IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *LABOUR RELATIONS CODE* OF BRITISH COLUMBIA
R.S.B.C. 1996, c. 244

BETWEEN:

UNIVERSITY OF BRITISH COLUMBIA

(the "Employer")

AND:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 116

("CUPE 116")

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 882

("IUOE 882")

(Monthly Emergency Generator Tests)

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| ARBITRATOR: | Christopher Sullivan |
| COUNSEL: | Michael Korbin for the Employer<br><br>William Clements for CUPE 116<br><br>Rick Edgar for IUOE 882 |
| DATES AND PLACE OF HEARING: | July 3 and 4, 2008 and December 17, 18 and 19, 2008 Vancouver, BC |
| PUBLISHED: | March 24, 2009 |

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The parties agree my jurisdiction to hear and determine the matter in dispute is governed by a Protocol Agreement to resolve a tri-partite dispute. The Protocol Agreement provides as follows:

1. The matter shall be adjudicated under the provisions of both the CUPE and IUOE Collective Agreements. Neither agreement will have precedence over the other, and the arbitrator will have the normal power to interpret and apply those Collective Agreements, but shall not have the power to alter, modify, or amend either Collective Agreement.

2. The arbitrator will determine the dispute based on the same principles and considerations as the Labour Relations Board would determine the dispute if they were adjudicating it pursuant to an application under the *Labour Relations Code*.

3. The arbitrator will apply Part 8 of the *Code* to this proceeding, in such a way as is necessary to reflect the Tri-Party nature of the dispute.

4. Chris Sullivan shall be appointed the arbitrator of this dispute.

5. The expenses and compensation of the arbitrator shall be shared equally between the parties to the arbitration.

6. CUPE shall withdraw its application filed with the Labour Relations Board on September 24, 2007.

The case involves a grievance/complaint filed by CUPE Local 116 essentially alleging the University has violated Article 3.02 of the Collective Agreement in relation to the assignment of certain work having to do with scheduled monthly testing of the University's forty-three or so emergency generators. The work was transferred from CUPE 116 electricians to IUOE 882 mech2/operating engineers.

Article 3.02 of the CUPE 116 Collective Agreement reads as follows:

**Work of The Bargaining Unit**

Persons whose jobs are not in the bargaining unit shall not work on any jobs which are included in the bargaining unit, except in cases mutually agreed upon between the University and Union 116. Special consideration will be given to bona fide students enrolled at the University of British Columbia.

During the course of these proceedings a procedural issue arose with regards to IUOE 882's right to cross-examine witnesses. CUPE 116 took the position IUOE 882's interests were aligned with that of the Employer and, therefore, were being represented at these proceedings.

After hearing the parties' respective submissions on this point I exercised my discretion and ruled IUOE 882 had a right to call evidence, and examine the witnesses of the other two parties, except it could not cross-examine its own members called as witnesses by the University. The interests of the University and IUOE 882 are not necessarily the same. IUOE 882 seeks only to protect work its members have performed in the past, and it takes no position on the specific tasks CUPE 116 is claiming.

The grievance/complaint giving rise to these proceedings arose after the University changed the way it staffs monthly tests of its forty-three or so emergency generators and associated fifty transfer switches. The generators serve to provide electrical power to emergency systems, and certain critical systems such as refrigerators and freezers for some research facilities, in the event of an outage of the normal power service.

Most of the emergency generators are powered by large diesel engines, although some are powered by natural gas. The generators are subject to inspection and testing

requirements pursuant to the *British Columbia Fire Code*, as well as other rules and regulations.

Since at least the early 1980's, a CUPE 116 electrician has always been assigned with an IUOE 882 mech 2/operating engineer to perform the monthly testing, and each employee performed tasks to ensure the generators were in operational condition and would work in the event of a power outage. The monthly testing occurred during the first three weeks of each month. The two full-time employees performed three tests a day.

In May 2005 the University proposed, and in November 2005 it implemented, a change to the staffing of the monthly testing. From this time forward, the Employer has deployed only one employee, an IUOE operating engineer, to conduct the monthly tests. The IUOE operating engineer now performs all of his previous duties, together with those previously performed by the CUPE electrician. The employee continues to perform three tests per day for the first three weeks of each month, although the running time for each generator test is now thirty minutes rather than sixty.

During the course of these proceedings the parties called extensive evidence relating to the emergency generator inspection/testing/maintenance/servicing program, and the nature and substance of functions performed by employees during the monthly tests before and after November 2005. The following individuals testified: Electricians Brian Templeton and Rob Wright, Head Electrician Mike Frizell, Associate Director Building Operations and Maintenance Dan Leslie, and Operating Engineers Prem Greywal, Tino Muscato and Lance Lane.

