

IN THE MATTER OF THE ARBITRATION BETWEEN

Teamsters Local 320,
Grievant,

and

BMS Case No.: 14 PA 0719

University of Minnesota
Employer.

ARBITRATOR: Christine Ver Ploeg

DATE AND PLACE OF HEARING: October 2, 2014
University of Minnesota
Duluth, MN

DATE OF RECEIPT OF POST-HEARING BRIEFS: November 4, 2014

DATE OF AWARD: November 9, 2014

For the Employer
Shelley Carthen Watson
Senior Associate General Counsel
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455

For the Union
Kari Seime
Attorney/Business Agent
IBT Local #320
3001 University Ave. SE, # 500
Minneapolis, MN55414

Robin MacGregor Grievant

ISSUES

1. Did the Employer violate Article 16.6 of the parties' Collective Bargaining Agreement by not posting the overtime for Saturday, July 13, 2013?
2. Should the Grievant have been given the Saturday, July 13, 2013, overtime?

BACKGROUND

This case has been brought by Teamsters Local 320 (hereinafter “Union”) on behalf of the Grievant, who is employed as a Building and Grounds (B & G) Worker at the University of Minnesota, Duluth (hereinafter “Employer”). The Union is the Grievant’s exclusive representative.

This Arbitration stems from the Employer’s assignment of overtime that arose on Saturday, July 13, 2013. The Union submits that the Employer violated the parties’ Collective Bargaining Agreement by failing to post that overtime and failing to award it to the Grievant. The Employer asserts that its actions are supported by the parties’ Agreement, past practice and policy.

The background facts are not in dispute. The Employer has a Sports and Health Center (“SPHC”) that is maintained by Custodial Buildings and Grounds (B & G) workers. B & G workers are assigned to one of two custodial shifts: custodial shift A covers 8 AM – 4 PM Monday through Friday, and custodial shift D covers Monday through Friday after 4 PM and on the weekends. In addition, B & G workers are divided into job classifications: Senior B & G Worker and B & G Worker. On April 11, 2011, the Employer hired the Grievant as a B & G Worker in the SPHC, where he continues to work on shift D.

The SPHC contains an ice rink and employees who work on it must be trained and “qualified” to do so. To be eligible to “make ice” an employee must independently perform ice duties a minimum of five hours within 12 months, including operating the ice resurfacing equipment (the Zamboni). The job classification of “6099 Icemaker” is currently not filled at the University. Therefore Senior B & G employees, all of whom are qualified icemakers, are assigned to work out of class and make ice as part of their regular duties. When they do so their pay is temporarily augmented to the 6099 job classification.

In addition, some regular B & G workers are also trained to “make ice,” and they provide backup when there is no available Senior B & G employee to do so. At present, three B & G employees are qualified icemakers and are designated as “relief icemakers”: two for the D shift and one for the A shift. The Grievant has received that training and the designation of “Relief Ice Maker” is attached to his job title. Thus, he has served as a backup for ice making duties when the Senior B & G worker on the D shift has been unavailable.

In the summer of 2013 the Senior B & G worker on the D shift requested and was approved for vacation time. The Employer then verbally notified the other B & G workers of these overtime opportunities, and a senior B & G worker assigned to the Tweed Museum requested and was given that overtime. That B & G worker, like the Grievant, worked the D shift, was also qualified as an ice maker and was senior to the Grievant.

The Union, on behalf of the Grievant, now protests the Employer's assignment of the July 13, 2013, overtime on two grounds: (1) the Employer failed to properly post the available overtime, as the parties' Agreement requires, and (2) the Grievant, as the B & G Relief Ice Maker who regularly performs the ice making duties in the Senior B & G worker's absence, should have been given this overtime. The Union submits that the Grievant should be paid for the eight hours and made whole.

The Union filed a timely grievance protesting the Employer's action. The parties were unable to resolve their differences concerning this matter in earlier steps of the grievance process and have agreed that this dispute is now properly before the arbitrator for resolution. The parties and the arbitrator met for a hearing on this matter on October 2, 2014, and the parties subsequently submitted post-hearing briefs which this arbitrator received on November 4, 2014. The Record was closed at that time.

RELEVANT CONTRACT PROVISIONS

Article 5 Employer Authority

5.1 The Employer retains the sole right to operate and manage all personnel, facilities, equipment, and operating supplies; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct, and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this agreement.

Any term and condition of employment not specifically established or modified by this agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

Article 10 Seniority

10.1 Total seniority shall be the length of continuous employment with the Employer.

10.2 Primary seniority for employees shall be the continuous length of time in a particular classification in an assigned first (1st) level supervisor's area.

10.3 Master seniority shall be the continuous length of time in a particular classification in the bargaining unit within an IMMEDIATE GEOGRAPHIC AREA.

Article 16.4: Overtime

16.4 Overtime shall be voluntary, based on master seniority within an assigned first level supervisor's area, but may be assigned on the basis of inverse seniority, within a classification, and assigned to the first level supervisor's area. Or, at the supervisor's option, prior to assigning overtime to the least senior, the overtime may be offered by master seniority in another supervisor's area (or supervisor's areas). This provision shall not be construed to require the Employer to break in on work in progress, nor shall it be construed to require either a call back or the assignment of an employee not qualified to do the work. Overtime offered, but refused, shall be noted for purposes of overtime rotation.

Article 16.6: Overtime

16.6 Overtime which can reasonably be scheduled at least seven (7) days in advance of its occurrence shall be posted in the first level supervisor's area in which the overtime is to be worked.

