

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGE SMITH,)	
 Petitioner.)	
)	
 v.)	<u>ULP No. 00-12-300</u>
)	
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 Longshoremen’s Association, Local 1694-1 (“ILA” or “Union”), were parties to a collective bargaining agreement which included a grievance procedure.

SUMMARY OF THE PLEADINGS

On December 5, 2000, the above-captioned unfair labor practice Complaint was filed alleging the following:

On or about January 13, 2000, Charging Party filed a written complaint contending that management failed to maintain a safe working place in violation of the collective bargaining agreement and requested the Union to file a grievance. At some point thereafter, grievance 2000-3 was filed.

On or about January 17, 2000, Charging Party filed a written complaint alleging that he was improperly bumped from a job and requested the ILA to file a grievance. At some point thereafter, grievance 2000-2 was filed.

Prior to the Step 2 answers dated February 25, 2000, denying both grievances, Charging Party did not meet with management and Union representatives to discuss his grievance, as required by Section 7.3 of the collective bargaining agreement. Charging Party subsequently informed the Union's Business Agent that he wanted to appeal both grievances.

On March 4, 2000, Charging Party was injured at work. He next returned to work on March 8, 2000. On March 10, 2000, Charging Party went to a physical therapy appointment between approximately 11:00 a.m. and 12:00 noon. Charging Party was subsequently summoned to a meeting at which he was berated by management for scheduling a therapy appointment during working hours and indefinitely suspended without pay. Charging Party was neither informed that the meeting involved a disciplinary matter nor permitted to have a Union representative present.

On March 11, 2000, Charging Party filed a written complaint concerning the work-related injury which he sustained on March 4, 2000. He requested that the Union file a grievance protesting his subsequent suspension. At no time thereafter did Charging Party meet with management and Union representatives, as required by Section 7.3 of the collective bargaining agreement.

Hearing nothing from either the Port or the Union concerning the status of any of his grievances, Charging Party sent a letter dated June 15, 2000, via certified mail to representatives of both the Port and the Union requesting that the processing of his grievances be suspended until after he recovered from his injuries and returned to work. Charging Party received no response from either the Port or the Union.

The Complaint alleges that Union officers and trustees, after being promoted into the higher paying position of "Coordinator" at the discretion of management, have been less willing to file grievances and otherwise represent bargaining unit employees.

The Complaint alleges that: 1) By failing to provide Union representation during the disciplinary meeting of March 10, 2000, the State interfered with Charging Party's right to be represented by his

exclusive representative in violation of 19 Del.C. Section 1307(a)(1); 2) By the discretionary promotion of Local ILA officers and trustees to the higher paying Coordinator position, the State has dominated and interfered with the existence and administration of the Local Union in violation of 19 Del.C. Section 1307(a)(2); 3) By failing to process Charging Party's grievances in accordance with the contractual time requirements set forth in Article VII, of the collective bargaining agreement, the State has violated 19 Del.C. Section 1307(a)(5).

19 Del.C. Section 1307, Unfair labor practices, provides, in relevant part:

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee because of the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization;

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate bargaining unit, except with respect to a discretionary subject.

The Answer filed by the State on December 19, 2000, denies the material allegations set forth in the Complaint. Under a section entitled "New Matter," the State contends that, as it applies to the allegations of failing to process grievances 2000-2 and 2000-3 and the alleged written complaint dated March 11, 2000, the unfair labor practice charge is untimely and must be dismissed pursuant to Section 1.1(a) and 5.2(a) of the PERB's rules and regulations.

Charging Party's Response to the New Matter contends the Complaint was filed within 180 days from his June 15, 2000, letter requesting that the processing of his grievances be stayed until he was able to return to work and is, therefore, timely filed.

DISCUSSION

Article VII, of the collective bargaining agreement, Grievance and Arbitration Procedure, Section 7.2, Step 1, provides that an aggrieved employee, with or without the Union Steward, will discuss his or her grievance with the immediate supervisor within 10 days from the date of the incident giving rise to the grievance or misunderstanding, or the date of the grievant's knowledge of its occurrence. The immediate supervisor shall attempt to resolve the matter and respond to the Union Steward within 5 working days.

Article VII, Section 7.3, Step 2, provides that if the grievance is not resolved and appealed to Step 2, it is to be reduced to writing setting forth the nature of the complaint, the remedy sought and the contract provision involved. The Union Steward, Business Agent and the aggrieved employee will discuss the grievance with the Director of Operations within 5 days of the date the immediate supervisor's response was due. The Director of Operations shall respond in writing within 5 working days from the date of the discussion.

