

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOLT CARGO SYSTEMS, INC., et al. : CIVIL ACTION
:
v. :
:
DELAWARE RIVER PORT AUTHORITY, :
et al. : NO. 94-7778

MEMORANDUM and ORDER

Norma L. Shapiro, J.

November 13, 1997

Plaintiffs Holt Cargo Systems, Inc. ("Holt Cargo"), Astro Holdings, Inc. ("Astro") and Holt Hauling and Warehousing Systems, Inc. ("Holt Hauling") in their Second Amended Complaint against defendants Delaware River Port Authority ("DRPA"), Philadelphia Regional Port Authority ("PRPA") and Port of Philadelphia and Camden ("PPC") allege constitutional violations actionable under 42 U.S.C. § 1983. All defendants filed motions to dismiss the Second Amended Complaint. For the reasons stated below, defendants' motions will be granted in part and denied in part.

ALLEGED FACTS

Plaintiff Holt Cargo is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania. (Compl. ¶ 3). Holt Cargo is in the business of stevedoring, warehousing and providing terminal services in the Port District of Philadelphia and Camden (the "Port District"). Holt Cargo entered into an amended and restated lease and operating

agreement dated December 30, 1990, with PRPA (the "amended lease") for the Packer Avenue Marine Terminal ("Packer Avenue Terminal") in the Port District. See id. at ¶¶ 4,8. The amended lease is for a term of fifty years. See id. at ¶ 46. On June 14, 1991, Holt Cargo assigned its interest in the amended lease to plaintiff Astro. On the same date, Astro entered into a sublease with Holt Cargo for the Packer Avenue Terminal. See id. at ¶¶ 6-7. Holt Cargo currently occupies and operates the Packer Avenue Terminal. See id. at ¶ 7.

Plaintiff Holt Hauling is a Pennsylvania corporation with its principal place of business in New Jersey. See id. at ¶ 9. Holt Hauling holds title to a marine terminal warehouse complex in Gloucester City, New Jersey (the "Gloucester Terminal") and leases this facility to tenants providing stevedoring, warehousing and terminal services in the Port District. See id. at ¶ 10.

Defendants are all state-created entities. Defendant DRPA is a public corporate entity created by the Commonwealth of Pennsylvania and the State of New Jersey by interstate compact (the "Amended Compact"). Congress and the President approved the Amended Compact under the Interstate Compact Clause, U.S. Const. art. I, § 10, cl. 3. See id. at ¶ 12.

Defendant PPC is a public corporate entity of the Commonwealth of Pennsylvania and the State of New Jersey created

under the Amended Compact by DRPA in 1994 to unify the Port District. See id. at ¶¶ 13, 35.

Defendant PRPA, a public entity of the Commonwealth of Pennsylvania, was formed to promote port development in southeastern Pennsylvania. PRPA owns marine terminals and other facilities in the Philadelphia region of the Port District. See id. at ¶ 11. PRPA owns the Packer Avenue Terminal, Piers 84, 86 and 96 South, the Tioga Marine Terminal, the Tioga Container Terminal and Piers 96, 98 and 100 (the "additional parcels"). See id. at ¶ 11.

Plaintiffs have named a variety of non-defendant co-conspirators. These include: South Jersey Port Corporation ("SJPC"), a public entity of the State of New Jersey analogous to PRPA; it owns and operates Broadway Marine Terminal ("Broadway") and Beckett Marine Terminal ("Beckett") in the Port District; PASHA Auto Warehousing, Inc. ("Pasha"), a party to two PRPA leases (the "Pasha leases") of Pier 96 South in the Philadelphia region of the Port District; James McDermott ("McDermott"), PRPA's executive director; Paul DiMariano ("DiMariano"), PPC's president and chief executive officer; Paul Drayton ("Drayton"), DRPA's executive director; and Joseph Balzano ("Balzano"), SJPC's chief executive officer (collectively the "executive directors"). See id. at ¶¶ 14-17.

In 1992, Pennsylvania and New Jersey agreed to unify the

Port District to eliminate intra-port competition and "churning" of cargo and to strengthen the Port District's ability to compete against other regional ports. See id. at ¶¶ 22, 25.

