FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Nos. 1D19-2226
1D19-2241
1D19-2248

SEACOR ISLAND LINES, LLC,
BALEARIA CARIBBEAN, LTD.,
CROWLEY LINER SERVICES, INC.,
KING OCEAN SERVICES, LTD.,
and KING OCEAN AGENCY, INC.,

Appellants,

v.

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF PILOT
COMMISSIONERS, PILOTAGE RATE
REVIEW COMMITTEE, and
FLORIDA CARIBBEAN CRUISE
ASSOCIATION,

Appellees,

and

PORT EVERGLADES PILOTS
ASSOCIATION,

Appellee/Cross-Appellant.

On appeal from the Pilotage Rate Review Committee.
Robert Benson, Chairman.

November 20, 2020

PER CURIAM.

In this consolidated appeal of a pilotage rate-setting decision, the Pilotage Rate Review Commission ("PRRC") adopted new pilotage rates for Port Everglades based on requested rates submitted in a joint proposal by the Florida Caribbean Cruise Association ("FCCA") and Port Everglades Pilots Association ("PEP"). Appellants are companies who own smaller vessels and cargo ships, two categories of vessels that saw increased pilotage rates as a result of the PRRC's adoption of the rates presented in the joint proposal. Appellants raise several issues with the PRRC's decision to adopt these rates, each of which is addressed in turn. Additionally, PEP cross-appeals the PRRC's determination that one Appellant's petition for a formal hearing was timely.

First, Appellants contend that they did not receive due process during the rate-setting proceedings. Appellants specifically argue that the PRRC did not afford them reasonable notice of its consideration of FCCA and PEP's joint proposal. FCCA and PEP originally filed separate applications to the PRRC in which they proposed contrasting pilotage rates for Port Everglades. However, after several years, the two parties entered into settlement negotiations and drafted a joint proposal containing new proposed rates. The PRRC did not mention the joint proposal in its notices issued in the Florida Administrative Register ("FAR"); instead, it only referenced the original applications of both parties. It is undisputed, however, that Appellants learned of the joint proposal during a fact-finding meeting held over a month before the final rate hearing. Additionally, in the interest of fairness, the PRRC allowed any interested party to submit comments for inclusion in the record after that meeting, and Appellants did so. Appellants were also given the opportunity to participate in the final rate hearing. Months later at the hearing concerning Appellants' petitions for formal hearings, Appellants were each given fifteen minutes to address their concerns with the committee's intended action.

These opportunities to add to the record and be heard by the PRRC satisfy the required due process. Florida's pilotage rate statute directs the PRRC to give interested parties notice of rate hearings, an opportunity to file alternative petitions and responses, and the chance to participate in the investigatory process and final hearing. § 310.151(3), Fla. Stat. The PRRC met these statutory requirements and was not required to do more in this proceeding. Therefore, Appellants ultimately received sufficient due process.

Second, Appellants claim that the PRRC erred in failing to require the FCCA and PEP to submit their joint proposal as a new application. Appellants point to rule 61G14-22.007(4), Florida Administrative Code, which states that "any changes or additions to the original application must be sent in the form of a revised application . . . ." However, parties that enter into settlement agreements are not required to submit new applications. *Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1160–61 (Fla. 2014). Settlement agreements are considered informal dispositions of rate proceedings, thereby distinguishing them from additions or amendments to original applications. *Id.* at 1150; *Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018). Here, FCCA and PEP's joint proposal is more akin to a settlement agreement than an amendment or addition to either party's original application. FCCA and PEP were the only parties to the proceeding for roughly four years. Their joint proposal was the product of settlement negotiations to resolve the conflicting rates originally proposed by both parties. Additionally, neither FCCA nor PEP abandoned their original applications. The two parties merely attempted to resolve the ongoing rate dispute by coming to an agreement. Given the joint proposal served as a settlement agreement, the FCCA and PEP were not required to file new applications.