Article 30: Temporary Assignment

30.1 When an employee is required to assume the full responsibilities of a classification paying a higher rate, such employee shall receive an augmentation of at least four percent (4%) or the minimum step of the higher paying classification, whichever is greater, for the period of that assignment, provided that the assignment is for a duration of at least four (4) consecutive work hours. When an augmentation to a bargaining unit classification as described above is required, the Employer will augment the most senior employee determined by the Employer to be qualified to perform the work.

30.2 An employee who receives an augmentation under 30.1 may receive increases in the augmentation equivalent to progression increases that would be available in the higher paying classification. To be eligible, the employee must: work sufficient cumulative hours to be eligible according to provisions of the contract on progression increases for the higher paying classification

Notwithstanding, seniority shall be earned only in the original classification. For purposes of calculating cumulative eligible hours, only straight time hours worked effective 7/1/91 and later will be used.

UMD Facilities Management Ice Maker/Sr. Buildings and Grounds Worker Policy, Effective 2010:

- Senior B & G workers are normally assigned to ice duties during their shift, and will have ice making duties attached to their job description;
- Two Custodial D and 1 Custodial A (B & G) assignments will also require ice-making relief duties;
- Senior B & G and B & G's workers will have the opportunity to receive training to become qualified ice-makers, after which they would be designated as qualified ice-makers;
- Qualified ice makers will be augmented to Class 6099 Ice Maker on days when they perform ice work. Seniority will not be earned when augmented to the 6099 job classification, but cumulative eligible hours will be tracked for purposes of progression increases;
- Overtime will be offered in the supervisory area/level based upon master seniority in the respective class of ice makers. If no qualified ice makers are available in the supervisory area/level on shift, overtime will be offered to qualified ice makers in the other ice maker supervisory area/level. No ice making assignment will extend beyond 12 hours continuous time.

DISCUSSION AND DECISION

In this case the Union has had the burden of proving that the Employer failed to properly post and award the July 13, 2013, overtime in question. For the following reasons I find that the Union has not met that burden.

1. Posting of overtime

Article 16.6 of the parties' Agreement provides:

Overtime which can reasonably be scheduled at least seven (7) days in advance of its occurrence shall be posted in the first level supervisor's area in which the overtime is to be worked.

The Union asserts that the Employer has violated the parties' Agreement by failing to abide by its dictate that overtime "*shall* be posted..." (Emphasis added).

The Employer, noting that the Union did not raise this issue until step 3 of the grievance process, presented compelling evidence that the parties have a long standing, unwavering past practice of verbally notifying qualified icemakers of available overtime. The Union itself acknowledged at the step 3 hearing that "it has never been posted," as did the Grievant at this arbitration. He agreed that overtime has always been offered verbally, that supervisors call employees into the office or on the radio and simply ask qualified icemakers if they want the overtime.

As the Union has acquiesced to this long-standing, consistent practice, this grievance cannot be sustained on this basis.

2. Assignment of the July 13, 2013 overtime

The Union asserts that there is a long-standing past practice to have Senior B & G workers perform the ice making work and, if none are available, to assign that duty to a qualified B & G Relief Ice Maker worker not only for that regular shift but also when it is available as overtime.

The Union notes that the Grievant has the designation "relief ice maker" attached to his job description, while the worker who was given this overtime does not. Moreover, the

successful bidder does not even work in the SPHC and, unlike the Grievant, ice making is not part of his regular duties.

However, the Union does acknowledge that the successful bidder has been trained and is “qualified” for ice making duties, he too works on the D shift (the shift in which the overtime arose) and is more senior to the Grievant.

I have considered the Union evidence and argument and find that the Union has failed to carry its burden of proof on this question. This determination is based upon the following:

In 2009 the Union filed a grievance protesting how the Employer assigned icemaker duties and overtime. At that time the Union argued that the Employer should use master seniority in the Senior relief ice maker classification, irrespective of shift, to determine whom to call in for overtime. The Employer disagreed, contending that icemaker overtime was assigned based upon seniority among qualified icemakers. The step 3 decision on this question found for the University, and the Union did not appeal the grievance to arbitration.

Nevertheless, in an effort to clarify how icemaker duties would be assigned and augmented, the Employer and the Union then worked together to create a formal *UMD Facilities Management Ice Maker/Sr. Buildings and Grounds Worker Policy* (“the Policy”). It became effective in 2010. That Policy, coupled with the parties’ past practice, has guided decision in this matter. The provision of that policy relevant to this hearing states:

- Overtime will be offered in the supervisory area/level based upon master seniority in the respective class of ice makers.

The evidence is undisputed that during these negotiations the parties did not discuss how ice making overtime would be assigned. The Employer has made a compelling argument that the policy simply continued its long standing past practice of basing ice making overtime decisions upon master seniority and the other criteria set forth above.

In this case both the Grievant and the successful bidder worked in the D shift “supervisory area/level.” As both are “qualified” icemakers, the July 13, 2013, overtime was properly awarded to the employee who had more “master seniority in the respective class of icemakers.” That employee was not the Grievant.

The Policy does not, and the Employer never has, assigned overtime to persons based upon the location of their work, or the extent to which they regularly perform ice making duties. Nor is the attachment of the designation “relief ice maker” to a job title determinative. That designation is relevant only to job assignments within a regular shift. It does not apply overtime.

Because the policy demands only that the successful bidder be the more senior, “qualified” icemaker in the supervisory area/level, the Employer properly awarded the overtime now in question.

AWARD

For the above reasons this grievance is hereby denied.

November 9, 2014

A handwritten signature in black ink, reading "Christine Ver Ploeg". The signature is written in a cursive, flowing style.

Christine Ver Ploeg, Arbitrator