Pennsylvania and New Jersey both enacted legislation (the "Unification Acts") to unify the Port District. See Pa. Stat. Ann. tit. 36 § 3503; N.J. Stat. Ann. § 32:3-1, et seq.; (Compl. ¶ 26.) Congress and the President approved the Amended Compact on October 27, 1992. See 106 Stat. 3576 (1992); (Compl. ¶ 26.)

Unification of the Port District was intended to place the power to maintain the Port District in DRPA and its subsidiary, PPC. (Compl. ¶ 31). Unification of the Port District was supposed to occur within two years of the Amended Compact's approval, i.e., October 27, 1994 (the "unification date"). See id. at ¶ 32. After unification, PPC was to take over PRPA's and SJPC's functions. See id. at ¶ 34. The executive boards of PRPA, SJPC and DRPA approved a Term Sheet in 1994 to govern the merger of PRPA and SJPC into PPC. See id. at 36. Plaintiffs assert all port development activities after unification were to be conducted solely by DRPA or its subsidiary PPC.

Plaintiffs claim unification occurred de jure on the unification date. Alternatively, unification occurred de facto "because DRPA, PPC, PRPA and SJPC have joined together to control the Port District, both pursuant to the Term Sheet approved in 1994 and by joint adoption of business plans and goals by the

boards and Executive Directors of DRPA, PPC, PRPA and SJPC, even though a final merger has technically not taken place." Id. at ¶¶ 37-38. PPC's 1994-95 Handbook states unification "became a reality in 1994." Id. at ¶¶ 39-40.

The Amended Compact provides that DRPA shall prepare a comprehensive master plan (the "master plan") for the development of the Port District to include "plans for construction, financing, development, reconstruction, purchase, lease, improvement and operation of any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity." Amended Compact, art. XII(7); Compl. ¶ 27.

"Prior to adopting such master plan, the commission shall give written notice to, afford a reasonable opportunity for comment, consult with and consider any recommendations from State, county and municipal government, as well as commissions, public corporations and authorities from the private sector." Id. If DRPA modifies or changes the master plan, it must follow these same procedures. See id.

When DRPA authorizes any "project or facility," it must provide the governor and legislature of both states with a "detailed report on the project." Amended Compact, art. XII(7). In those reports to the two states, DRPA "shall include therein its findings which fully set forth that the facility or

facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate." Amended Compact, art. IV(q); Compl. ¶ 28.

In 1994, DRPA, PPC, PRPA and SJPC produced a "Strategic Business Plan" providing for "a unified government agency to take over the entire Port District" by purchasing PRPA leases with private businesses so that "the private sector would not be the operator of the facilities." Id. at ¶¶ 41-42. PRPA sought "not only to be a lessor, but to operate its marine terminals with the aid of SJPC and in competition with Holt Cargo, Astro, and Holt Hauling." Id. at ¶ 45.

Holt Cargo's fifty-year amended lease, its plan to develop the Publicker Site, Pier 96 South and the additional parcels, and Holt Hauling's ownership and operation of the Gloucester Terminal "stood in the way of the hidden goal of total government ownership, operation, and control of the Port District." Id. at ¶ 46. PRPA informed the other defendants it had no right to condemn the property covered by the amended lease. See id. at ¶ 47. PRPA, SJPC, DRPA and PPC could not afford to purchase the property of the plaintiffs. See id. at ¶ 48.

Therefore, DRPA, PPC, PRPA and SJPC allegedly entered into a conspiracy to obtain control of the entire Port District, including the marine terminals controlled by the plaintiffs, by driving Holt Cargo, Astro and Holt Hauling from the Port

District. See id. at ¶¶ 49, 50. DRPA, PPC, PRPA and SJPC sought to obtain the customers of Holt Cargo and Holt Hauling. See id. at ¶ 53. During a meeting between Thomas Holt, a shareholder of Holt Cargo, Astro and Holt Hauling, McDermott threatened to "destroy Holt." Id. at ¶ 51. DRPA, PPC, PRPA and SJPC sought to "destroy" Holt to "control the entire Port District under the guise of Unification ... [and] maximize their profits, to the detriment of private enterprise." Id. at ¶ 54.

