EFiled: Feb 24 2011 8:25AM EST
Transaction ID 36113649
Case No. 5961-VCN

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

February 24, 2011

Michael P. Stafford, Esquire
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building, 17th Floor
1000 West Street
Wilmington, DE 19801

Claiborne S. Newlin, Esquire
Meranze and Katz, P.C.
Legal Arts Building
1225 King Street
Wilmington, DE 19801

Re: State of Delaware, Diamond State Port Corporation v.
International Longshoremen's Association, Local 1694-1, AFL-CIO
C.A. No. 5961-VCN
Date Submitted: January 19, 2011

Dear Counsel:

Appellant State of Delaware, Diamond State Port Corporation (the "DSPC"), appeals the Decision of the Public Employee Relations Board (the "Board") that it committed an unfair labor practice by failing to bargain in good faith when it refused to engage in negotiations with Appellee International Longshoremen's Association, Local 1694-1 AFL-CIO (the "ILA"), which represents certain of

DSPC's employees.[1] DSPC sought to justify its refusal to bargain by relying upon a provision in the 2007-2010 Collective Bargaining Agreement (the "CBA") which provided that the agreement would renew automatically if neither party gave notice of its intention to negotiate at least six months before the termination date of the agreement.[2] In this instance, the ILA gave notice of its intent to negotiate on May 19, 2010; the CBA was set to expire on September 30, 2010; thus, having not received the six months prior notice prescribed by the CBA, DSPC argued that it was excused from any duty to bargain because the CBA had already been extended in accordance with its own terms.

The Board rejected DSPC's argument by relying upon 19 *Del. C.* § 1313(a), which provides in part, that "[c]ollective bargaining shall commence at least 90 days

[1] Pet. for Appeal, Ex. A (PERB Review of Executive Director's Decision, ULP No. 10-07-755). This Court has jurisdiction of the appeal by 19 *Del. C.* § 1309(a).

[2] The CBA, at Article 23.2, provides:

> 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 main to 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.

prior to the expiration date of any current collective bargaining agreement . . . ." The Board held that "the contractual notice provision of a collective bargaining agreement does not supersede the statutory mandate to bargain where a party clearly and unequivocally expresses its intent to negotiate at least ninety days prior to the expiration of an existing collective bargaining agreement."[3] Thus, because the ILA had clearly expressed its desire to negotiate the CBA more than ninety days in advance of the expiration date, DSPC, notwithstanding the unambiguous renewal provision of the CBA, was required by statute to engage in negotiations. The Board, however, cautioned that its "decision is limited to the facts and circumstances presented in the pleadings in this case.[4]

Although DSPC was ordered to bargain with the ILA, the ILA has chosen to bargain (after having given due notice) for a new collective bargaining agreement that would take effect at the end of September 2011, and not with respect to any agreement to be in effect for the period from September 2010 through September

[3] Decision, at 7. The matter was resolved both before the Board's executive director and before the Board based on the uncontested facts of the pleadings.
[4] *Id.* at 6.

2011.[5] In this appeal, the controversy that brought about the unfair labor practice charges no longer exists because the ILA has decided not to seek enforcement. Before a court may properly adjudicate a dispute, there must be a justicable controversy.[6] When "the substance of the dispute disappears due to the occurrence of certain events following the filing of an action," the matter is moot.[7] The doctrine of mootness is grounded in the policy against "wasting judicial resources on academic disputes."[8] Unless an exception to the mootness doctrine can be found, this appeal should be dismissed as moot.

DSPC relies upon two recognized exceptions to the mootness doctrine: (1) "situations that are capable of repetition but evade review" and (2) "matters of

---

[5] The ILA's position was first expressed on November 23, 2010, in a letter from its counsel to DSPC. Appellee's Answering Br., Ex. 1-A to Ex. A. Although the letter is arguably ambiguous—it is possible to read that the notice to negotiate was provided in the event of a successful appeal by DSPC—its position has subsequently been clarified and confirmed. *See* Appellee's Answering Br., Ex. A (Katz Aff.).
[6] *Crescent/Mach I P'ners, LP v. Dr Pepper Bottling Co. of Tex.*, 962 A.2d 205, 208 (Del. 2008).
[7] *NAMA Hldgs. v. Related World Market Center, LLC*, 922 A.2d 417, 435 (Del. Ch. 2007).
[8] *Crescent/Mach I P'ners, LP*, 962 A.2d at 208.

public importance."[9] First, this matter does not involve circumstances that could be repeated without presenting an opportunity for judicial review. Judicial review was, in fact, available here, and it could have been accomplished in a timely fashion. In this instance, it is not the passage of time or the inability of the judicial system to deal with the appeal that has ended the need for resolution; instead, it has been the decision of the ILA not to seek enforcement of what it gained through the unfair labor practice proceedings before the Board.

DSPC argues against dismissal for mootness by emphasizing the undeniable public importance of public employee bargaining and the question of whether automatic renewal (so-called "evergreen") provisions in collective bargaining agreements under Delaware's public employee labor laws are valid. This is a question that is likely to recur, and it is understandable that the parties would want certainty as to the validity of such a provision on a going forward basis. A number of considerations, however, counsel against resolving this appeal on the merits. For example, the ILA, although participating in the appeal, has made clear its desire to

[9] *Gen. Motors Corp. v. New Castle County*, 701 A.2d 819, 824 n.5 (Del. 1997).

avoid further confrontation and expense regarding the renewal of the CBA at the end of September 2010. This suggests that the full benefit of the adversary system would not be available in the event that any disappointed party might want to seek appeal of this Court's decision. Next, although the Board's decision is written in comprehensive, sweeping language, the Board did recite that its decision is limited to the facts and circumstances of this case. Moreover, this is a question fundamentally within the jurisdiction of the administrative body specifically charged with responsibility for public employment relations in Delaware. Judicial interference in the work of an administrative body is best left to real and immediate disputes. Thus, the Court is satisfied that neither exception to the mootness doctrine identified by DSPC applies.

The question remains of what, if anything, to do about the Decision and the Board's finding of an unfair labor practice and its continuing direction to negotiate regarding a contract extending until, presumably, September 30, 2011. Although the ILA has announced its intention not to seek enforcement, and although the ILA,

given its representations in this Court,[10] would likely be deemed estopped from taking any other position if it for some reason might later change its mind, parties "who have been prevented from obtaining the [appellate] review to which they are entitled should not be treated as if there had been [an adverse determination upon] review."[11] The appropriate response where a case has become moot during the appellate process is frequently to "vacate the judgment below and to remand with directions to dismiss, where the interests of justice so require."[12] This is one of those instances. Here, the ILA brought unfair labor practice charges and was successful before the Board. Upon judicial review, the ILA rethought its position and decided not to pursue its rights. The appeal is moot, but DSPC should not be burdened with the Board's findings where it has not had a fair opportunity to vindicate its interests on appeal. For this reason, the interests of justice require that the Decision be vacated and the matter remanded to the Board with directions to dismiss the unfair labor practice charges.

---

[10] *See, e.g.*, Appellee's Answering Br. at 7-8.
[11] *Stern v. Koch*, 628 A.2d 44, 46 (Del. 1993) (quoting *United States v. Munsingware, Inc.*, 340 U.S. 36, 39 (1950)).
[12] *Id.*

For the foregoing reasons, the Decision is vacated and the matter is remanded to the Board with instructions to dismiss the unfair labor practice charges.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K