FEDERAL MARITIME COMMISSION

ODYSSEA STEVEDORING OF PUERTO RICO, INC. *v.* PUERTO RICO PORTS AUTHORITY; INTERNATIONAL SHIPPING AGENCY, INC. *v.* PUERTO RICO PORTS AUTHORITY; SAN ANTONIO MARITIME CORPORATION *v.* PUERTO RICO PORTS AUTHORITY.	Docket Nos. 02-08; 04-01; 04-06

Served: December 22, 2004

ORDER

The issue presented in the above-captioned proceedings is whether the adjudication of privately-filed complaints against the Puerto Rico Ports Authority (PRPA) can proceed. PRPA has claimed that it is entitled to sovereign immunity from these adjudications. See Federal Maritime Comm'n v. S.C. State Ports Auth., 535 U.S. 743 (2002) (constitutional sovereign immunity bars Shipping Act adjudication against a non-consenting state). There is a degree of uncertainty surrounding Puerto Rico's entitlement to constitutional sovereign immunity.

See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 141 n.1 (1993) (reserving the question); Jusino Mercado v. Commonwealth of Puerto Rico, 214 F.3d 34, 37-39 (1st Cir. 2000) (Puerto Rico is entitled to constitutional sovereign immunity); Rodriguez v. Puerto Rico Federal Affairs Admin., 338 F.Supp.2d 125 (D.D.C. 2004) (Puerto Rico is not entitled to constitutional sovereign immunity). Accordingly, the Commission issued an order in the three proceedings directing the parties to file briefs addressing the following question:

> Whether Puerto Rico should be treated as a state for the purposes of constitutional sovereign immunity from federal administrative proceedings in light of the origin and purposes of such immunity as explained by the Supreme Court in Alden v. Maine, Federal Maritime Commission v. S.C. State Ports Auth., and other relevant opinions.

The complainants in the three proceedings have now filed a joint petition seeking reconsideration of this order. They contend that the Commission should not reach the issue whether the Commonwealth of Puerto Rico is entitled to constitutional sovereign immunity from a Shipping Act adjudication. They argue that the Commission should instead determine that PRPA is not an "arm" of Puerto Rico and is therefore not entitled to whatever immunity Puerto Rico may have. The complainants aver that the Commission should defer to the First Circuit's assumption that Puerto Rico is entitled to constitutional sovereign immunity, and should only address the question whether this particular Puerto Rican entity, PRPA, may share in that immunity. Petition at 3-6. The complainants also request that, if their petition is denied, the briefing schedule be extended.

PRPA filed a reply in opposition, in which it contends that the petition will cause needless delay, and that the question the Commission asked the parties to brief is central to the resolution of the three cases. PRPA also avers that the question of Puerto Rico's entitlement to constitutional sovereign immunity was in fact raised by complainant San Antonio Maritime Corporation in its opposition to PRPA's motion to dismiss before the presiding administrative law judge. See PRPA Opp. at 6, citing San Antonio Maritime Corporation's Response to PRPA's Motion to Dismiss at 7. PRPA requests that the Commission deny the petition and reaffirm the current procedural schedule, under which opening briefs are due by December 22, 2004.

DISCUSSION

We will deny the petition. The complainants' suggestion is not only that the Commission should not reach the sovereign immunity issue, but that it should not even receive briefing on that issue. This is counterproductive, as briefing will shed light on how the Commission should best resolve these proceedings. As we explained in the November 22, 2004 order, the question of whether Puerto Rico is entitled to constitutional sovereign immunity from administrative adjudications is a crucial threshold issue. See Order at 4-5 (Slip Op., Nov. 22, 2004). To refuse to consider an important threshold issue without receiving arguments on that issue would be an uninformed and ill-advised approach, in our view. Of course, the complainants may contend in their substantive briefs that for reasons of quasi-judicial economy the Commission should not address the sovereign immunity question. Fleshing out this argument would be more useful to the decisionmaking process than complainants' suggestion that the Commission decline to acknowledge the existence of the question in the first place.

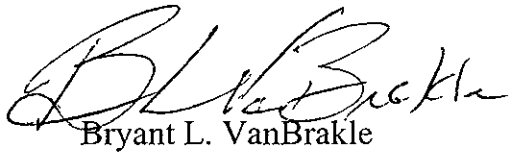
Nonetheless, we will grant the complainants' request to extend the briefing schedule in these cases. PRPA has explained that it has worked to meet the December 22 deadline, and that the complainants should have raised their objections to the Commission's briefing order much earlier. PRPA Opp. at 6. This point is well-taken, and we agree that complainants' petition was filed relatively late. Nonetheless, the larger interest to be served is the Commission's receipt of well-developed briefs that will facilitate resolution of these proceedings. Accordingly, we will grant additional time for the filing of opening briefs.

CONCLUSION

THEREFORE, IT IS ORDERED, That the petition is denied.

IT IS FURTHER ORDERED, That the procedural schedule is revised as follows: opening briefs are due by January 7, 2005, and reply briefs by January 28, 2005.

By the Commission.



Bryant L. VanBrakle
Secretary