The plaintiffs in their Second Amended Complaint allege ten specific predatory acts by the defendants: (1) PRPA agreed to join with Holt Cargo and Astro in an application for environmental permits to develop the Publicker Site and the additional parcels and then arbitrarily and in bad faith withdrew its support, see id. at ¶¶ 55-60; (2) PRPA and Pasha have arbitrarily and in bad faith denied Holt Cargo and Astro their rights under the amended lease to use and develop Pier 96 South, see id. at ¶¶ 61-65; (3) in October, 1994, PRPA arbitrarily threatened to evict Holt Cargo and Astro from the Packer Avenue Terminal, and knew Holt would have to report this eviction notice to the attention of its lenders, customers and prospective financing sources, see id. at ¶¶ 66-70; (4) PRPA arbitrarily refused to honor its obligations under the amended lease "to dredge berths, provide capital improvements, and repair property, including container cranes," and DRPA arbitrarily refused to

provide funds to PRPA for dredging, see id. at ¶¶ 71-75; (5) DRPA, PPC and PRPA jointly published advertisements falsely attributing operation of the Packer Avenue Terminal to them in order to mislead customers into contacting them for business, see id. at ¶¶ 76-78; (6) PRPA arbitrarily refused to lease Piers 82 and 84 to Holt Cargo and to another company that planned to use Holt Cargo for its stevedoring needs, see id. at ¶¶ 79-83; (7) PRPA and SJPC have diverted customers from Holt Cargo and Holt Hauling by offering subsidized rates, free rent and other benefits to competitors, solely to cause economic loss to Holt Cargo and Holt Hauling, see id. at ¶¶ 84-86; (8) DRPA approved a master plan in 1996 that concealed numerous subsidized leases between PRPA and plaintiffs' competitors, including leases with American Transport Lines, Inc. (the "Crowley lease"), Tioga Fruit Terminal, Inc. (the "Tioga lease"), Marine Terminals of Pennsylvania (the "Marine Terminal lease") and Delaware River Stevedores, Inc. (the "DRS lease") (collectively the "unauthorized leases), see id. at ¶¶ 87-94; (9) DRPA's master plan and capital budget, approved by DRPA, PRPA and SJPC, concealed numerous capital projects included in PPC's budget, see id. at ¶¶ 95-101; and (10) DRPA failed to give an opportunity for notice and comment regarding the unauthorized leases and capital projects as required under the Amended Compact, see id. at ¶¶ 102-107. Plaintiffs did not raise predatory acts seven through

ten prior to their Second Amended Complaint. Plaintiffs contend these predatory acts were undertaken in an effort to destroy or appropriate plaintiffs' business.

The plaintiffs claim DRPA, PPC, PRPA, SJPC, Pasha and the executive directors have "conspired together by joint meetings, joint understandings and agreements, joint participation in unlawful conduct, and joint adoption of (i) budgets, (ii) capital, (iii) approval of lease[s], (iv) term sheets, (v) management agreements, (vi) interlocking board members, (viii) combined strategy meetings, (ix) joint adoption of [a] Sham Master Plan, (x) joint adoption of Amendments to the Sham Master Plan, all to effect each of the above predatory acts." Id. at ¶ 107.

Plaintiffs have stated three counts under 42 U.S.C. § 1983¹ for violations of the Fourteenth Amendment² by all three

¹ 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

² The Fourteenth Amendment provides no "State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV.

defendants and against all three defendants: Count I alleges violations of substantive due process; Count II alleges violations of equal protection; and Count III alleges procedural due process violations.³ All defendants have filed motions to dismiss the Second Amended Complaint, either in part or in its entirety.

DISCUSSION

I. Standard of Review

In considering a motion to dismiss under Rule 12(b)(6), the court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), cert. denied, 489 U.S. 1065 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court must decide whether "relief could be granted on any set of facts which could be proved." Random v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). A motion to dismiss may be granted only if the court finds the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See

³ In their earlier complaints, the plaintiffs attempted to raise a cause of action for violation of the Amended Compact either directly under the Amended Compact itself or as a violation of a federal statute, under 42 U.S.C. § 1983. The plaintiffs have not presented these claims in their revised Second Amended Complaint.

Conley v. Gibson, 335 U.S. 41, 45-46 (1957).

