

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE, DIAMOND STATE)	
PORT CORPORATION,)	
Charging Party,)	
)	<u>ULP No. 06-05-521</u>
v.)	
)	
INTERNATIONAL LONGSHOREMEN’S ASSOCIATION,)	
LOCAL 1694-1, AFL-CIO)	
Respondent.)	

DECISION ON THE PLEADINGS

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

The International Longshoremen’s Association, Local 1694-1, AFL-CIO, (“ILA”) is an employee organization within the meaning of 19 Del. C. §1302 (i) and the exclusive representative of certain DSPC employees within the meaning of 19 Del.C. §1302 (j).

On May 26, 2006, DSPC filed the instant unfair labor practice charge alleging conduct by the ILA in violation of 19 Del.C. §§ 1307 (b)(2) and (b)(3).¹ Specifically, the charge alleges the ILA has refused to schedule Step 4 grievance meetings unless the Deputy Director for Employee Relations personally represents the DSPC.

¹ §1307. Unfair labor practices. (b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following: (2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative. (3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The ILA filed its Answer on June 19, 2006, alleging conduct by DSPC in violation of 19 Del.C. 1307(a)(5) and (a)(6).² The parties agree that they were parties to a collective bargaining agreement which expired on September 30, 2004, and that a tentative agreement for a successor agreement was reached on or about September 7, 2005. Although they disagree as to the underlying circumstances, the parties further agree that as of the date of the filing of this Charge, the ILA had not signed the successor agreement. Consequently, the Agreement expiring on September 30, 2004, continues to govern the parties' relationship insofar as terms and conditions of employment.

Article 8, of that collective bargaining agreement, Grievance and Arbitration Procedure, provides for a Step 4 meeting involving the ILA, the grievant and the Deputy Director for Employee Relations or his/her designee. The parties agree that Article 8 speaks for itself and that numerous grievances have progressed to Step 4 of the grievance procedure.

On June 22, 2006, the ILA filed an Amended Answer alleging under the heading of New Matter that the resolution of the Charge requires the interpretation of Article 8, of the collective bargaining agreement which is within the exclusive jurisdiction of the arbitrator provided for, therein. The ILA, therefore, requests that this matter be deferred to the contractual arbitration procedure.

On July 17, 2006, the DSPC filed its Response To New Matter. The DSPC maintains that the ILA's refusal to participate in Step 4 of the contractual grievance

² §1307. Unfair labor practices. (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 the public employer or its designated representative if the employee organization is an exclusive representative. (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

procedure precludes the further processing of the pending grievances involved, and therefore, arbitration is not available to resolve these grievances.

DISCUSSION

The allegations set forth in the pleadings concerning the circumstances underlying the tentative agreement for a successor collective bargaining agreement and the ILA's failure to sign the document are the subject of a second unfair labor practice (ULP No. 06-05-518). Within the context of the current dispute, these allegations serve only as background explaining why the parties continue to be governed by the Agreement expiring on September 30, 2004.

Rule 5.6, Decision or Probable Cause Determination, Section (b), of the PERB's Rules and Regulations provides, in relevant part: "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 . . ."

The issue in this matter involves the alleged refusal of the ILA to process grievances pursuant to Article 8, Step 4, of the collective bargaining agreement. The PERB has held that the resolution of issues requiring the interpretation and/or application of a negotiated collective bargaining agreement is governed exclusively by the grievance and arbitration provisions contained in that Agreement. Seaford Ed. Assn. v. Bd. of Ed., ULP No. 87-10-018, Del. PERB, I PERB 233, 236 (1988); Indian River Ed. Assn. v. James Lobo v. Bd. of Ed., ULP No. 88-11-027, Del. PERB, I PERB 375, 379 (1988).

The PERB has likewise adopted a limited discretionary deferral policy where contractual issues also involve statutory questions. Red Clay Ed. Assn. v. Bd. of Ed.,

ULP No. 90-08-052, Del. PERB, I PERB 591 (1991); Colonial Ed. Assn. v. Bd. of Ed., ULP No. 93-11-095, Del. PERB, II PERB 929, 930 (1994).

The ILA's request that the instant unfair labor practice charge be deferred to the contractual grievance and arbitration procedure is without merit. The underlying issue involves Step 4 of the grievance procedure. It is the State's position that the lack of a Step 4 hearing acts as a bar to the further processing of those grievances including arbitration.

