

Supreme Court, New York County, NYLJ,
December 16, 1986

1A PART 14
Justice Shorter

METRO-ILA PENSION FUND v. WATERFRONT COMMISSION OF NEW YORK HARBOR—The petitioners bring this Article 78 proceeding for a judgment annulling and setting aside the respondents' determinations dated Jan. 10, 1986, Feb. 18, 1986 and April 24, 1986, which denied the petitioners' requests, made pursuant to the New York Freedom of Information Act (Public Officers Law 84) and Waterfront Commissions' Rules and Regulations 1.24, for access to and copies of any documents, records, memoranda or other data pertaining to the petitioners, and directing the respondent to supply the petitioners with copies of the documents specified in the aforementioned requests.

The petitioners are various labor and management groups involved with stevedoring. The respondent Waterfront Commission is an interstate agency; the result of an interstate compact between New York and New Jersey made with the approval of Congress.

In response to a request for records pertaining to the petitioners' activities, the Waterfront Commission permitted access to public documents, and denied access to reports concerning past or present criminal investigations.

An assistant United States Attorney, the Organized Crime Strike Force and the U.S. Department of Labor, all allege that there is currently an investigation into the petitioners' activities, and that the Waterfront Commission documents being sought are critical to their investigation.

The petitioners argue that the respondent violated New York's Freedom of Information Law and that the respondent failed to establish a statutory exemption to the right of access.

The New York Freedom of Information Law is applicable to any state agency. Agency is defined as:

"Any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

Public Officers Law 86(3).

An interstate agency is created by interstate compact, and New York may not impose its preferences with respect to freedom of information on the other party to the compact. *C.T. Hellmuth & Associates, Inc. v. Washington Metropolitan Area Transit Authority*, 414 Fed. Supp. 408. Thus, the Waterfront Commission is not an "agency" subject to New York's Freedom of Information Law.

The Waterfront Commission applied its own regulation 1.24 entitled "access to records". Access was denied on the ground that the records sought were "compiled for law enforcement or official investigatory purposes" and "their disclosure would interfere with law enforcement investigations".

The respondent Waterfront Commissions' determination has a rational basis.

In view of the three letters, from three separate federal law enforcement agencies, the respondent Waterfront Commission has met its burden of establishing that the material sought falls squarely within the exemption. *Matter of Capital Newspapers Division of the Hearst Corp. v. Burns*, 67 NY2d 562; *Matter of Farbman & Sons v. New York City Health and Hospitals Corp.*, 62 NY2d 75. Thus, the allegation that the files contain exempt material is sufficient to overcome the presumption that the records are open for inspection.

Accordingly, the petitioners' request is denied, and the petition is dismissed.

Settle judgment.