II. Substantive Due Process

Substantive due process is implicated where a governmental authority "infringed a property interest encompassed by the Fourteenth Amendment." Acierno v. Cloutier, 40 F.3d 597, 616 (3d Cir. 1994); see Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 679 (3d Cir. 1991), cert. denied, 503 U.S. 984 (1992). "[T]he touchstone of due process is protection of the individual against arbitrary action of the government." Bello v. Walker, 840 F.2d 1124, 1129 (3d Cir. 1988) (quoting Davison v. Cannon, 474 U.S. 344, 353 (1974)), cert. denied, 488 U.S. 851 (1988). "The substantive component of the Due Process Clause can only be violated by government employees when their conduct amounts to an abuse of official power that 'shocks the conscience.'" Fagan v. City of Vineland, 22 F.3d 1296, 1303 (quoting Collins v. City of Harker Heights, 503 U.S. 115, 126 (1992)).

Property ownership, an interest protected by substantive due process, cannot be "arbitrarily or irrationally" restricted. DeBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 600 (3d Cir.), cert. denied, 116 S. Ct. 352 (1995). A lessee's property interest has been accorded substantive due process protection. See id. at 601 n.10 (citing Neiderhiser v. Borough of Berwick, 840 F.2d 213, 217 (3d Cir. 1988), cert. denied, 488 U.S. 822

(1989). “[A]ctual and prospective business relationships” have received substantive due process protection. Northeast Jet Center, Ltd. v. Lehigh-Northampton Airport, 767 F. Supp. 672, 677 (E.D. Pa. 1991).

Holt Cargo is a lessee and sub-lessee of the Packer Avenue Terminal. Holt Cargo also provides stevedoring and other marine services. Astro is the assignee of Holt Cargo’s leasehold interest in the Packer Avenue Terminal. Holt Hauling owns the Gloucester Terminal and leases this facility to tenants providing various services in the Port District. Plaintiffs have alleged property interests protected by the Due Process Clause. See DeBlasio, 53 F.3d at 601 n.10 (citing Neiderhiser, 840 F.2d at 217).

The plaintiffs have alleged predatory acts that, if true, evidence harassment and an attempt to destroy the business and property interests of the plaintiffs. As the court stated in its April 19, 1996 Memorandum and Order, the defendants cannot “conspire to reduce the value of plaintiffs’ businesses to acquire plaintiffs’ assets for less than their actual worth. Regardless of the presumption of legislative rationality, legislative authority to unify the ports cannot constitutionally authorize destroying a business to take property without compensation.” Holt Cargo Systems, Inc. v. Delaware River Port Auth., No. 94-7778, slip op. at 9 (E.D. Pa. April 19, 1996) [“Holt I”].

PPC, admitting Holt I precludes dismissal of the plaintiffs' substantive due process claims, does not seek dismissal of Count I. DRPA and PRPA argue they cannot be liable for the actions of each other, so the predatory acts committed by each of them cannot form the basis of a substantive due process claim against the other. The plaintiffs have alleged the three defendants conspired to drive them out of business. On a motion to dismiss, the court will assume government agencies can be liable for conspiracy. See, e.g., Billups v. Millet, No. 91-6326, 1996 WL 99399, *6 (S.D.N.Y. Mar. 6, 1996); Peavey v. Polytechnic Institute, 775 F. Supp. 75, 77 (E.D.N.Y. 1991), aff'd, 969 F.2d 1042 (2d Cir.), cert. denied, 506 U.S. 922 (1992).⁴ If a conspiracy is proved, DRPA and PRPA may be held accountable for the actions of one another in furtherance of that conspiracy. See N.A.A.C.P. v. Claiborne Hardware Co., 458 U.S. 886, 927 (1982); McKenzie v. Doctors' Hosp., 765 F. Supp. 1504, 1507 (S.D. Fla. 1991), aff'd, 974 F.2d 1347 (11th Cir. 1992).

Plaintiffs have abandoned their causes of action arising directly under the Amended Compact, but they still base alleged predatory acts on violation of the terms of the Amended Compact by defendants' failure to make findings that private enterprise was "inadequate" before authorizing port projects, failure to adopt a master plan by October 27, 1994, concealment of various

⁴ No party has addressed this issue.

leases and independent funding of fund port development projects by PRPA and SJPC rather than by DRPA or PPC having assumed total control. The court will not entertain the claims raised in predatory acts eight and nine. The Amended Compact does not create a private cause of action to enforce the terms of the Amended Compact. See Blessing v. Freestone, 117 S. Ct. 1353, 1359 (1997); Cort v. Ash, 422 U.S. 66, 78 (1975). The court will not intervene to micro-manage the entire Port District. Such judicial interference "would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern": the development and management of the Port District. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814-16 (1976); see Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 1072-73 (1959); Alabama Pub. Serv. Comm'n v. Southern R. Co., 341 U.S. 341, 349-50 (1951); Burford v. Sun Oil Co., 319 U.S. 315, 332-33 (1943).

