

P.E.R.C. NO. 2003-70

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Petitioner,

-and-

Docket No. SN-2003-25

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 68-68A, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Rutgers, the State University for a restraint of binding arbitration of a grievance filed by the International Union of Operating Engineers, Local 68-68A, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned the task of taking and logging readings of gauges on chiller units from an HVAC operating engineer represented by International Union of Operating Engineers, Local 68-68A, AFL-CIO to maintenance mechanics represented by AFSCME Local 888. The Commission concludes, on this record, that the employer's interests in changing the deployment and duties of the one HVAC engineer on the day shift in August 2001 outweighed the unit employees' interests in continuing to have the chiller gauge duties exclusively assigned to that one engineer. The Commission limits its holding to the need to reassign duties in August 2001 and does not extend it to a situation where the normal complement of engineers exists.

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, Greenbaum, Rowe, Smith, Ravin,  
Davis & Himmel, LLP, attorneys (Aron M. Schwartz, on  
the brief)

For the Respondent, Lynch Martin, attorneys  
(Raymond G. Heineman, on the brief)

DECISION

On October 18, 2002, Rutgers, the State University petitioned for a scope of negotiations determination. The University seeks a restraint of binding arbitration of a grievance filed by the International Union of Operating Engineers, Local 68-68A, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned the task of taking and logging readings of gauges on chiller units from an HVAC operating engineer represented by IUOE to maintenance mechanics represented by AFSCME Local 888.

The parties have filed briefs and exhibits. The University has submitted the certification and supplemental certification of Martin Ryan, its Director of Physical Plant. IUOE has submitted the certification of Joseph Gargante, an HVAC operating engineer on the day shift. These facts appear.

The parties' collective negotiations agreement is effective from July 1, 1999 through June 30, 2003. The grievance procedure ends in binding arbitration. IUOE represents various operating engineer titles, including HVAC operating engineer.

The Newark campus of Rutgers University covers ten city blocks, has 25 buildings, and has approximately 3,000 employees and 10,700 students. The Physical Plant Department maintains the buildings and grounds and keeps the mechanical systems (heating, cooling, ventilation) in good working order. The department operates around the clock. The heating and cooling operations involve equipment including chiller units used to chill water for cooling.

Before 2001, five HVAC operating engineers worked on the Newark campus - one on the evening or afternoon shift, one on the night shift, one on relief, and one or two on the day shift. According to Ryan, there was little scheduling overlap; but whenever there was an overlap, two engineers were assigned to the day shift. According to Gargante, there were usually two engineers on the day shift. However, during various times in

2001, one HVAC engineer retired, a second took a disability leave, and a third was terminated. As a result, only four engineers were available for assignment and only one could be assigned to the day shift.

The job scope for an HVAC engineer provides:

Under general supervision, takes a leading part in the operation, maintenance, adjustment/calibration and repair of all HVAC and related equipment to assure operational reliability and proper environmental conditions throughout the campus. Responds to and takes appropriate action to resolve emergency situations during assigned evening, night and weekend shifts. May train and or guide others in the work unit.

The duties and responsibilities of an HVAC engineer provide, in part:

The HVAC-Operating Engineer has charge responsibility for operations of all HVAC equipment and related equipment as delineated. Makes any and all required adjustments/calibrations to assigned equipment and related hardware campus wide. Specific tasks include routine logging of operating data and status, adjusting controls, linkages, valving, etc., start/stop routines in order to achieve maximum equipment efficiency and performance.

On the day shift, the work of the HVAC engineer is project and maintenance oriented. Main responsibilities include water treatment, fume hood maintenance in laboratories, flushing out pumps, and various projects at the central heating plant. The water treatment work is a year-round, labor-intensive, and

critical function; failure to treat water properly can lead to corrosion, equipment malfunctions, and future repairs.

The focus of the HVAC operating engineers' work on the "backshifts" - the evening and night shifts - differs from their main functions on the day shift. On the backshifts, the engineers' job consists principally of making rounds through all buildings, including checking on all systems and responding to all emergencies. They are "the eyes and ears" of the Physical Plant department since there is only one HVAC engineer on each evening and night shift and since maintenance mechanics do not work on either shift.

Maintenance mechanics are represented by AFSCME Local 888. They work in two geographic zones on the Newark campus and are assigned to several buildings within each zone. The zone assignments reduce the time mechanics need to travel between assignments. Their duties involve the examination, dismantling, repair, reassembly and maintenance of mechanical/electrical equipment. That equipment includes refrigeration units, heating systems, air handling machinery, air conditioners, pumps, plumbing and steamfitting equipment, boilers and filters. These mechanics inspect, repair and replace defective parts and do painting, carpentry, locksmithing, masonry and electrical duties.

