

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION LOCAL 23

and

JIM TESSIER, an Individual

and

KEITH LOWE, an Individual

Cases 19-CB-175084

19-CB-198689

**ORDER CONSOLIDATING CASES AND PARTIALLY  
REVOKING SETTLEMENT AGREEMENT, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

A Complaint and Notice of Hearing issued in Case 19-CB-175084 (the "Complaint") against International Longshore and Warehouse Union Local 23 ("Respondent"), based upon a charge filed by Jim Tessier, an Individual ("Tessier"), alleging that it engaged in unfair labor practices in violation of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*

On March 22, 2017, a Settlement Agreement and Notice to Employees and Members was approved in Case 19-CB-175084, a copy of which is attached as Appendix A ("2017 Settlement"). Pursuant to the 2017 Settlement, Respondent agreed to take certain actions to remedy the unfair labor practices alleged in the Complaint, including those set forth in an earlier settlement agreement dated June 23, 2005, in Case 19-CB-9269 ("2005 Settlement"), attached as Appendix B. Respondent has partially failed to comply with the terms of the 2017 Settlement and has failed to comply with the terms of the 2005 Settlement.

On May 11, 2017, Keith Lowe, an Individual ("Lowe"), filed a charge in Case 19-CB-

198689, alleging Respondent had engaged in additional unfair labor practice conduct in violation of the Act and the 2017 Settlement. Accordingly, pursuant to the terms of the 2017 Settlement, § 10(b) of the Act, and §§ 102.15 and 101.9(e)(2) of the Rules and Regulations of the National Labor Relations Board (the "Board"), the Complaint in Case 19-CB-175084 is partially reissued and the 2017 Settlement partially revoked and set aside.

Pursuant to § 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 19-CB-175084 is consolidated with Case 19-CB-198689. This Order Consolidating Cases and Partially Revoking Settlement Agreement, Consolidated Complaint and Notice of Hearing is issued pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act by engaging in the following unfair labor practices.

1.

(a) The charge in Case 19-CB-175084 was filed by Tessier on April 25, 2016, and a copy was served on Respondent by U.S. mail on April 28, 2016.

(b) The first amended charge in Case 19-CB-175084 was filed by Tessier on June 27, 2016, and a copy was served on Respondent by U.S. mail on June 27, 2016.

(c) The second amended charge in Case 19-CB-175084 was filed by Tessier on June 28, 2016, and a copy was served on Respondent by U.S. mail on June 28, 2016.

(d) The third amended charge in Case 19-CB-175084 was filed by Tessier on August 30, 2016, and a copy was served on Respondent by U.S. mail on August 30, 2016.

(e) The fourth amended charge in Case 19-CB-175084 was filed by Tessier on September 30, 2016, and a copy was served on Respondent by U.S. mail on September



30, 2016.

(f) The charge in Case 19-CB-198689 was filed by Lowe on May 11, 2017 and a copy was served on Respondent by U.S. Mail on May 12, 2017.

2.

(a) At all material times the Pacific Maritime Association ("PMA"), a State of California corporation with its principal place of business in San Francisco, California, and a branch office at the Port of Tacoma, Washington (the "Port"), has been an organization composed of various employers in California, Oregon, and Washington operating as steamship companies, stevedore contractors, and marine terminal operators, that represents its member employers in negotiating and administering collective-bargaining agreements with various labor organizations, including the International Longshore and Warehouse Union ("ILWU") and its locals, including Respondent.

(b) In conducting their operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, the PMA and its member employers have derived gross revenues in excess of \$500,000 from the transportation of goods and freight in interstate commerce.

(c) In conducting their operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, the PMA and its member employers have purchased and received goods at the Port valued in excess of \$50,000 directly from points outside the State of Washington.

(d) At all material times APM Terminals Tacoma LLC ("APM") has been a member employer of the PMA and a State of Washington limited liability company engaged in the business of providing marine terminal operation services at the Port.

(e) At all material times Washington United Terminals ("WUT") has been a

member employer of the PMA and a State of Washington corporation engaged in the business of providing marine terminal operation services at the Port.

(f) At all material times PMA and its member employers, including APM and WUT, have been employers engaged in commerce in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

At all material times, Respondent has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, the following named individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of § 2(13) of the Act acting on its behalf:

Dean McGrath	-	President
Sarah Faker	-	Secretary
Tawni (last name unknown)	-	Secretary

5.