More importantly, the language of Article 8, Section 8.5, is clear and unambiguous and not reasonably subject to varying interpretations. It provides:

8.5 STEP 4 – If, after receipt of the decision of the Port Director the grievance has not yet been satisfactorily resolved, the Union may request arbitration by registered or certified mail to the State Deputy Director for Employee Relations ("Deputy Director") not later than 15 calendar days after the rendering of such decision. Within 15 days of receipt by the Deputy Director of such request, the Union and the grievant shall meet with the Deputy Director or designee to attempt to resolve the grievance informally. If the grievance is not resolved at that meeting, the Union may invoke arbitration with the American Arbitration Association, provided it does so within 15 days of that meeting.

In this case, the Deputy Director designated the Manager of Labor Relations to serve as his designee for the purpose of representing DSPC at Step 4 grievance hearings. The designation of a designee is solely and exclusively within the authority of the Deputy Director as explicitly stated in §8.5. The ILA has no voice in the designation and is obligated to meet with the Deputy Director's designee at Step 4.

The unfair labor practice process is not a forum for frivolous issues. The allegation that the ILA has refused to participate in Step 4 of the contractual grievance procedure would, if proven, constitute a violation not only of Article 8, of the collective bargaining agreement but also Section 1307(b)(2) and (b)(3), of the Act.

I take administrative notice of a letter dated June 6, 2006, of which the PERB received a copy, from Bernard Katz, Esquire, representing the ILA, to Catherine Hickey, Esquire, representing the DSPC, which provides, in relevant part: “The charged Union has authorized me to indicate that it will certainly meet with Mr. Cutler at his level of the grievance procedure. Apparently, the charges filed are really the result of a misunderstanding . . .”

Accepting Mr. Katz assurance, there is no need to pursue a resolution already achieved and this issue is, therefore, moot. Consequently, the Charge is dismissed, without prejudice. If the unconditional compliance by the ILA with Article 8, §8.5, of the collective bargaining agreement has not or does not promptly occur, the DSPC may request that the PERB revisit the charge for a final disposition and remedy based upon the merits.

CONCLUSIONS OF LAW

1. The State of Delaware, Diamond State Port Corporation, is public employer within the meaning of 19 Del.C. §1302 (p).

2. The ILA, Local 1694-1, AFL-CIO, is an employee organization within the meaning of 19 Del.C. §1302 (i). It is the exclusive bargaining representative of certain employees of the Diamond State Port Corporation within the meaning of 19 Del.C. §1302(j).

3. Article 8, Grievance and Arbitration Proceedings, of the applicable collective bargaining agreement, provides, in relevant part:

8.5 STEP 4 If, after receipt of the decision of the Port Director the grievance has not yet been satisfactorily

resolved, the Union may request arbitration by registered or certified mail to the State Deputy Director for Employee Relations (“Deputy Director” not later than 15 calendar days after the rendering of such decision. Within 15 calendar days of receipt by the Deputy Director of such request, the Union and the grievant shall meet with the Deputy Director or designee to attempt to resolve the grievance informally. If the grievance is not resolved at that meeting, the Union may invoke arbitration with the American Arbitration Association, provided it does so within 15 days of that meeting.

4. The Deputy Director designated the Manager of Labor Relations as his designee for the purpose of representing the State at Step 4 grievance hearings.

5. The ILA allegedly refused to schedule and attend Step 4 grievance meetings unless the Deputy Director of Employee Relations personally appeared as the representative of the State.

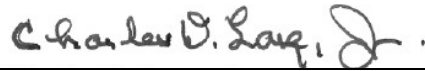
6. A letter dated June 6, 2006, from Bernard Katz, Esquire, representing the ILA, to Catherine Hickey, Esquire, representing the State, provides, in relevant part: “The charged Union has authorized me to indicate that it will certainly meet with Mr. Cutler at his level of the grievance procedure. Apparently, the charges filed are really the result of a misunderstanding.”

7. Based upon Mr. Katz affirmation, there is no need to pursue a resolution already achieved. Consequently, the instant charge is dismissed, without prejudice. If the unconditional compliance by the ILA with Article 8, of the collective bargaining agreement has not or does not occur promptly, DSPC may request that the PERB revisit the charge for a final disposition and remedy based upon the merits.

WHEREFORE, DSPC is ordered to post copies of the Notice of Determination in all locations where notices affecting employees represented by ILA Local 1694-1 are normally posted, including workplaces and DSPC administrative offices. The Notice must remain posted for thirty (30) days.

IT IS SO ORDERED

Date: August 1, 2006

A handwritten signature in dark ink, appearing to read "Charles D. Long, Jr.", written over a horizontal line.

CHARLES D. LONG, JR., Executive Director
Public Employment Relations Bd.