

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

INTERNATIONAL LONGSHOREMEN’S :
ASSOCIATION, AFL-CIO, LOCAL 1694-1, :
Appellant, : **PERB Review of the**
 : **Executive Director’s**
 : **Decision**
v. :
 :
STATE OF DELAWARE, DIAMOND STATE : **ULP 12-11-880**
PORT CORPORATION, :
Appellee. :

Appearances

Scott A. Holt, Esq., Young Conaway Stargatt & Taylor, LLP, for Diamond State Port Corporation
Bernard F. Katz, Esq., for ILA Local 1694-1

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”). 19 Del.C. Chapter 13 (1994). Diamond State Port Corporation (“DSPC”) is an agency of the State.

The International Longshoremen’s Association, AFL-CIO (“ILA”) is an employee organization which admits to membership DSPC employees and has as a purpose the representation of those employees in collective bargaining, pursuant to 19 Del.C. §1302(i). The ILA, by and through its Local 1694-1, represents a bargaining unit of DSPC employees (as defined by DOL Case #103) for purposes of collective bargaining and is certified as the exclusive bargaining representative of that unit. 19

Del.C. §1302(j).

ILA Local 1694-1 and DSPC are and have been parties to numerous collective bargaining agreements.

On or about November 16, 2012, the ILA filed an unfair labor practice charge alleging DSPC had violated 19 Del.C. §1307 (a)(1), (a)(3), (a)(4), (a)(5), (a)(6), and/or (a)(7). Specifically, the Charge alleged DSPC had refused to comply with a final and binding arbitration award and had ignored the arbitrator's decision, in violation of its statutory obligations under the PERA.

On January 18, 2013, DSPC filed its Answer to the Charge, which also included New Matter.

The ILA filed its Response to DSPC's Answer to the Charge on January 23, 2013, in which it denied the New Matter included in the Answer.

A hearing was convened before the Executive Director on May 21, 2013 for the purpose of receiving evidence on which a determination could be made as to whether DSPC had violated the Public Employment Relations Act, as alleged.

By decision dated August 15, 2013, the Executive Director determined the record did not support a finding that DSPC had violated its good faith or other statutory obligations. Consequently, the Charge was dismissed in its entirety.

On or about August 23, 2013, ILA 1694-1 (Appellant) requested the full Public Employment Relations Board review the Executive Director's decision, asserting it was "clearly erroneous" and unsupported by the law or the record. Written memoranda on appeal were received from the ILA on August 26 and from DSPC on September 6, 2013. The PERB accepted limited reply argument from the ILA on September 18, 2013.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on September 18,

2013 at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

DISCUSSION

The scope of the Board's review of the Executive Director's decision is limited to the record created by the parties. On review the Board must determine whether the decision is arbitrary, capricious, contrary to law, or unsupported by the record. Following its review, the Board may decide to affirm the decision, overturn the decision, and/or remand the matter for further action by the Executive Director.

The facts underlying this Charge are undisputed. ILA 1694-1 bargaining unit members performed warehousing and distribution work for cargo discharged from Pacific Seaways vessels by the stevedoring company, Murphy Marine Services, Inc. ("MMS"). At some point in 2010, the work was no longer assigned to 1694-1 bargaining unit employees and the union filed a grievance, which proceeded to arbitration. During the arbitration hearing, ILA 1694-1 and DSPC entered into a consent award which was reduced to writing and signed by the arbitrator, which stated:

The Parties to this case, after interchanges of their respective views, have agreed to the following arbitration award as of April 4, 2012:

The receiving, checking, stacking, storage, unstacking and delivery of containers, other than loading containers onto the ship during ship operations at the Port, once unloaded from a ship of Pacific Seaways or any similar entity, is exclusively the work of the bargaining unit members of ILA 1694-1.

The employer is hereby directed to, within seven (7) days, take all steps necessary to communicate to and notify all affected parties of the terms of this award

and to ensure that it is put into place within seven (7) days of the date of this award. *Charge Exhibit A.*

It is undisputed that only ILA Local 1694-1 and DSPC participated in this arbitration proceeding. MMS did not participate.

Following the issuance of the arbitration award, DSPC's Director of Operations and its Executive Director each contacted MMS to request the non-vessel container work be reassigned to DSPC. MMS' counsel responded noting the arbitration award was an agreement reached between DSPC and ILA 1694-1 and had no impact upon MMS' assignment of its work. The responding letter concluded the work in question was properly within the jurisdiction of the deep sea local.

On appeal, the ILA asserts that its bargaining unit members have performed all non-vessel container work¹ for many years, pursuant to the terms of its collective bargaining agreement with DSPC. It argued that in or around 2010, DSPC entered into an arrangement with MMS which allowed MMS to redirect the work which had historically been performed by bargaining unit employees. The ILA asserts these are the only facts which are relevant to this matter, and that the arbitration award is unconditional. By failing to implement the arbitration award within seven (7) days, DSPC violated its statutory obligations.

DSPC argues MMS has always had control of the non-vessel container work in question and had, prior to 2010, subcontracted that work to DSPC to perform with its warehousing employees. It asserts there is nothing in the record that supports the ILA assertion that DSPC "allowed" or "contracted" this work to MMS. MMS is party to a collective bargaining agreement with ILA Local 1694 (the deep sea local) which requires

¹ ILA 1694-1 asserts MMS was responsible for taking cargo off of ships and placing it on the dock, at which point its bargaining unit members were responsible for handling the cargo, moving it to warehouses, placing it on truck chassis, etc.

it to assign this work to that Local. The Executive Director's decision is consistent with the NLRB's decision in *Elevator Constructors Local 91 (Otis Elevator Co.)*², which held where two unions claim jurisdiction over the same work, "the collective bargaining agreement that is relevant is the one that has been negotiated with the employer who has the ultimate control over the assignment of work."

"Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Fed' Mar Comm'n*, 383 U.S. 607, 620 (1966)). In this case, substantial evidence supports the Executive Director's conclusion that the work in question (non-vessel container work involving cargo brought into the Port by Pacific Seaways vessels) is controlled Murphy Marine Services, Inc., and is not in the control of DSPC. The arbitration award can only be applied to work which is within the Port's control. The record establishes that the work in question has always originated from Murphy Marine Services, Inc. What changed in 2010 was that Murphy Marine Services ceased requesting labor from DSPC to perform this work and began assigning the work to the deep sea local, ILA 1694. MMS is not a public employer subject under the Public Employment Relations Act and this Board has no authority over MMS.

The record is also sufficient to support the Executive Director's conclusion that the Port acted in good faith in attempting to persuade Murphy Marine Services to reassign the work to the Port. The Board finds no basis in fact or law to overturn the Executive Director's decision on the merits.

Finally, the Board notes that both locals involved in this matter are affiliated with the International Longshoremen's Association, AFL-CIO. The parties acknowledged at the hearing there is a dispute mechanism available within the International to address

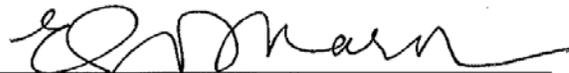
² 240 NLRB 94, 96 (2003).

work jurisdiction questions involving ILA locals. The Board encourages Local 1694-1 to avail itself of this option for resolution of the underlying dispute.

DECISION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director holding the record does not support the conclusion that DSPC violated its good faith or other obligations under the PERA, as alleged in the Charge.

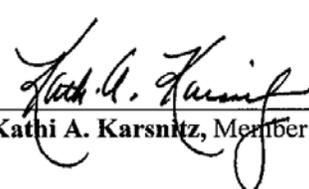
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

Dated: October 25, 2013