

**STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD**

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|--------------------------------|---|-------------------|
| GEORGE SMITH, |) | |
| Petitioner |) | |
| |) | |
| |) | |
| v. |) | |
| |) | ULP NO. 00-12-300 |
| |) | |
| STATE OF DELAWARE, |) | |
| DIAMOND STATE PORT CORPORATION |) | |
| Respondent |) | |

BACKGROUND

George Smith, an employee of the Diamond State Port Corporation, is a public employee within the meaning of Section 1302 (m) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) (“PERA” or “Act”). The Diamond State Port Corporation (“State” or “Port”) is a public employer within the meaning of Section 1302 (n) of the PERA. At all times relevant to this charge, the Port and the International Longshoremens’ Association, Local 1694-1 (“ILA” or “Union”) were parties to a collective bargaining agreement which included a grievance procedure.

DISCUSSION

The “Summary of the Pleadings” contained in the Executive Director’s decision dated January 26, 2001 contains the essential facts in this case. Mr. Long’s decision was subsequently appealed to the Public Employment Relations Board (“PERB”) for review.

The Petitioner contends his letter of June 15, 2000, to both the Union and DSPC requesting that his grievances be held in abeyance pending his return to work triggered the 180 day filing period. Notably, on that date neither the Union nor the DSPC did anything. In fact, the unfair labor practice was filed with the PERB on December 5, 2000, or approximately 8 ½ months after the specific action or inaction by the Union and DSPC set forth in the Complaint as the basis for the charge.

The Petitioner cannot avoid the 180 day filing requirement by relying upon an independent event which he unilaterally created and in which he alone participated. To conclude otherwise would violate Section 1308(a), of the Act and PERB Rule 1.10.

Concerning only the Charge against the DSPC, placing Union officials in higher paying positions does not constitute a per se violation of the Act. The Charge contains no timely allegation of improper conduct by Union officials. Furthermore, the practice was discontinued on or about November 15, 2000, for reasons unrelated to this Charge and the issue is, therefore moot.

The Petitioner contends he was incapacitated and unable to inquire about the status of his grievances prior to June 15, 2000. The statute does not provide for an exception to the 180 day filing period which is unconditional.

The Executive Director ruled, and the Board concurs, that the Respondent cannot avoid the 180 day filing requirement by relying upon an independent event which he unilaterally created and in which he alone participated. To conclude otherwise would violate Section 1308 (a) of the Act and PERB Rule 1.10.

DECISION

The Board upholds the Executive Director's Decision of January 26, 2001 in which he found no probable cause to believe that an unfair labor practice had occurred and accordingly dismissed the charge in its entirety as untimely filed.

IT IS SO ORDERED.

/s/Henry E. Kressman

Henry E. Kressman
Chair

/s/R. Robert Currie

R. Robert Currie, Jr.
Member

/s/Elizabeth D. Maron

Elizabeth Daniello Maron, Esq.
Member

DATE: March 21, 2001