Third, Appellants argue that the PRRC erred in determining that Appellants failed to raise a disputed issue of material fact in their petitions for a formal hearing. Under section 310.151(4)(a), Florida Statutes, if the PRRC finds that a petitioner has raised a disputed issue of material fact regarding the committee's proposed action, it must designate a section 120.57 hearing before the Division of Administrative Hearings ("DOAH"). In the present case, Appellants contend that their petitions included several

disputed issues of material fact. Among the raised issues were whether the proposed rates were fair, just, and reasonable; whether the proposed rates were in the public interest; and whether the PRRC erred in failing to determine the pilots' pension fund value. These and the remaining issues raised in Appellants' petitions do not constitute disputed issues of material fact. Rather, they are challenges to the PRRC's legal conclusions, reiterations of the statutory factors to be considered in pilotage rate-setting, or simply undisputed facts. *See Cabezas v. Corcoran*, 293 So. 3d 602, 603–04 (Fla. 1st DCA 2020) (noting that a petition for formal hearing was properly denied in part because it raised a legal dispute rather than a disputed issue of material fact); *see also Unisource Pharm. Grp., Inc. v. State, Agency for Health Care Admin.*, 799 So. 2d 333, 333 (Fla. 1st DCA 2001) (affirming the dismissal of a formal hearing petition because the petitioner only raised issues regarding the agency's interpretation of a statute). As such, the PRRC did not err in determining Appellants failed to raise a disputed issue of material fact, and Appellants were not entitled to a section 120.57 hearing.

Fourth, Appellants maintain that even if they did not raise a disputed issue of material fact in their petitions, the PRRC was required by Florida law to provide them with a chance to amend their petitions. Appellants point to section 120.569(2)(c), Florida Statutes, which states that if a petition is dismissed due to untimeliness or failure to substantially comply with Florida's Uniform Rules of Procedure, the agency must afford the petitioner an opportunity to file an amended petition, so long as the defect is curable. Appellants argue that a petition's dismissal for failure to raise a disputed issue of material fact is considered a failure to substantially comply with the Uniform Rules of Procedure. The Uniform Rules of Procedure's requirement that a petition contains a statement of disputed issues of material fact, however, appears to be a procedural requirement and not an examination of the substantive merit of the disputed issues of material fact. *See* § 120.54(5)(b)4, Fla. Stat. Here, Appellants included statements of their alleged disputed issues of material fact in their petitions. Therefore, regardless of whether those statements substantively amounted to disputed issues of material fact, Appellants substantially complied with the Uniform Rules of Procedure. Moreover, Appellants have not shown that their defective petitions

were curable. Appellants did not adequately explain what additional statements of disputed issues of material fact they would add to their amended petitions to cure that defect. For these reasons, the PRRC was not required to provide Appellants a chance to amend under Florida law.

Finally, Appellants challenge the constitutionality of Florida's pilotage rate statute. Appellants first allege that section 310.151, Florida Statutes, is facially unconstitutional. A statute enacted by the legislature is presumptively constitutional on its face. *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005). Given that section 310.151 does not concern any fundamental rights, rational basis review applies. *Haire v. Fla. Dep't of Agric. & Consumer Servs.*, 870 So. 2d 774, 782 (Fla. 2004). Thus, so long as any rational relationship exists between the statute and the furtherance of the State's goal, the statute will be upheld. *Id.* Section 310.151 concerns the efficient setting of pilotage rates, which rationally relates to the State's goal of ensuring safety within its ports by adequately compensating well-qualified pilots. *See* § 310.001, Fla. Stat. Therefore, section 310.151 is not unconstitutional on its face. Appellant Balearia also contends that section 310.151(4)(a) is unconstitutional as applied because it did not provide Appellant Balearia with a chapter 120 hearing under Florida's Administrative Procedure Act, thereby denying it due process. However, chapter 120 is not the sole source of due process for parties in an administrative proceeding. *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1235 (Fla. 2009). Given that the Florida Supreme Court rejected the notion that due process can only be satisfied by compliance with the Administrative Procedure Act, section 310.151(4)(a) is not unconstitutional as applied to Appellant Balearia. Rather, Appellant Balearia received sufficient due process during the pilotage rate proceedings.

On cross-appeal, PEP argues that the PRRC incorrectly determined that Appellant Balearia's petition for a formal hearing was timely. We affirm without further comment.

For these reasons, we affirm.

AFFIRMED.

MAKAR, OSTERHAUS, and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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Ashley Moody, Attorney General, and Marlene K. Stern and Donna C. McNulty, Assistant Attorneys General, Tallahassee, for Appellee Pilotage Rate Review Committee.

George N. Meros, Jr., and Tara R. Price of Holland & Knight LLP, Tallahassee, for Appellee/Cross-Appellant Port Everglades Pilots Association.

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