

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

INTERNATIONAL LONGSHOREMAN’S ASSOCIATION)	
LOCAL 1694-1, AFL-CIO,)	
)	<u>ULP No. 04-12-461</u>
Petitioner,)	
)	Probable Cause Determination
STATE OF DELAWARE, DIAMOND STATE)	
PORT CORPORATION)	
)	
Respondent.)	

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 (1986). The Diamond State Port Corporation (“DSPC”) is an agency of the State.

International Longshoreman’s Association, Local 1694-1, 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). 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 those units. 19 Del.C. §1302(j).

ILA Local 1694-1 and DSPC are parties to a collective bargaining agreement which has an expiration date of September 30, 2004. The parties entered into negotiations concerning a

successor agreement on or about September 15, 2004, at which time ILA provided DSPC with its initial proposals for modifications to the predecessor agreement.

On or about December 23, 2004, ILA filed an unfair labor practice charge alleging the DSPC violated 19 Del.C. §1307(a)(5), which provides:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

The Charge alleges that during the course of negotiations through December 13, 2004, DSPC offered regressive proposals and counterproposals and refused to offer any proposals on some issues of concern to the ILA. The ILA requests PERB find DSPC in violation of its statutory duty to bargain in good faith and impose, as a remedy, the ILA's last contract proposal retroactive to the September 30, 2004, expiration date of the prior agreement.

DSPC filed its Answer to the Charge on or about December 29, 2003, in which it denied all material allegations of the ILA Charge.

DSPC's Answer did not include new matter. This Probable Cause Determination is based upon a review of ILA's Charge and DSPC's Answer.

DISCUSSION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and,

if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

The Delaware General Assembly conferred upon the Public Employment Relations Board authority and responsibility to “. . . assist in resolving disputes between public employees and public employers . . .” 19 Del.C. §1301(3). The statute also requires employers and unions to “enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations.” 19 Del.C. §1301(2)

The duty to bargain in good faith compels meaningful negotiations but does not require “either party to agree to a proposal or require the making of a concession.” 19 Del.C. §1302(e). In one of the earliest cases decided by the Delaware PERB, the standard was established for evaluating the quality of negotiations when questioned by one of the parties:

When deciding failure to bargain in good faith issues, it is necessary to examine the “totality of conduct” of the parties. NLRB v. Montgomery Ward, 9th Cir., 133 F.2d 676 (1943). The validity of a single position can only be ascertained from the overall record. While a party’s posture as it relates to a particular subject, in and of itself, might qualify as an unfair labor practice, viewed in the light of the continuing and evolving negotiations process, it may well prove otherwise. It is the totality of conduct that tests the quality of negotiations. Absent sufficient proof of an unwillingness by the party charged to maintain an open mind and a willingness to sincerely search for common ground upon which settlement can be based, it is not the Board’s prerogative to dictate bargaining strategy. Seaford Education Association v. Bd. of Education, Del.PERB, ULP 2-2-84S, I PERB 1, 7 (1984).

Attached to the Charge were two exhibits, each a letter from one party to the other, explaining why each thought the other was not negotiating in good faith. Each letter included an invitation to the other party to return to the table and to engage in good faith negotiations.

The pleadings support a conclusion that these parties have reached a point in their negotiations where third party assistance is warranted. They, do not, however, support a conclusion that the statute has been violated at this point in the negotiations.

The PERA provides for the unilateral initiation of mediation at any point after 30 days prior to expiration of the collective bargaining agreement. These parties are now more than 120 days post-expiration and the need for mediation is supported by the record.

For purposes of clarification, it should also be noted that the ILA's prayer for imposition of its last proposal as a remedy should there have been a finding that DSPC had failed to negotiate in good faith, is beyond the authority of PERB. Section 1308(b)(1) circumscribes the remedies available to PERB:

(b)(1) If, upon all the evidence taken, the Board shall determine that any party charged has engaged or is engaging in any such unfair labor practice, the Board shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this chapter, such as payment of damages and/or the reinstatement of an employee; provided, however, that the Board shall not issue:

a. Any order providing for binding interest arbitration of any or all issues arising in collective bargaining between the parties involved; or

b. Any order, the effect of which is to compel concession on any items arising in collective bargaining between the parties involved. (emphasis added).

DECISION

Consistent with the foregoing discussion, the pleadings fail to establish a sufficient basis for concluding that there has been a failure to bargain in good faith, when viewed in the context of the on-going negotiations between the parties. The Charge is, therefore, dismissed without prejudice.

Consistent with PERB's responsibility to promote and support the collective bargaining process, the parties are directed to return to the bargaining table and to notify PERB within ten (10) days of receipt of this decision as to the status of their negotiations, including:

- The dates and duration of all negotiation sessions;
- Copies of any agreements reached;
- Summary of the issues still in dispute, including relative positions; and
- A description of the reasons for the parties' failure to reach agreement.

The parties should also indicate in the letter whether they are willing to enter into mediation at this time, and if not, why they believe mediation cannot be productive.

IT IS SO ORDERED.

DATE: 1 February 2005

/s/Deborah L. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Del. Public Employment Relations Bd.