

P.E.R.C. NO. 92-73

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,  
GARDEN STATE ARTS CENTER,

Petitioner,

-and-

Docket No. SN-92-11

INTERNATIONAL ALLIANCE OF  
THEATRICAL STAGE EMPLOYEES  
AND MOVING PICTURE MACHINE  
OPERATORS, LOCAL 536

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the New Jersey Highway Authority, Garden State Arts Center, without prejudice to the Authority's filing another petition should a negotiability dispute arise during successor contract negotiations.

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Appearances:

For the Petitioner, Schwartz, Pisano, Simon and Edelstein,  
attorneys (Stephen J. Edelstein, Nicholas Celso III, and  
Leonard C. Shiro, of counsel)

For the Respondent, Spivak, Lipton, Watanabe & Spivak,  
attorneys (Neil D. Lipton, of counsel)

DECISION AND ORDER

On August 9, 1991, the New Jersey Highway Authority petitioned for a scope of negotiations determination. The Authority asserts that provisions in its collective negotiations agreement with International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 536 ("IATSE") infringe upon non-negotiable management rights.

The parties have filed briefs. These facts appear.

The Authority operates the Garden State Arts Center. Local 536, IATSE represents a unit of approximately 70 stage employees

working on the stage and in stage-related areas. The parties negotiated an agreement effective from January 1, 1989 through December 31, 1991. The agreement does not provide for binding arbitration of grievances.<sup>1/</sup> The parties are not engaged in negotiations for a new agreement.

We decline to decide this petition because there is no present controversy over the articles alleged to be non-negotiable.

N.J.S.A. 34:13A-5.4(d) empowers the Commission, upon the request of any public employer or exclusive representative, to determine whether a matter in dispute is within the scope of negotiations. N.J.A.C. 19:13-2.2(a)(4) requires that a petition for scope of negotiation determination specify that the dispute has arisen:

i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for collective negotiations; or

ii. With respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or

iii. Other than in subparagraphs i and ii above, with an explanation of the circumstances.

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<sup>1/</sup> According to the IATSE, grievances are handled by a joint labor management committee and if unresolved are referred to IATSE's General Office for mediation. It asserts that the absence of an arbitration clause is typical of stagehand contracts.

In Cinnaminson Tp. Bd. of Ed., P.E.R.C. No. 78-11, 3 NJPER

323 (1977), we stated:

The Commission concurs with the Association that its authority under 5.4(d) does not extend to the issuance of advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy. The Commission recognizes that negotiability disputes requiring a Commission scope determination will normally arise in two ways. Perhaps the most common arena is at the negotiations table, where, typically, the public employer will resist negotiating with respect to a given subject matter on the theory that it relates to managerial prerogatives and not terms and conditions of employment. Secondly, disputes have arisen in the context of a negotiated grievance procedure. Typically the employee representative will seek to grieve the matter, and ultimately to have the matter arbitrated, which the public employer contends is a matter of managerial prerogative and not a term and condition of employment. In this context, the public employer will claim that the matter at issue may thus not legally be included in a contract and otherwise may not legally be submitted to an arbitrator, as the public employer's statutory management responsibilities may not be abdicated or delegated.

The Commission however concludes that in addition there are "special circumstances" that require that the Commission issue scope of negotiations determinations relating to provisions of an existing contractual agreement that may not be presently the subject of negotiations for a successor contract or the subject of an arbitration request. Where a petitioner has made a prima facie showing that (1) a particular clause in a contract has been declared to be an illegal, as opposed to a mandatory or permissive, subject of collective negotiations by an intervening Commission or judicial decision or (2) specific legislation mandates the conclusion that a particular contractual provision is an illegal subject for collective negotiations, the Commission will assert jurisdiction over that matter and will render, where appropriate, a scope of negotiations determination on the issues in dispute.... [Id. at 324-325; footnote omitted]

See also Livingston Tp. Bd. of Ed., P.E.R.C. No. 86-135, 12 NJPER 451 (¶17170 1986); Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 85-9, 10 NJPER 499 (¶15227 1984); Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983); Pitman Bor., P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981); Camden Cty. Freeholder Bd., P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1980), recon. granted, P.E.R.C. No. 81-71, 7 NJPER 20 (¶12007 1980).

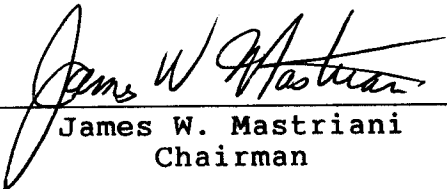
The Authority has not shown that any special circumstances warrant our ruling on its petition. While it states that it will insist when negotiations begin that the items be removed from the agreement, we cannot assume that the parties' positions will not change once negotiations begin. Even though it alleges that some disputes currently in the grievance procedure involve the contested contract articles, we will not halt the processing of a grievance even if it involves a non-negotiable subject unless and until a demand for binding arbitration is made. See So. Hackensack Bd. of Ed., P.E.R.C. No. 81-118, 7 NJPER 234 (¶12104 1981), aff'd App. Div. Dkt. No. A-4264-80T2 (7/7/83). The Authority's assertion that a non-negotiable subject is necessarily "non-grievable" is incorrect. See Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9, 19-20 (1983) and Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 325-326 (1979) holding that disputes involving managerial prerogatives may be submitted to advisory arbitration. Cf. Montclair Tp., P.E.R.C. No. 90-44, 16 NJPER 1 (¶2100 1989) (even where binding arbitration is unavailable, preliminary steps of a

grievance procedure can be used). Under all these circumstances, we hold that there is no cognizable dispute under N.J.S.A. 34:13A-5.4(d) and dismiss the petition.

ORDER

The petition is dismissed without prejudice to the Authority's filing another petition should a negotiability dispute arise during successor contract negotiations.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith, Regan and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
December 19, 1991  
ISSUED: December 20, 1991