When Ryan became the Director of the Newark physical plant in 1997, the plant was not keeping pace with the volume of hot

and cold service calls about malfunctioning HVAC equipment. Ryan reallocated more employees during the day shift to enable the plant to respond to hot and cold calls more quickly, keep pace with the current calls, and reduce the backlog. He shifted primary responsibility for responding to these calls from the day shift HVAC operating engineer to several maintenance mechanics scheduled during the day. IUOE filed a grievance over that reassignment of work, but did not seek to arbitrate the grievance after the University denied it.

On August 15, 2001, Ryan similarly reassigned the task of taking and logging chiller gauge readings from the one HVAC engineer on the day shift to maintenance mechanics in the two zones. The HVAC engineers on the backshifts continued to take and log the chiller gauge readings once per shift.

According to Ryan, it was necessary to reassign the logging of these readings because the HVAC engineer on the day shift had not been regularly taking chiller day readings due to the press of other business. Further, by August 2001, the HVAC engineer assigned to the day shift had been out on disability leave for a considerable period so readings were being taken rarely if at all. According to Gargante, however, he was able to take the readings in the normal course of his job when he was the HVAC engineer on the day shift.

There are 13 or 14 chillers on the Newark campus, but some are in groups at one location. Not all the chillers run at the same time. How many of them are operating at a given time depends on the weather and other factors.

Ryan asserts that taking a chiller gauge reading involves nothing more than looking at the temperature and pressure gauges and recording the current readings once a day - this task takes only moments for each chiller unit. According to Gargante, however, several readings must be taken for each chiller - e.g. ingoing and outgoing water temperature, oil temperature, oil level, gas pressure, and evaporator pressure - and the cooling tower on the roof of each building must also be examined. Gargante did not visit all chillers in an uninterrupted sequence, but he estimates that he spent between 10 and 15 minutes at each chiller and between two to three hours on such duties during each shift. If the readings revealed a problem, he corrected the problem immediately rather than shut the chiller unit down. In his supplemental certification, Ryan disputes Gargante's assessment of the time required to read the gauge and log the readings and reiterates that this task takes only seconds.

Before August 2001, only HVAC engineers had taken chiller gauge readings on the day shift. The parties agree that this work fits within the job description for HVAC engineers. Ryan asserts that this work also fits within the job descriptions of

several maintenance mechanic titles. For example, the job description for Sewer Maintenance Mechanic includes examining refrigeration units, heating systems, air handling machinery and air conditioners; detecting and reporting faulty operations; and maintaining preventive maintenance records. The job descriptions for Refrigeration and Air Conditioning/Maintenance Mechanic and Energy Management Central Technician have similar duties, but do not specify maintaining preventive maintenance records.

Ryan and Gargante dispute whether HVAC engineers are more qualified than maintenance mechanics to take and log chiller gauge readings. Ryan notes that the license required for HVAC engineers relates only to operation of boiler equipment and asserts that the difference in qualifications between HVAC engineer and maintenance mechanics does not relate to the chiller gauge duties. Gargante asserts that HVAC engineers have received extensive training from chiller manufacturers and from the University and they can interpret and diagnosis problems with chiller units.

According to Ryan's initial certification, HVAC engineers took chiller gauge readings while on their regular rounds and did not have to make special trips to chiller locations. His supplemental certification, however, asserts that the duties of HVAC engineers would be fundamentally altered if they had to take and log chiller gauge readings on the day shift because that duty



would require them to go on rounds to all 14 chillers and that "travel time" would substantially detract from their main project and maintenance responsibilities. Ryan asserts that it is more efficient for maintenance mechanics to take and log the readings because they are already assigned to zones and buildings within zones so their "travel time" is limited.

Ryan's decision to reassign the chiller gauge readings was based on the recommendations of Andrew Witek, the Associate Director for Maintenance and Operations, and George Fedor, the Chief Engineer at the Newark campus, in response to Ryan's desire to ensure that chiller log readings were collected regularly and reliably on the Monday to Friday day shift. No consultants were used and the reassignment of duties was not a part or a product of a major reorganization. Ryan asserts that the reassignment was done strictly for reasons of operational efficiency so as to improve the monitoring, maintenance, repair and operation of HVAC equipment by eliminating the need for "travel time" for the HVAC engineer and freeing him up for other important project and maintenance duties.

Ryan certifies that the reassignment of duties did not result in the layoff of any HVAC engineers, did not alter their workload or work hours, and did not affect their overtime opportunities. Further, Rutgers made every effort to fill HVAC engineer vacancies so as to maintain the five-person complement

of HVAC engineers. After advertising positions and interviewing candidates for the three positions that become vacant in 2001 and 2002, Rutgers filled the first two vacancies and offered the third to a candidate. The first vacancy was filled on April 1, 2002; the second was filled on September 16, 2002; and the third vacancy was offered to a candidate who was to start work by the beginning of February 2003. Gargante's certification does not dispute these facts; but according to IUOE's brief, the change in assignment permitted the University to avoid increasing available staff and could negatively impact on overtime assignments and employee work schedules.