Taking the plaintiffs' allegations as true, they have stated a cause of action against all three defendants for a violation of substantive due process. The court will deny the motions to dismiss Count I.

III. Equal Protection

The Equal Protection Clause does not require that all persons be treated alike; it provides "a direction that all persons similarly situated should be treated alike." City of

Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). "The level of scrutiny applied to ensure that classifications comply with this guarantee differs depending on the nature of the classification." Artway v. Attorney General of the State of N.J., 81 F.3d 1235, 1267 (3d Cir. 1996). "Classifications involving suspect or quasi-suspect class, or impacting certain fundamental constitutional rights, are subject to heightened scrutiny. Other classifications, however, need only be rationally related to a legitimate government goal." Id.; see Chapman v. United States, 500 U.S. 453, 465 (1991); Taylor Inv., Ltd. v. Upper Darby Township, 983 F.2d 1285, 1294 (3d Cir. 1993), cert. denied 510 U.S. 914 (1993). Under a rational basis analysis, the government's action will be upheld as long as it was not "irrational." Vance v. Bradley, 440 U.S. 93, 97 (1979); Rogin v. Bensalem Township, 616 F.2d 680, 687 (3d Cir. 1980), cert. denied sub nom., Mark-Garner Assoc. v. Bensalem Township, 450 U.S. 1029 (1981).

The plaintiffs have alleged PRPA arbitrarily refused to lease facilities to Holt Cargo and another company planning to rely on Holt Cargo's stevedoring services, offered subsidized leases to competitors of Holt Cargo, Astro and Holt Hauling in order to draw customers away from the plaintiffs and made millions of dollars of capital improvements to competing facilities in the Port District. At the same time, PRPA failed

to fulfill its obligations to dredge and develop facilities operated by the plaintiffs. Plaintiffs state DRPA arbitrarily refused to provide funding to PRPA for dredging plaintiffs' facilities. Plaintiffs claim PRPA and DRPA engaged in these acts to drive them out of business. Allegedly, all three defendants acted in concert to achieve this goal.

The plaintiffs claim American Transport Lines, Inc., Tioga Fruit Terminal, Inc., Marine Terminals of Pennsylvania and the Delaware River Stevedores, Inc. are similarly situated, non-public companies that have received leases from the PRPA on terms more favorable than any offered to plaintiffs. Allegedly, these other companies are involved in stevedoring, warehousing and other port-related activities. DRPA argues that public entities (such as SJPC) cannot be similarly situated to private companies, such as plaintiffs. Accepting that as true, see Wood v. Rendell, No. 94-1489, 1995 WL 676418, *4 (E.D. Pa. Nov. 3, 1995) (non-profit entity and for-profit entity not similarly situated), the port companies listed by the plaintiffs appear to be private entities. DRPA also asks the court narrowly to distinguish between the plaintiffs and each of the listed companies, because "land is unique." The companies need not be exactly like the plaintiffs if they all engage in the same kinds of port-related commercial activity; plaintiffs' allegations are sufficient to allow their equal protection claim to survive a motion to

dismiss. Whether the competitors are similarly situated will be an issue of fact.

Taking all of the plaintiffs' allegations as true, the three defendants have conspired together to drive Holt Cargo, Holt Hauling and Astro out of business. DRPA, PRPA and PPC intentionally and arbitrarily offered the plaintiffs' competitors more favorable lease terms, provided extensive development and construction of facilities used by plaintiffs' competitors while refusing to fulfill their obligations under the amended lease to dredge areas operated by Holt Cargo. Each defendant is responsible for the acts of its co-conspirator in furtherance of the conspiracy. See McKenzie, 765 F. Supp. at 1507.