Since 2002 the University's Fire Life Safety Department has been responsible for the emergency generators, and other equipment such as fire alarms and sprinklers, emergency lighting on battery packs, and clocks. The Head of the Fire Life Safety

Department is Head Electrician Mike Frizell, a member of the CUPE 116 bargaining unit.

Prior to 2005 it had been identified that some of the emergency generators were in poor condition and occasionally failed to work when required. To address this problem the University implemented its new program that included an annual inspection and servicing of each emergency generator and transfer switch, and a five-year inspection and service, to be conducted in addition to the monthly tests.

The Employer's Policy and Procedures Manual with an issue date of November 2007 sets out the particulars of the new program as follows:

3.0 PROCEDURES:

A. Inspection, Testing and Maintenance of Emergency Generators

To meet the regulations, emergency generators are inspected, tested and serviced on a daily, monthly, annual and five-year scheduled as detailed below.

i) Daily Inspections

All generators are inspected on a daily basis as part of Boiler and Pressure Vessel regulation compliance inspections. This is a visual check for obvious problems such as leaking fluids. All inspections are recorded and filed for due diligence.

ii) Monthly Inspections/Testing

All generators are inspected and tested monthly. The following specific tasks are performed:

- Check fluid and fuel
- Check starter system
- Check batteries and charging system
- Check air control louver settings

- Test the entire system. Operate the system at 30% of rated load for 60 min. (now 30 minutes) Operate transfer switch under load.
- Record all instrument readings
- Make necessary repairs

iii) Annual Inspections/Servicing

Once a year, in addition to the tasks performed monthly, the following tasks are performed:

- Check battery cranking capacity
- Service all control panels
- Service engine
- Service generator
- Service transfer switch
- Test entire system. Operate for 2 hours at full load. Operate transfer switch under load.
- Clean/refresh fuel supply
- Record all instrument readings
- Make necessary repairs

iv) Five-Year Inspection and Service

Every 5 years the following tasks are performed:

- Inspect insulation of generator windings. Conduct Megger test.
- Drain and flush the engine cooling system....

Over the past few years duties performed by both CUPE 116 electricians and IUOE operating engineers during the monthly tests were itemized in "Inspection Work Order" forms that outlined specific tasks. At these proceedings the parties all referred to a list of tasks contained in correspondence sent by CUPE 116 to the Labour Relations Board on September 24, 2007 outlining what took place during the monthly test. This list contained the following:

- Visual inspection;
- Checking air-handling units for correct damper operation and filter replacement, if required;
- Checking fuel, oil, and fluid levels;
- Taking battery readings, including checking the specific gravity;
- Checking all connections;
- Checking and then performing a by-pass of alarm panels, including fire alarm panels;
- Starting the generator to ensure motor operation;
- Engaging the transfer switch to place the generator under load;
- Running and monitoring the generator for a required period (formerly 1 hour – now changed to 30 minutes);
- Checking the amperage, voltage, frequency, temperature and pressure readings;
- Checking pumps on the fuel transfer system;
- Recording applicable performance data;
- Re-starting fans;
- Documenting repair and service requirements;
- Carrying out repairs; and
- Organizing associated other trades as required.

Evidence led at these proceedings indicates that prior to November 2005 CUPE 116 electricians and IUOE 882 operating engineers both performed a number of the same functions in relation to the monthly emergency generator tests. Specifically, both employees performed a visual inspection, including checking connections; both

monitored the running generator for a required period; both checked the amperage, voltage, frequency, temperature and pressure readings; both recorded applicable performance data; and both documented repair and service requirements.

The evidence indicates the CUPE electricians used their own meters to check voltage and amperage, whereas the IUOE operating engineers took their readings from the gauges on the generators.

The evidence discloses IUOE operating engineers performed certain tasks not performed by CUPE electricians. Specifically, the IUOE operating engineers checked the air handling units for correct damper operation and filter replacement; they checked fuel, oil and fluid levels; they checked the pumps on the fuel transfer system; and they re-started the fans.