On August 27, 2001, IUOE filed a grievance on Gargante's behalf. The grievance stated:

As an HVAC Engineer employed at Rutgers Newark, assigned to the 7:30/am to 3:30/pm shift, I was given along with other HVAC engineers a memo not to monitor or log any readings of chiller's on the day shift (see memo). The day shift engineers are not getting heating or cooling calls. This work is given to Local #888 mechanics in zone #1 & 2 and also Zone supervisor's in direct breach of Local #68 contract agreement, Article #2 (Recognition), Sec #2. Reference exclusions.

On September 27, 2001, the University denied the grievance. IUOE demanded arbitration<sup>1/</sup> and this petition ensued.

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<sup>1/</sup> IUOE does not seek arbitration over the assignment of hot and cold calls since HVAC engineers did not exclusively answer those calls. Thus, we do not consider that portion of the grievance.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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 this grievance or any contractual defenses the employer may have.

The unit work rule provides that an employer must negotiate before using non-unit employees to do work traditionally performed by negotiations unit employees alone. In City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), the New Jersey Supreme Court stated that the unit work rule typically applies to require negotiations before workers in a negotiations unit are replaced by workers outside the negotiations unit. The objective of the rule is to provide a majority representative with an opportunity to negotiate over an acceptable alternative that would avoid a loss of jobs or a reduction in union membership. Id. at 576. However, the Court also ruled that the unit work rule cannot be applied on a per se basis. Instead, the

negotiability balancing test set forth in Local 195, IFPTE v. State, 88 N.J 393 (1982), must be applied to the facts of each particular unit work claim.

Local 195 states:

[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]

There is no preemption argument so we will proceed to balance the parties' interests. We will focus on the situation that existed in August 2001 when there was a shortage of HVAC engineers and the employer reassigned the chiller gauge duties on the day shift.

HVAC engineers on the day shift have an interest in continuing to perform the work that they have always performed and that HVAC engineers on other shifts continue to perform on other shifts. Further, the entire negotiations unit of employees represented by IUOE has an interest in not having that unit

reduced in size or strength and in not having the historical expectation of work assignments disrupted. We reject the University's assertion that taking and logging chiller gauge readings does not come within IUOE's unit work because the job descriptions of maintenance mechanics arguably may be construed to encompass that work as well. The fact is that HVAC engineers on the day shift performed that work exclusively before August 2001.

On this record, we believe that the employer's interests in changing the deployment and duties of the one HVAC engineer on the day shift in August 2001 outweighed the unit employees' interests in continuing to have the chiller gauge duties exclusively assigned to that one engineer. The shortages in the traditional complement of engineers meant that only one HVAC engineer could be on the day shift. Given the press of business on that shift, the employer believed that it needed to have the only HVAC engineer on the day shift focus his energy and time on his main project and maintenance responsibilities such as water treatment, laboratory fume hood maintenance, and long-term projects. It also believed it was necessary to improve the reliability of its chiller gauge readings by reassigning that work to maintenance mechanics near the chillers. No positions were eliminated and no employees were laid off. Neither the work hours of these engineers nor their workload was changed.

This is not a case where the employer merely substituted a non-unit employee for a unit employee with no change in the responsibilities or duties attendant to a position and with the objective of reducing labor costs. Contrast Bergen Pines Cty. Hosp., I.R. No. 91-16, 17 NJPER 236 (¶22102 1991). See Jersey City at 580-581. Rather, the duties were reassigned solely for operational reasons and based on the employer's determination of which employees could best perform what jobs so as to meet all the employer's service needs. Compare Borough of Bogota, P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999), aff'd 26 NJPER 169 (¶31066 App. Div. 2000) (Borough made a policy determination as to how to best manage department resources and best use the skills of police officers). We accept the employer's explanation for why it reassigned the duties and will not secondguess its judgment of the relative qualifications of the HVAC engineer and the maintenance mechanics to take and log chiller gauge readings. We stress that the employer did try to fill vacant HVAC positions promptly and it believed it needed to act rather than to wait until it could fill the positions.

Given the balance of interests in light of the particular facts of the case, the reassignment of chiller gauge duties in August 2001 cannot be challenged through binding arbitration.


We limit our holding to the need to reassign duties in August 2001 and do not extend it to a situation where the normal

complement of HVAC engineers exists. The balance of interests is different in that situation. The parties dispute how often two engineers worked together on the day shift given normal staffing levels; but there does not appear to be a reason in this record why, when that happened, one of the two engineers could not take and log the chiller gauge readings. Nor does the record show that such readings were not being reliably taken when a normal complement of engineers was available. We therefore decline to restrain arbitration over the grievance to the extent it asserts that the chiller gauge work is work within IUOE's unit given the normal complement of HVAC engineers.

ORDER

The request of Rutgers University for a restraint of binding arbitration is granted to the extent it challenges the reassignment of duties in August 2001 given the shortage in HVAC operating engineer positions. The request is otherwise denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003  
Trenton, New Jersey  
ISSUED: March 28, 2003