Government agencies may legitimately act to ensure competition in the marketplace, but "intentional discrimination to destroy or reduce the value of a particular business would not be rationally related to a legitimate government purpose." Holt I, at 10. The defendants' motions to dismiss Count II of the revised Second Amended Complaint will be denied.⁵

⁵ Plaintiffs may not base their equal protection claim on alleged predatory acts involving certain defendants' failure to comply with the Amended Compact by not making findings that private enterprise was "inadequate" before authorizing port projects, by failing to adopt a master plan by October 27, 1994, and by allowing PRPA and SJPC to fund port development projects independently rather than having DRPA or PPC assume total control. See Colorado River, 424 U.S. at 814-16.

IV. Procedural Due Process

Plaintiffs raised a procedural due process claim for the first time in their Second Amended Complaint. To prevail on a procedural due process claim, the plaintiffs must demonstrate the defendants deprived them of a protected property interest without affording an adequate opportunity to be heard in connection with that deprivation. See Taylor Inv., Ltd., 983 F.2d at 1293.

"Property interests are not created by the Constitution, 'they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law'" Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 538 (1985) (quoting Board of Regents v. Roth, 408 U.S. 564, 577 (1972)).

The plaintiffs argue DRPA violated their procedural due process rights by failing to provide notice in the master plan and a chance to comment on the various capital improvements and leases PRPA was associated with directly (and that were attributed to DRPA as a co-conspirator).⁶ Article XII of the Amended Compact states: "Prior to adopting [a] master plan, [DRPA] shall give written notice to, afford a reasonable

⁶ The plaintiffs also attempt to base a procedural due process violation on DRPA's failure to make findings that private industry was inadequate before supporting PRPA's expenditures. The court will not consider DRPA's failure to make findings of industrial inadequacy in the Port District. See Colorado River, 424 U.S. at 814-16.

opportunity for comment, consult with and consider any recommendations from State, county and municipal government, as well as commissions, public corporations and authorities and the private sector."

The Procedural Due Process Clause only applies to substantive rights granted by the Constitution or statutory law. But "a state statute that merely prescribes procedure, yet 'place[s] no substantive limitations on official discretion ... create[s] no liberty interest entitled to protection under the Due Process Clause.'" Townsend v. Cramblett, 1989 WL 153979, **3 (6th Cir. 1989) (quoting Olim v. Wakinekona, 461 U.S. 238, 249 (1983)), cert. denied, 497 U.S. 1026 (1990). "Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." Olim, 461 U.S. at 250. "The State may choose to require procedures for reasons other than protection against deprivation of substantive rights, of course, but in making that choice the State does not create an independent substantive right." Id., 461 at 250-51; see Shango v. Jurich, 681 F.2d 1091, 1100-1101 (7th Cir. 1982).

"[T]he violation of a state statute outlining procedure does not necessarily equate to a due process violation under the federal constitution. If otherwise, federal courts would have the task of insuring strict compliance with state procedural

regulations and statutes." Harris v. Birmingham Bd. of Ed., 817 F.2d 1525, 1527-28 (11th Cir. 1987) (citing Hewitt v. Helms, 459 U.S. 460, 471-72 (1983), implicitly overruled on other grounds, Sandin v. Conner, 515 U.S. 472 (1995)).

The Amended Compact outlines a procedure by which DRPA is supposed to inform the private sector of proposed projects included in its master plan. The fact that it describes a notice and comment process does not mean the plaintiffs' interest in receiving that notice is protected by the Fourteenth Amendment. Procedural due process protections only apply if plaintiffs have an independent, substantive right that is being taken away.

In Harris, the plaintiff was deprived of a tenured position in a public school. A state statute required a detailed description of the reasons for termination in the notice provided to an employee. The plaintiff argued the school violated his procedural due process rights by failing to give him the detailed notice required under the statute. The court held the state statute was a "purely procedural requirement" and did not give the plaintiff a property interest worthy of procedural due process protection. Harris, 817 F.2d at 1527. The plaintiff had no procedural due process right to receive the process specified in the statute, because the statute accorded no substantive rights. See id. at 1528.

Plaintiffs can only state a procedural due process claim if

they have been deprived of a substantive right created by the Amended Compact; there is no such right. Plaintiffs' procedural due process claim based on or related to alleged predatory act number ten will be dismissed.

