

ORIGINAL

(S E R V E D)
(MAY 28, 2010)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 10-05

AMERICAN STEVEDORING, INC.

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by American Stevedoring, Inc., hereinafter "Complainant," against the Port Authority of New York and New Jersey, hereinafter "Respondent." Complainant asserts that it is a corporation organized and existing pursuant to the laws of the state of New York.

Complainant asserts that Respondent is a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of Congress of the United States, and a marine terminal operator subject to the jurisdiction of the Commission.

Complainant asserts that Respondent violated Section 10(b)(10) and Section 10(d)(3) of the Shipping Act of 1984, 46 U.S.C. §41106(3), which prohibit a marine terminal operator from engaging in unreasonable refusal to deal or negotiate. Complainant bases this allegation on the Respondent's "refusal to negotiate the terms and conditions of a lease renewal, its

haste in forcing American Stevedoring to sign the leases on one day's notice, and its ultimatum that the set of leases presented on April 23, 2008 "be signed by noon the following day, if not signed, would not be presented again to American Stevedoring, and that no leases would be presented." Complainant alleges that Respondent "exacerbated its refusal by not countersigning the set of leases for another ten months" giving competitors "at other terminals an unfair advantage." Complainant further alleges that Respondent "then interfered with American Stevedoring's existing and prospective economic relationships by issuing an RFEI and encouraging competitors to take over American Stevedoring's piers and operations, and to service its customers." Complainant asserts that as a result of Respondent's unlawful conduct, Complainant "has suffered and will suffer monetary damages in an amount yet to be determined, but exceeding \$16,000,000.00 per year."

Complainant also alleges that Respondent violated Section 10(d)(4) of the Act, 46 U.S.C. app. §41106(2), which provides that no marine terminal operator may "give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person," in refusing to "negotiate the terms and conditions of the set of leases with American Stevedoring, unlike its relationships and negotiations with other marine terminal operators for lease renewal." Specifically Complainant alleges that "[t]he Port Authority's actions have given American Stevedoring's competitors at other terminals an unfair advantage in that they have been and are able to negotiate the terms and conditions of the lease agreements, including the terms of capital investments the Port Authority undertakes, such as the provision of truck toll replacement payments, on-dock rail connections, highway improvements and other transportation connecting services, whereas American Stevedoring has been frozen out of negotiations, communications, capital


investments, ordinary maintenance and repairs, and has suffered other kinds of different, discriminatory treatment, not justified by transportation factors.” Complainant asserts that as a result it “has suffered monetary damages and lost business opportunities in an amount yet to be determined, but exceeding several million dollars.”

Complainant requests that the Commission order Respondent “(i) to cease and desist from all actions to terminate Complainant’s leasehold relationships with Complainant; (ii) to recommence discussions with the Complainant in good faith over the terms and conditions of the Agreements of the Lease entered into on April 24, 2008 comparable to those entered into by the Port Authority for its other marine terminals including the recently reduced rent of Maher Terminals; (iii) to order the Port Authority to cease interfering in the economic relationships of American Stevedoring with its customer and potential customers; (iv) to establish and put in force such other practices as the Commission determines to be lawful and reasonable governing the relationship between the Port Authority and American Stevedoring; and (v) to pay the Complainant by way of reparation for the unlawful conduct hereinabove described, in an amount yet to be determined, but exceeding \$16,000,000.00 with interest and attorney’s fees, or such other sum as the Commission may determine to be proper as an award of reparation; and (v)and that such other and further order or orders be made as the Commission so determines to be appropriate.”

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper

showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 31, 2011 and the final decision of the Commission shall be issued by September 28, 2011.



Rachel E. Dickon
Assistant Secretary