

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

INTERNATIONAL LONGSHOREMAN’S ASSOCIATION)	
LOCAL 1694-1, AFL-CIO,)	
)	<u>ULP No. 10-07-755</u>
Petitioner,)	
)	Probable Cause Determination
STATE OF DELAWARE, DIAMOND STATE)	and Decision on the Merits
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” or “Port”) 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, 2010.

On or about July 16, 2010, the ILA filed an unfair labor practice charge alleging DSPC had violated §§1307(a)(1), (a)(3), (a)(5), (a)(6) and/or (a)(7) of the PERA, which provide:

- §1307(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 in or because of the exercise of any right guaranteed under this chapter.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (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.
 - (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.
 - (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Specifically, the ILA alleges DSPC deliberately bargained in bad faith and has failed to meet its statutory obligations to negotiate concerning a successor agreement. The union alleges management was aware that it was meeting with its membership to prepare for negotiations at least six months prior to the expiration date of the agreement. By letter dated May 19, 2010¹, ILA counsel provided formal written notice by Certified Mail to open negotiations for a successor agreement. That correspondence was addressed to the Port's Executive Director and states, in relevant part:

As you may recall, this office is counsel for the above-noted Union and I send this letter in that official capacity. The Collective Bargaining Agreement is due to expire on September 30, 2010. Please regard this letter as the formal "written notice by Certified Mail..." to open negotiations in order to fulfill the desire and need of your bargaining unit employees to "... modify or amend..." the Collective Bargaining Agreement.

It is our intention to provide you within the near future with the actual proposals designed to amend the Labor Contract. In view of the fact that the contract would

¹ The certified receipt attached to the Charge indicates the letter was received by the Port on May 20, 2010.

not expire until September 30, 2010, this should provide the parties with more than adequate time in which to, in good faith, successfully engage in collective bargaining negotiations designed to achieve a mutually satisfactory labor contract.

If you have any questions regarding this notice, you or your counsel to whom a copy of this letter is being sent, should get back to me as promptly as possible.

Union counsel sent a second letter to the Port's Director on or about May 26, 2010, to correct an error in the reference line of the previous correspondence:

I have had drawn to my attention that there was some mention in my previous notice to you regarding the opening of contract negotiations of another unrelated matter. As you are aware, the Kenneth Swann issue which is in the process of being resolved has nothing to do with the contract negotiation reopening. Accordingly, you may delete the Swann reference in the "RE:" subtitle of the letter from the communication which I had earlier dispatched to your by Certified Mail.

We will shortly have our actual proposals to present to you. Please advise if I should be dealing directly with you or if I should be contacting Mr. Cutler, Ms. Floyd Kennard, Mr. Shapiro or someone else.

By letter dated June 10, 2010, DSPC's Executive Director requested Union Counsel contact DSPC's labor representative directly. Counsel contacted the DSPC's representative by telephone and followed up with a written communication on June 18, 2010, in which a June 24, date was suggested to initiate negotiations. At some point thereafter, DSPC's representative advised the ILA that the terms of the 2007-2010 Agreement would be continued through September 30, 2011, and that DSPC would not participate in negotiating a new collective bargaining agreement at that time.

DSPC filed its Answer to the Charge on or about July 20, 2010, in which it admitted the correspondence attached to the Charge had been sent and received as described therein, but denied the allegations that an unfair labor practice has been committed. It asserts that the May 19 correspondence from Union counsel fails to satisfy the requirement of Article 23.2² of the

² 23.2 This Agreement shall be automatically renewed after September 30, 2010 annually from year to year unless either party shall give the other party written notice by certified mail to

current collective bargaining agreement, which requires notice be provided by certified mail to the other party six months prior to expiration of the collective bargaining agreement to open negotiations. DSPC asserts under New Matter that the Charge should be deferred to the negotiated grievance and arbitration procedure because the issue raised therein requires interpretation and application of Article 23.2 of the collective bargaining agreement.

