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Editorials

Kudos to Waterfront Commission for Defending Hiring Protections

On Aug. 30, 2016, the U.S. Court of Appeals for the Third Circuit affirmed a ruling of the New Jersey District Court that the Waterfront Commission of New York Harbor “was within its statutory authority to require shipping companies and other employers to certify that prospective employees had been referred for employment pursuant to federal and state non-discrimination policies” (*New York Shipping Association, Inc., et al. v. Waterfront Commission of New York Harbor*, Nos. 14-3956 et al.). For the past several years, the New York Shipping Association Inc., the International Longshoremen’s Association, AFL-CIO, and other organizations have battled the Waterfront Commission over a provision in the bi-state compact between New York and New Jersey which created the commission in 1953. The provision in question, referred to as “section 5-p,” is one which authorizes the commission to provide for the Longshoremen’s Register to be prepared in response to certified information from prospective employers that the selection of the person or persons in question was made on a fair and non-discriminatory basis in accordance with the laws of New York, New Jersey and the United States having to do with equal employment opportunities.

The plaintiffs in the suit just decided by the Third Circuit had, for the past several years, taken the position that the commission was effectively interfering with the ability to hire longshoremen and that, as a result, the operation of the port was being impaired. The plaintiffs urged that because the bi-state compact did not specifically mention racial discrimination at the time it was enacted, any provision such as section 5-p, designed to ensure non-discriminatory hiring practices, was not in furtherance of the compact and was therefore unconstitutional. Plaintiffs also had urged from time to time that the commission was no longer needed and that corruption on the waterfront, as originally portrayed in the famous movie, “On the Waterfront,” was a thing of the past.

In recent years, in litigation and through sworn tes-

timony, representatives of the commission have consistently demonstrated that corruption on the waterfront has not been eliminated, and that hiring practices continue to be violative of some laws, including those designed to prevent racial discrimination. The dispute evolved into a lawsuit filed in the U.S. District Court for the District of New Jersey and decided by Judge Susan D. Wigenton (D.C. Civil No. 2-13-cv-07115). Judge Wigenton dismissed the amended complaint on the ground that it failed to state a claim upon which relief could be granted. In affirming that dismissal, the Third Circuit traced the history of the bi-state compact and pointed out that one of the original purposes was to eradicate racial discrimination in hiring. In concluding that the procedure set up by the commission for regulating such hiring “cannot be viewed as an improper intrusion into Appellants’ collective bargaining rights,” the Third Circuit also dealt with the contention of one of the appellant’s that racial discrimination in hiring was not a corrupt practice that was contemplated by the legislatures of New York and New Jersey and by Congress when the compact was enacted and approved.

At oral argument before the Third Circuit, counsel apparently conceded that racial discrimination could be a corrupt hiring practice but contended that it was not one of the practices that was considered as corrupt at the time of the enactment of the compact in 1953. The Third Circuit asked rhetorically, “can it seriously be argued that racial discrimination in hiring (or anywhere, for that matter) is not a corrupt practice?” The court said that it had “little difficulty concluding that such a corrupt practice was indeed contemplated by the State legislatures and Congress” at the time the compact was enacted.

The Waterfront Commission has won a significant battle over one of the threshold purposes of the bi-state compact. We commend the commission for a job well done.