used to further its educational mission. It asserts that providing changing areas for these employees would involve a major capital expenditure or a reallocation of existing space. Rutgers also asserts that allowing arbitration over the use of staff lounges would be analogous to allowing an arbitrator to allocate office, library or laboratory space.

AFSCME asserts that the availability of employee lounges has nothing to do with Rutgers' educational mission and is a mandatorily negotiable term and condition of employment. It asserts that the dispute over where employees change into uniforms involves work hours because the directive changed an existing practice of allowing employees to change after they punched in (and before they punched out) to a practice of requiring employees to be in uniform

before their shift starts and until their shift ends. It asserts that this dispute and the issue of whether employees can continue to use the bathroom as a changing facility are severable from the decision to require that uniforms be worn, a prerogative it does not challenge.

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]

We thus do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

We first consider the lounge grievance (SN-94-60). We hold that it pertains to a mandatorily negotiable term and condition of employment. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 28-29 (App. Div. 1977); Delaware Tp., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980). The grievance seeks access to already existing facilities not devoted to educational uses and reserved for use by staff. In the absence of any showing of a significant interference

with Rutgers' educational mission, there is no basis to hold that Rutgers could not have legally agreed to permit custodians to use these staff facilities. We thus decline to restrain arbitration of this grievance.

The grievance in SN-94-61 raises two issues: (1) whether the employees must change into their uniforms during work time or on their own time; and (2) whether the employer must provide changing areas. The first issue predominately relates to employee work hours and is mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, (1973); cf. Pennsauken Tp. and AFSCME Council No. 71, P.E.R.C. No. 93-62, 19 NJPER 114 (¶24054 1993). The second issue predominately relates to employee working conditions and is also mandatorily negotiable and legally arbitrable. The employer asserts that providing changing facilities would involve a major capital expenditure. AFSCME asserts that an existing bathroom is an area where employees could change clothes before punching in. We note that any arbitral award could not order a capital improvement involving a major budgetary expense. See Byram. But we will not speculate about what remedies might or might not be lawful if a contractual violation is proved.

ORDER

The requests of Rutgers, the State University, for restraints of binding arbitration in SN-94-60 and SN-94-61 are denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. Commissioner Klagholz was not present.

DATED: November 27, 1995
Trenton, New Jersey
ISSUED: November 28, 1995