On or about July 28, 2010, the ILA filed its Response denying the New Matter asserted in DSPC's Answer to the Charge.

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 the provisions set forth in Regulation 7.4. The Board shall 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 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.

For the purpose of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without benefit of

the Port Director or the Union President of the party's desire to terminate, modify, or amend this Agreement. Such notice shall be given to the other party not later than 6 calendar months prior to the date of expiration.

receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, Del. PERB Probable Cause Determination, ULP No. 04-10-453, V PERB 3179, 3182 (2004).

There are no facts alleged in the Charge which, even if true, would support an allegation that 19 Del.C. 1307(a)(1), (3), and/or (7) has been violated. Those allegations are dismissed based upon the pleadings.

Concerning the alleged violation of 19 Del.C. 1307(a)(5) and/or (6), the duty to negotiate collective bargaining agreements establishing terms and conditions of employment is the fundamental premise of the PERA. 19 Del.C. §1301. The Public Employment Relations Board recently held:

The concept of good faith encompasses numerous considerations. The statute does not condition bargaining on negotiating a notice provision; in fact, the statute requires that ‘negotiations shall commence at least 90 days prior to the expiration of any collective bargaining agreement.’ 19 Del.C. §1313(a). *LIUNA Local 1029 v. State of Delaware, DHSS*, ULP 08-08-628, VI PERB 4205, 4206 (2009, PERB Decision on Review).

There is no dispute in this case that the ILA sought to initiate negotiations at least 90 days prior to the September 30, 2010 expiration of the collective bargaining agreement by written correspondence to the Port Director dated May 19, 2010. Nearly six weeks passed before DSPC’s labor representative responded to the ILA’s request by declining to enter into negotiations, citing the notice provision of Article 23.2.

There is no dispute that both the Port Director and DSPC’s labor representative were aware of the ILA’s desire to commence negotiations more than ninety days prior to the expiration of the collective bargaining agreement. Consistent with the statutory mandate of 19 Del.C. §1313 (a), DSPC had an obligation to enter into negotiations at least ninety days prior to expiration of the agreement. Consistent with the Public Employment Relations Board’s holding in *LIUNA v. DHSS* (Supra.), the contractual notice provision of a collective bargaining agreement does not supersede the statutory mandate to bargain where one party clearly and

unequivocally expresses its intent to negotiate at least ninety days prior to expiration of an existing collective bargaining agreement.

CONCLUSIONS OF LAW

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

2. International Longshoreman’s Association, Local 1694-1, AFL-CIO is an employee organization which admits to membership public employees and has as a purpose the representation of employees in collective bargaining pursuant to 19 Del.C. §1302(i).

3. DSPC and the ILA are parties to a collective bargaining agreement which was effective June 8, 2004 through September 30, 2010.

4. On or about May 19, 2010, the ILA provided certified notice to DSPC’s Director specifically requesting to initiate negotiations for a successor agreement. A second notice was provided to the Port Director by correspondence dated May 26, 2010. The Port’s labor representative was provided with a simultaneous copy of each of these correspondences.

5. The ILA provided a third notice to DSPC’s designated labor representative of its intent to initiate negotiations on or about June 14, 2010.

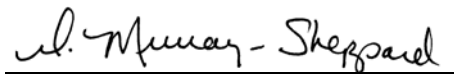
6. By failing to enter into negotiations for a successor agreement where it was aware of the Union’s request to do so at least ninety days prior to expiration of the existing collective bargaining agreement, the State violated its duty to bargain in good faith and 19 Del.C. §1307(a)(5) and (6)..

WHEREFORE, the State is hereby ordered to immediately enter into negotiations with ILA Local 1694-1 with the commitment to expedite those negotiations. It is further ordered to

advise the Public Employment Relations Board of the status of these negotiations not later than sixty days after the date of this decision.

IT IS SO ORDERED.

DATE: August 30, 2010



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.