V. Injunctive Relief

DRPA, arguing the alleged acts do not violate the plaintiffs' constitutional rights, moves to dismiss the plaintiffs' request for permanent injunctive relief. See DRPA's Mem. Supp. Mot. Dismiss at 56. Because the court concludes the plaintiffs have stated a cause of action for violation of substantive due process and equal protection, DRPA's argument is premature.

Plaintiffs also request the court enjoin all three defendants from future "violation of the Amended Compact and Unification Acts." Plaintiffs are attempting to insert the court into the midst of local political policy over the appropriate role of the DRPA, PPC, PRPA and SJPC in developing and maintaining the Port District. This is a unique and highly important matter of local policy. The court will address plaintiffs' claims for constitutional violations but will not interpret the Amended Compact or intervene in vital matters of state policy. See supra note 4. Accordingly, DRPA's motion to dismiss plaintiffs' request for injunctive relief will be granted to the extent plaintiffs seek an injunction based on the Amended

Compact itself.

VI. Joinder of Pennsylvania and New Jersey

DRPA and PRPA move to dismiss the Second Amended Complaint for failure to join Pennsylvania and New Jersey as indispensable parties under Federal Rule of Civil Procedure 19. They base their argument on the fact that the plaintiffs seek a permanent injunction, barring all other state-related entities from funding development in the Port District. The court will dismiss plaintiffs' request for injunctive relief concerning the terms and scope of the Amended Compact. See Baltimore Bank for Coops. v. Farmers Cheese Coop., 583 F.2d 104, 108 (3d Cir. 1978).

Joinder of Pennsylvania and New Jersey is not possible under the Eleventh Amendment. Because Pennsylvania and New Jersey cannot be joined, the court must determine "whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed." Fed. R. Civ. P. 19(b). Rule 19(b) enumerates four factors to consider:

first, to what extent a judgment rendered in a person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

The court can render judgment in the absence of Pennsylvania and New Jersey; the Amended Compact created DRPA as an

independent agency that operates distinctly from either Pennsylvania and New Jersey. If the plaintiffs are successful on their claims, the court can fashion any relief in a manner avoiding any restriction on the ability of either Pennsylvania or New Jersey independently to engage in port development activities. Any judgment rendered in plaintiffs' favor can be adequate even without New Jersey and Pennsylvania joined as parties to this action. Finally, plaintiffs have no other adequate remedy if this court dismisses their action for failure to join Pennsylvania and New Jersey. Therefore, the action will not be dismissed for inability to join Pennsylvania and New Jersey.

CONCLUSION

Holt Cargo, Astro and Holt Hauling have stated a cause of action for violations of their substantive due process and equal protection rights, and the defendants' motions to dismiss those claims will be denied. The plaintiffs have failed to state a claim upon which relief can be granted for violation of their procedural due process rights, and the court will dismiss Count III of the revised Second Amended Complaint. The court will dismiss the portion of plaintiffs' request for injunctive relief dealing with any alleged violations of the terms of the Amended Compact.

An appropriate order follows.

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ORDER

AND NOW, this 13th day of November, 1997, upon consideration of the motions to dismiss the Second Amended Complaint filed by defendants Delaware River Port Authority ("DRPA"), Port of Philadelphia and Camden ("PPC") and Philadelphia Regional Port Authority ("PRPA"), their supplemental memoranda, the response by plaintiffs Holt Cargo Systems, Inc. ("Holt Cargo"), Astro Holdings, Inc. ("Astro") and Holt Hauling and Warehousing Systems, Inc. ("Holt Hauling"), after a hearing in which counsel for all parties were heard, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. As to Count I, alleging violations of substantive due process, the defendants' motions to dismiss are **DENIED**; the court will not consider alleged predatory acts eight (8) or nine (9).

2. As to Count II, alleging violations of equal protection, the defendants' motions to dismiss are **DENIED**.

3. As to Count III, alleging violations of procedural due process, defendants' motions to dismiss are **GRANTED**; the court will not consider alleged predatory act ten (10).

4. DRPA's motion to dismiss plaintiffs' claim for injunctive relief is **GRANTED IN PART AND DENIED IN PART**; the motion is **GRANTED** as to any claim for injunctive relief arising out of alleged violations of the Amended Compact's terms; the motion is **DENIED** as to any claim for injunctive relief arising out of alleged violations of substantive due process or equal protection.

Norma L. Shapiro, J.