Article VII, Section 7.4, provides that if the grievance is not satisfactorily resolved at Step 2, the Union Steward, the Business agent and the aggrieved employee, after written appeal, shall discuss the grievance with the Port Director of Operations within 5 days from the date the Step 2 answer was due. The Port Director shall respond in writing within 5 working days from the date of the discussion.

Pursuant to the applicable provisions of Article VII, if the Step 2 answer of Friday, February 25, 2000, denying grievances 2000-2 and 2000-3 had been appealed to Step 3, as the grievant allegedly requested, the last day for the contractually required discussion with the Port Director would have been Friday, March 3, 2000. When the required meeting had not occurred by that date, the grievant was reasonably on notice that grievances 2000-2 and 2000-3 had not been appealed, as requested. At the very least, he was reasonably on notice that a potential problem existed concerning the processing of his grievances. At that time, Charging Party was obligated to make a timely inquiry.

The 10 day period for filing a Step 1 grievance concerning the work-related injury allegedly sustained on March 4, 2000, expired on March 14, 2000. The 10 day period for filing a Step 1 grievance

concerning the suspension and alleged failure to provide Union representation at the meeting of March 10, 2000, expired on March 20, 2000. [1] When the required Step 2 discussions with the Director of Operations had not occurred within 5 working days thereafter, or by Tuesday, March 21 and Monday March 27, 2000, respectively, the grievant was reasonably on notice that his complaint of March 11, 2000 had not been appealed, as requested. At the very least, he was reasonably on notice that a potential problem existed.

_____ For whatever reason, Charging Party did not contact either the Port or the Union concerning the status of either grievance 2000-2, grievance 20000-3 and his complaint of March 11, 2000, until June 15, 2000, when he requested that all of his grievances be held in abeyance until his return to work.

Recognizing the importance of time limitations, the PERB specifically addressed timeliness in PERB Rule 1.10, which provides:

1.10 Timeliness

Notwithstanding the provisions of Regulation 1.9, and so that the Act may be efficiently enforced and disputes thereunder swiftly resolved, the Board shall strictly construe all time limitations contained in the Act and in these Regulations.

19 Del.C. Section 1308(a), as amended, effective July 12, 1999, provides, in relevant part:

[1] It is unclear whether Charging Party discussed any of these 3 incidents with his immediate supervisor. Whether or not he did so has no bearing upon the disposition of the unfair labor practice complaint, as presented.

1308. Disposition of complaints,
 no complaint shall issue based on
 any unfair labor practice occurring more

than 180 days prior to the filing of the charge with the Board.

PERB Rule 5.2, provides:

5.2 Filing of Charges

(a) A public employer, labor organization and/or one or more employees may file a complaint alleging a violation of 14 Del.C. §4007, 19 Del.C. §1607, or 19 Del.C. §1307. Such complaints must be filed within one hundred eighty (180) days of the alleged violation. This limitation shall not be construed to prohibit introduction of evidence of conduct or activity occurring outside the statutory period, provided the Board or its agent finds it relevant to the question of a commission of an unfair labor practice within the limitations period.

But for the letter of June 15, 2000, the instant Complaint dated December 5, 2000, was not filed with the PERB until approximately 2 1/2 months after the 180 day filing period triggered by specific acts or inaction by the Port as set forth in the Complaint. On June 15, 2000, the date which Charging Party contends triggered the 180 day filing period, the Port did nothing. Charging Party cannot avoid the 180 filing requirement by relying upon an independent event which he unilaterally initiated and in which he alone participated. To conclude otherwise would violate Section 1308(a), of the Act and fail PERB Rule 1.10.

The Complaint also alleges that by unilaterally placing union officials and trustees in higher-paying Coordinator positions the State violated Section 19 Del.C. Section 1307 (a)(2) by creating a situation whereby Union officials were less willing to process grievances fearing that doing so would result in their being reassigned to a lower-rated job.

In ULP 000-99-301, Norman Davis v. State of Delaware, Port of Wilmington and the International Longshoremen's, Local; No. 1694-1, it was established that the practice of filling the

Coordinator positions with bargaining unit employees was discontinued on or about November 15, 2000. The fact that Union officials held Coordinator positions does not constitute a per se violation of the Act. In the absence of a timely allegation of wrongdoing by Union officials during the period they occupied the Coordinator position, that issue is now moot.

DECISION

1. Consistent with the foregoing discussion, there is no probable cause to believe that an unfair labor practice may have occurred.

Consequently, ULP 12-00-300 is dismissed in its entirety.

January 26, 2001

(Date)

/s/Charles D. Long, Jr.

Charles D. Long, Jr.

Executive Director