

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

- - - - -x

In the Matter of

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO

DECISION NO. B-15-74

-and-

DOCKET NO. BCB-184-74

THE CITY OF NEW YORK

- - - - -x

INTERIM DECISION

On September 16, 1974, District Council 37, AFSCME, AFL-CIO, filed the instant request, which petitions that its request for arbitration be held in abeyance pending the United States Supreme Court's decision in Fry v. U.S.¹

BACKGROUND

On June 24, 1974, District Council 37, AFSCME, AFL-CIO, filed a request to arbitrate its grievance that the City violated the wage increase provisions of the various collective bargaining agreements between the City and District Council 37 and its affiliated local unions by (1) failing to reimburse the affected employees for the amounts cut from negotiated increases as a result of the Economic Stabilization Act of 1970, as amended, and

¹No. 78-822, certiorari granted February 19, 1974.

(2) effective May 1, 1974, by failing to restore each employee to the salary rate such employee would have been at but for the aforesaid pay cuts.

The City in its Petition challenging arbitrability filed on July 19, 1974, basically claims that the request for arbitration must be denied because (1) the request was not made on the basis of each contract alleged to have been violated; many of the contracts have substantial differences and cannot be grouped together as if they were identical. (2) The waiver is not in the form required by Section 173.8.0(a) of the NYC Collective Bargaining Law and Rule 6.3(b) of the Revised Consolidated Rules of the Office of Collective Bargaining. And (3) the U.S. District Courts, by statute have exclusive jurisdiction over controversies arising out of the Economic Stabilization Act.

On September 19, 1974, DC 37 filed its request that its underlying request for arbitration be held in abeyance pending the U.S. Supreme Court's decision in *Fry v. U.S.*² DC 37 contends that the U.S. Supreme Court's decision as to the applicability to public employees of the Economic Stabilization Act may affect both the challenge to arbitrability and the merits of the underlying grievance herein.

² DC 37 has not yet filed its answer to the City's petition challenging arbitrability.

The City, on September 23, 1974, filed a letter in opposition to DC 37's request that the matter be held in abeyance, alleging that (1) DC 37 has already been granted several delays; (2) the City may be severely prejudiced if the request for arbitration is held in abeyance; and (3) the underlying request for arbitration is without merit.

DISCUSSION

DC 37 seeks arbitration of its grievance that the City violated wage increase provisions of various contracts by not reimbursing employees for wage cuts made pursuant to the Economic Stabilization Act and by failing to restore employees to the wage rate the employees would have had but for the aforesaid wage cuts. The U.S. Supreme Court in Fry v. U.S. may decide the issue of whether the Economic Stabilization Act applies to public employees. DC 37 contends that the Board should hold its request for arbitration in abeyance pending the Court's decision.

We find that the matter should be held in abeyance.³ The City has not shown any basis for its

³ In case No. B-16-71, we held in abeyance an issue concerning bargaining for welfare contributions for retired employees pending the U.S. Supreme Court's decision in Pittsburg Plate Glass. In B-21-7-2, subsequent to the court's decision, we decided the issue.

assertion that delay in the resolution of this matter will prejudice the interests of the City; it appears that the City's liability, if any, is fixed. In any case, the central issue in this matter - the effect of the Economic Stabilization Act upon contract rights under agreements between the parties - is so closely related to the issue of applicability of the Act to public employees now before the U.S. Supreme Court, that deferral of our consideration of the matter is clearly appropriate. It is equally clear that piecemeal disposition of the various issues presented by the City's Petition Challenging Arbitrability would serve no useful purpose. We recognize that the decision of the Supreme Court may or may not resolve or render some or all of the issues before us. We believe, however, that the most rational and orderly course of procedure for us to follow is to await the Court's decision and, aided by the enlightenment afforded thereby, to resolve all remaining issues herein as a whole. It should be noted that our decision here to hold the matter in abeyance is in no way a determination of the merits of DC 37's request for arbitration.

Accordingly, we find that the request for arbitration shall be held in abeyance pending the U.S. Supreme Court's decision in Fry v. U.S.

DATED: NEW YORK, N.Y.
October 10, 1974

ARVID ANDERSON
C h a i r m a n

EDWARD F. GRAY
M e m b e r

HARRY VAN ARSDALE, JR.
M e m b e r

THOMAS J. HERLIHY
M e m b e r

EDWARD SILVER
M e m b e r

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r