P.E.R.C. NO. 85-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO, LOCAL 389,

Petitioner,

-and- Docket No. SN-85-1

ELIZABETH HOUSING AUTHORITY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that a proposal that Service Employees International Union, AFL-CIO, Local 389 made during successor contract negotiations with the Elizabeth Housing Authority is mandatorily negotiable. The proposal calls for final and binding arbitration of grievances. The Commission rejects the Authority's assertion that federal law precludes agencies contracting with the United States Department of Housing and Urban Development from agreeing to binding arbitration of grievances.

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Appearances:
For the Petitioner, Max Wolf, Secretary-Treasurer

For the Respondent, O'Dwyer & Malone, Esqs.
(John F. Malone, of Counsel)

DECISION AND ORDER

On July 9, 1984, the Service Employees International Union, AFL-CIO, Local 389 ("Local 389") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. Local 389 seeks a determination concerning the negotiability of a proposal it has made during successor contract negotiations with the Elizabeth Housing Authority ("Authority"). The proposal calls for final and binding arbitration of grievances.

The parties have filed statements and exhibits. The following facts appear.

Local 389 is the majority representative of the Authority's maintenance employees except for administrative employees and employees in the skilled trades. The Authority and Local 389 have entered a collective negotiations agreement effective from

July 1, 1983 through June 30, 1985. That agreement covers such subjects as dues deductions, promotional procedures, leaves of absence, wage increases, uniform allowances, health and death benefits, overtime allocation and compensation, sick leave, and vacation leave. The agreement contains a grievance procedure ending in an appeal to the Authority.

During negotiations for a successor contract, Local 389 proposed that the contractual grievance procedure end in final and binding arbitration. The Authority refused to negotiate over this proposal. It asserted that the United States Department of Housing and Urban Development ("HUD") bars agencies contracting with it from agreeing to binding arbitration. This position is based solely on an excerpt from a new proposed Handbook which HUD's Office of Labor Relations forwarded to the Authority upon its request. This excerpt, which has not been adopted or codified in a federal regulation, provides:

> CHAPTER 4. Maintenance Wage Rate Determinations, Collective Bargaining, And Labor Disputes
>
> 4.1 Collective Bargaining. PHAs are free to establish employee-management relationships, including the recognition of employee organizations or unions, subject to any limitations imposed by State law. At the same time, such relationships must also recognize and be consistent with the requirements of the Annual Contributions Contract for the protection of labor standards and efficiency and economy in administration and Section 12 of the U.S. Housing Act of 1937, as amended.
>
> PHAs and such employee organizations are not precluded from bargaining compensation issues. HUD, however, retains it prerogatives under statute and through the Annual Contributions Contract to disapprove through the operating budget process any agreement dealing with economic issues which is deemed unreasonable or excessive in light of locality labor market prevailing compensation conditions

> comparable maintenance positions and budgetary resources availability. For example, a clause requiring binding arbitration may be disallowed given its potential impact on compensation or efficiency and economy.

Local 389 initially filed an unfair practice charge against the Authority, but withdrew this charge when the parties agreed to resolve their dispute through filing a scope petition.

Local 389 asserts that binding arbitration of grievances is a mandatorily negotiable subject under N.J.S.A. 34:13A-5.3. It further asserts that the handbook excerpt is inapplicable since its proposal concerns grievance arbitration, not interest arbitration, and thus maintenance wage rate determinations are not implicated. It also asserts that Housing Authority employees in Newark, Paterson, and several other New Jersey cities already enjoy binding arbitration of grievances.

The Authority does not dispute that binding arbitration of grievances is, in general, a mandatorily negotiable term and condition of employment. It contends, however, that federal law preempts binding arbitration of grievances involving these employees.

N.J.S.A. 34:13A-5.3 provides, in pertinent part:

> In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.
>
> * * *
>
> Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that

> such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (Emphasis supplied).

Thus, with very limited exceptions inapplicable here, N.J.S.A. 34:13A-5.3 specifically makes binding arbitration of grievances a mandatorily negotiable term and condition of employment.[1/]

Under Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982) and Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982), negotiation over a particular term and condition of employment may be fully or partially preempted if a statute or regulation specifically, explicitly, and comprehensively precludes or limits such negotiation. See also State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). While we ordinarily consider preemption questions concerning New Jersey statutes and regulations, the same analysis should be applied in determining whether a federal statute or regulation preempts negotiations. In re Union County Welfare Bd., P.E.R.C. No. 82-83, 8 NJPER 209 (¶13088 1982) ("Union County").

1/ An employer is under no obligation to agree to binding grievance arbitration, but it must negotiate, upon demand, over such a proposal.

In the instant case, we are not persuaded that any federal statute or regulation specifically, explicitly, and comprehensively precludes the Authority from agreeing to binding arbitration of contractual grievances. The Authority's preemption argument rests solely on a proposed handbook, not an adopted federal regulation. Further, it appears to us that the excerpt from the proposed handbook is directed only at the initial determination of wage rates through the collective negotiations process, not the resolution of grievances arising under a contract. In short, the excerpt, if adopted, would merely bring into question the propriety of interest arbitration, not grievance arbitration. Finally, even if we assumed that the excerpt, if adopted, would pertain to grievance as well as interest arbitration, the excerpt would not automatically preclude an agreement to use binding grievance arbitration, but would merely preserve HUD's right to review and approve or disapprove such an agreement. The proposal would remain fully negotiable in the first instance, subject to possible subsequent disapproval. Union County. For all these reasons, we conclude that Local 389's proposal is mandatorily negotiable.

ORDER

The proposal of the Service Employees International Union, AFL-CIO, Local 389 that the negotiated grievance procedure

end in binding arbitration is mandatorily negotiable.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984