Prior to November 2005 CUPE electricians exclusively performed the following functions: they took battery readings, including checking the specific gravity; they checked and then performed a by-pass of fire alarm panels; and they started the generator by engaging the transfer switch to place the generator under load. The evidence indicates these tasks took between about ten and fifteen minutes per generator. It was these functions that were transferred to the IUOE operating engineer, who now performs the monthly tests on his own. It bears noting that as at the time of these proceedings the University was in the process of changing the emergency generator batteries to maintenance-free batteries, which do not require specific gravity testing. Further, the evidence indicates that if an operating engineer sees any problem with a battery during the monthly testing, including excess corrosion, a CUPE garage mechanic is called in to deal with it.

There has been no change in the way repairs are carried out in regards to the monthly tests. Fire Life Safety Department Head Electrician Mr. Frizell continues to

assign electricians to perform required repair work to the electrical components of the emergency generators, and coordinate with other trades when needed.

There has also been no change to the record keeping in regards to the monthly emergency generator tests. There are regulatory requirements to maintain logs and other records, and these have been kept in the Electrical Shop for decades. Data is transcribed daily into individual log books that exist for each generator. The evidence indicates that other records were maintained by IUOE operating engineers at the site of each generator, but not recently.

As noted, up until November 2005 it has been the consistent practice since at least the early 1980's to have an electrician present for every monthly emergency generator test. It was an anomaly if the electrician was not in attendance. The evidence indicates that the operating engineer carried a pager and would, on occasion, leave the monthly testing to deal with some other matter. The frequency of these departures was disputed in the evidence. The electricians testified the operating engineers left the monthly test relatively often. The operating engineers denied this, adding the electrician would also leave the test on occasion.

At these proceedings the parties made reference to the job descriptions for the CUPE electrician and IUOE mech 2/operating engineer positions. The electrician job description reads, in part, as follows:

> JOB DESCRIPTION
>
> Under the supervision of the Head Electrician, engages in maintenance and installation of electrical fixtures, apparatus, control equipment and wire used in light, power, public address and alarm systems of buildings.

TYPICAL JOB DUTIES

2. Maintenance and installation of electrically operated apparatus such as fire alarm systems, clocks, programme bells, elevators, public address equipment, electrical cranes and generators in buildings.

The operating engineer job description provides, in part:

JOB DESCRIPTION

Under the direction of Head Maintenance Engineer... or designate performs routine checking, and running maintenance in the servicing and operation of mechanical equipment and related duties.

TYPICAL JOB DUTIES

1. Performs checking, routine maintenance, and operation of pumps, fans, compressors, steam expansion joints, high pressure steam traps and associated equipment and systems....

Evidence was led at these proceedings regarding how the University initially raised the implementation of the new program with CUPE 116. The University entered into dialogue with CUPE 116 and sought its agreement. After this was not obtained, the University took unilateral action.

When the new program was implemented it was necessary for the IUOE operating engineers to be "trained" on how to by-pass the alarm by telephoning the alarm company and conveying the appropriate information. This training was ultimately provided by Mr. Frizell under protest, on the basis the work belonged to an electrician.

## SUMMARY OF PARTIES' POSITIONS

On behalf of CUPE 116, Mr. Clements argues the electricians have held a distinct area of responsibility over the monthly tests of emergency generators for a period of

many years. He points to the evidence of Mr. Templeton who started in 1983, and at that time learned from the electrician before him who had performed the work. Counsel states the only suggestion that this was not so was from Employer witness Mr. Leslie, who was not involved in the area at that time as is therefore not credible on this point.

Mr. Clements refers to the record keeping for the monthly tests, which have been consistently maintained over time in the Electrical Shop. Even prior to the development of the Employer's Fire Life Safety Department, the "locus of responsibility" for emergency generators is the Electrical Shop. It makes operational sense to have electricians involved in the monthly testing of the emergency generators as they are involved in the testing of the other emergency systems under the responsibility of the FLS Department. Having the mechanical maintenance employees now perform this work without the involvement of a CUPE electrician is an operational anomaly.

Mr. Clements points to the job description of the CUPE electrician, and its specific reference to "maintenance" and "generators". This can be contrasted with the relevant IUOE job description, which includes no specific reference to generators. Counsel adds the term "maintenance" in the CUPE job description has been generally interpreted over the years to include all aspects of preventative maintenance, of which the monthly test is an important part.

CUPE 116 takes the position that the rationale for the monthly generator testing is to ensure electricity is being produced. The tests for regulatory and other purposes are electrical in nature as they involve, at their core, the transfer of electrical power. From a safety standpoint an electrician should be on hand in case the transfer switch, used to start and stop the test, does not work. Counsel suggests there was good reason as to why CUPE electricians would never leave the monthly test, while IUOE operating engineers, who carried pagers, would at times leave the tests to attend to other work-related matters.