S E R V E D
October 27, 2011
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 10-05

AMERICAN STEVEDORING, INC.

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

INITIAL DECISION APPROVING PROPOSED SETTLEMENT AGREEMENT[1] AND SEALING CONFIDENTIAL DOCUMENTS

I.

On October 14, 2011, complainant American Stevedoring, Inc. ("ASI") and respondent The Port Authority of New York and New Jersey ("Port Authority" or "PANYNJ") filed a Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice ("Settlement Motion") and a Motion to Seal Confidential Documents ("Motion to Seal"). The confidential settlement agreement is attached to the settlement motion and will be kept in the Secretary's confidential files, although the full text has been reviewed by the undersigned and is available to the Commission. The parties provided a public version of the settlement motion, with confidential settlement terms redacted.

II.

The Notice of Filing of Complaint and Assignment was issued on May 28, 2010. ASI asserts that the Port Authority violated the Shipping Act of 1984, 46 U.S.C. §§ 421106(2) and 41106(3), which prohibit a marine terminal operator from giving any undue or unreasonable preference or advantage or imposing any undue or unreasonable prejudice or disadvantage with respect to any person and which prohibit unreasonably refusing to deal or negotiate.

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[1] This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

Both parties are represented by counsel. The parties indicate that "[f]ollowing months of discussions and negotiations, ASI and PANYNJ have agreed to a Confidential Settlement Agreement." Settlement Motion at 1. Throughout the proceeding, the parties have pursued relevant discovery and have engaged in an active motions practice. They indicate that "mutual concession made in connection with the Confidential Settlement Agreement fairly address the outstanding issues between them in this matter." Settlement Motion at 2. The settlement agreement is detailed and comprehensive and resolves the outstanding issues between the parties. According to the parties, "the terms of the Confidential Settlement Agreement – which are the product of month-long arms-length negotiations – are fair and reasonable, and that the benefit of its terms far outweigh any benefit that could be derived from further and costly litigation." Settlement Motion at 4.

III.

Using language borrowed in part from the Administrative Procedure Act,[2] Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), *quoting Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). *See also Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

> The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092, *quoting* 15A American Jurisprudence, 2d Edition, pp. 777-778 (1976).

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[2] "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Id.* However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 18 S.R.R. at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

"Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation." *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

The parties request that the settlement agreement terms remain confidential. Motion to Seal. Pursuant to Commission Rule 119, parties may request confidentiality. 46 C.F.R. § 502.119. "If parties wish to keep the terms of their settlement agreements confidential, the Commission, as well as the courts, have honored such requests." *Al Kogan v. World Express Shipping, Transportation and Forwarding Services, Inc.*, 2000 WL 19204888, *3 n.7 (ALJ Sec. 15, 2000) (citations omitted); *Marine Dynamics v. RTM Line, Ltd.*, 27 S.R.R. 503, 504 (ALJ 1996); *Int'l Assoc. of NVOCCs v. Atlantic Container Line*, 25 S.R.R. 1607, 1609 (ALJ 1991). Similarly, federal courts frequently maintain the confidentiality of settlement agreements, although some have questioned whether the public interest is undermined in certain circumstances. *See, e.g., Schoeps v. The Museum of Modern Art,* 603 F. Supp. 2d 673 (S.D.N.Y. 2009); *see also* Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 484-487 (1991). Accordingly, the request will be granted and the settlement agreement will be maintained in the Secretary's confidential files, although the full text has been reviewed by the undersigned and is available to the Commission. Moreover, the parties filed a redacted, public version of the settlement motion and the full version will be maintained in the Commission's confidential files.

Based on the representations in the joint motion, the confidential settlement agreement, and other documents filed in this matter, the parties have established that the agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. The parties have reviewed the relevant documents, engaged in months of discussions and negotiations, and have determined that the mutual concessions made fairly address the outstanding issues between them. The parties are represented by counsel and engaged in arms-length negotiations. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the proposed settlement agreement is approved.

IV.

Upon consideration of the settlement motion, the motion to seal, the confidential settlement agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the proposed settlement agreement between American Stevedoring, Inc. and the Port Authority of New York and New Jersey be **APPROVED**. It is

FURTHER ORDERED that the request to seal the confidential settlement agreement and discussion of the settlement agreement terms in the settlement motion be **GRANTED**. It is

FURTHER ORDERED that all other pending motions be **DISMISSED AS MOOT**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.

Erin M. Wirth

Erin M. Wirth
Administrative Law Judge