(a) At all material times, by virtue of § 9(a) of the Act, Respondent has been the exclusive collective-bargaining representative of the following employees of the PMA member employers employed at the Port (the "Unit"):

All employees performing work described in and covered by "Section 1 of This Contract Document and Assignment of Work to Longshoremen" of the collective-bargaining agreement between Respondent and the PMA (the "Pacific Coast Agreement"); excluding all other employees, guards, and supervisors as defined in the Act.

(b) At all material times, the PMA and Respondent have maintained and enforced the Pacific Coast Agreement, which sets forth the conditions of employment of



the Unit employees as well as provisions for the use of Respondent's dispatch hall by longshoremen who are not members of Respondent.

(c) At all material times, the PMA and Respondent have maintained and enforced a practice regarding the use of Respondent's dispatch hall by longshoremen who are not members of Respondent pursuant to the contractual dispatch provisions of the Pacific Coast Agreement.

(d) At all material times since at least July 2014, the PMA and Respondent, through the ILWU, have maintained an agreement and practice requiring that Respondent be the exclusive source of referrals of Respondent's Unit members and non-member longshoremen for employment with PMA member employers at the Port, including APM and WUT.

(e) On June 23, 2005, Respondent entered into the 2005 Settlement, Notice to Members attached as Appendix B, whereby it agreed to undertake certain actions set forth in the Notice to Members that it posted, including timely providing users of its dispatch hall, upon request, with access to and copies of Joint Port Labor Relations Committee ("JPLRC") minutes.

(f) On March 22, 2017, Respondent entered into the 2017 Settlement, attached as Appendix A, whereby it agreed to undertake certain actions set forth in the Notice to Employees and Members that it posted, including providing users of its dispatch hall, upon request, with access to and copies of JPLRC minutes as per their normal procedure.

6.

(a) On about June 15, 2016, Karey Martinez ("Martinez"), a user of Respondent's exclusive dispatch hall pursuant to the contractual provisions and practice described above in paragraph 5, verbally requested of Faker and Tawni \_\_\_ that

Respondent provide him with copies of the following documents maintained by Respondent:

- (i) the JPLRC minutes from April and May 2016; and
- (ii) employer complaint documents.

(b) On about June 15, 2016, Martinez requested in writing that Respondent provide him with the JPLRC minutes and employer complaint documents described above in paragraph 6(a).

(c) Martinez had requested the documents described above in paragraphs 6(a) and 6(b) to determine whether he had been treated fairly regarding a complaint filed against him by PMA member employer APM, to which he had been dispatched by Respondent.

(d) Since about June 15, 2016, Respondent has refused to provide Martinez with copies of the documents he requested as described above in paragraphs 6(a) and 6(b).

(e) On or about April 19, 2017, Lowe, a user of Respondent's exclusive dispatch hall, pursuant to the contractual provisions and practice described above in paragraph 5, requested verbally of Faker and in writing that Respondent provide him with the JPLRC minutes for the month of April 2017.

(f) Respondent's form upon which Lowe made the request for information described in paragraph 6(e), indicated that the information would be available within two to three weeks and that the requester would be notified when the information was ready to be picked up.

(g) Lowe had requested the documents described above in paragraph 6(f) to determine whether Respondent had fairly suspended him from referrals from the exclusive



dispatch hall for failure to show or call a replacement.

(h) Respondent did not notify Lowe until May 24, 2017, five weeks after the information was requested, that the information was available for pick-up.

(i) By the conduct described above in paragraph 6(d) and 6(h) Respondent has breached the duty of fair representation that it owed to Martinez and Lowe, respectively, as users of its exclusive dispatch hall.

(j) By the conduct described above in paragraphs 6(d) and 6(h), Respondent has breached the duty of fair representation that it owes to Martinez and Lowe.

(k) By the conduct described above in paragraphs 6(d) and 6(h) as pertains to the failure to provide information to Martinez and the delay in providing information to Lowe, Respondent breached certain terms of the 2017 Settlement, which also encompassed the terms of the 2005 Settlement.

7.

By the conduct described above in paragraph 6, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(b)(1)(A) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

**ANSWER REQUIREMENT**

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before August 9, 2017, or postmarked on or before August 8, 2017.** Respondent should file an original and four copies of the answer with

this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.



## NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 10<sup>th</sup> day of October, 2017, at 1 pm, in the James C. Sand Hearing Room of the Jackson Federal Building, 915 2nd Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB- 4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 26<sup>th</sup> day of July, 2017.

*RK Hooks*

RONALD K. HOOKS REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 19  
915 2nd Ave Ste 2948  
Seattle, WA 98174-1006

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

IN THE MATTER OF

ILWU Local 23 (PMA)

Case 19-CB-175084

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its office and dispatch hall in Tacoma, Washington, including all places where the Charged Party customarily posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting. Further, if the Charged Party maintains bulletin boards at the facility of the Employer where the alleged unfair labor practices occurred, the Charged Party shall also post Notices on each such bulletin board during the posting period. The Regional Director will send copies of the signed Notices to the Employer whose employees are involved in this case, and request that the Notices be posted in prominent places in the Employer's facility for 60 consecutive days from the date of posting.

**ELECTRONIC POSTING OF NOTICE** - The Charged Party will also post a copy of the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, on its intranet site and/or Facebook page, which it controls and customarily uses to communicate with its members, and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will send an e-mail to the Region's Compliance Officer at james.lorang@nlrb.gov when it submits the Certification of Posting and provide a password for a password protected intranet site in the event it is necessary to check the electronic posting.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** --- None.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees and Members made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover

APPENDIX A

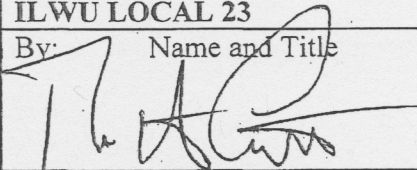
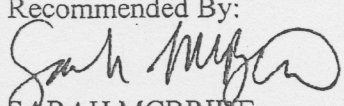
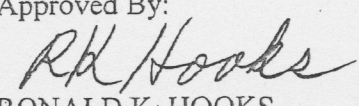


letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes RAH No \_\_\_\_\_  
 Initials Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on October 31, 2016 in the instant cases. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> ILWU LOCAL 23		<b>Charging Party</b> Jim Tessier	
By: 	Name and Title	Date	
		3.26.17	
Print Name and Title below <i>Counsel for Union</i>		Print Name and Title below	
ROBERT H. LAVITT			
Recommended By: 	Date	Approved By: 	Date
SARAH MCBRIDE	3/21/17	RONALD K. HOOKS	3/22/17
Field Attorney		Regional Director, Region 19	

(To be printed and posted on official Board notice form)

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** fail or refuse to provide users of our dispatch hall with access to and copies of requested JPLRC minutes as per our normal procedure.

**WE WILL NOT** fail and refuse to refer users of our exclusive dispatch hall for arbitrary or discriminatory reasons.

**WE WILL NOT** discriminate against nonmembers Karey Martinez and Robert Jefferson in the operation of our exclusive dispatch hall by refusing to refer them for employment.

**WE WILL** upon request, provide users of our dispatch hall with access to and copies of the JPLRC minutes as per our normal procedure.

**WE WILL** remove from our files any reference to our 6-month suspensions of Karey Martinez and Robert Jefferson from our dispatch hall that we imposed in 2016 and thereafter notify them in writing that this has been done and that their suspensions will not be used against them in any way by Local 23.

ILWU LOCAL 23

(Labor Organization)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's*



*Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572).- Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*

915 2nd Ave Ste 2948  
Seattle, WA 98174-1006

Telephone: (206)220-6300  
Hours of Operation: 8:15 a.m. to 4:45 p.m.

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.



# NOTICE TO MEMBERS



POSTED PURSUANT TO A SETTLEMENT AGREEMENT  
APPROVED BY A REGIONAL DIRECTOR OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT

in any manner interfere with the exercise of the foregoing rights by our employees and more specifically;

WE WILL NOT

fail or refuse to timely provide users with access to and copies of the JPLRC meeting minutes for the Port of Tacoma.

WE WILL

upon request, timely provide hiring hall users with access to and copies of the JPLRC meeting minutes.

International Longshore and Warehouse Union, Local 23  
(Union)

By: T. E. [Signature] BA  
(Title)

Date: 10-23-05

Case 19-CB-9269

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and