

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

ILWU LOCAL 23

and

Case 19-CB-212192

TOBY JACKSON, an Individual

PACIFIC MARITIME ASSOCIATION

and

Case 19-CA-215375

JIM TESSIER, an Individual

ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING

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 the charges filed against ILWU Local 23 (Respondent Local 23) by Toby Jackson (Jackson), an Individual, in Case 19-CB-212192, and against Pacific Maritime Association (Respondent PMA) by Jim Tessier (Tessier), an Individual, in Case 19-CA-215375, are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing which is based on these charges, is issued pursuant to § 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that Respondents have violated the Act as described below.

1.

(a) The charge in Case 19-CB-212192 was filed by Jackson on December 22, 2017, and a copy was served on Respondent Local 23 by U.S. mail on about December 27, 2017.

(b) The first amended charge in Case 19-CB-212192 was filed by Jackson on February 13, 2018, and a copy was served on Respondent Local 23 by U.S. mail on about February 15, 2018.

(c) The second amended charge in Case 19-CB-212192 was filed by Jackson on February 21, 2018, and a copy was served on Respondent Local 23 by U.S. mail on about February 23, 2018.

(d) The charge in Case 19-CA-215375 was filed by Charging Party Tessier on February 21, 2018, and a copy was served on Respondent PMA by U.S. Mail on about February 23, 2018.

2.

(a) At all material times, Respondent PMA, a State of California corporation with its principal place of business in San Francisco, California, and an 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 Local 23.



(b) In conducting their operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent 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.

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

3.

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

(b) At all material times, Respondent Local 23 has been a labor organization within the meaning of § 2(5) of the Act.

4.

(a) At all material times the following individuals have held the positions set forth opposite their respective names and have been agents of Respondent Local 23 within the meaning of § 2(13) of the Act, acting on its behalf:

Tawni Bailey	- Clerical Employee
D. Basher	- Labor Relations Committee Representative
Jed DiMaggio	- Labor Relations Committee Representative
Jared Faker	- Labor Relations Committee Representative
S. Faker	- Labor Relations Committee Representative
B. Graber	- Labor Relations Committee Representative
Perry ____ (LNU)	- Business Representative
Teresa Sammalisto	- Labor Relations Committee Representative
Perry Smith	- Labor Relations Committee Representative
John Stagg	- Labor Relations Committee Representative

R. Whitman - Labor Relations Committee Representative

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

Steve Bassett	- Labor Relations Committee Representative
W. Brebner	- Labor Relations Committee Representative
L. Jacobson	- Labor Relations Committee Representative
C. Jones	- Labor Relations Committee Representative
G. Kagey	- Labor Relations Committee Representative
M. Mrzena	- Labor Relations Committee Representative
A. Pick	- Labor Relations Committee Representative
Bob Roedel	- Labor Relations Committee Representative
S. Schuman	- Labor Relations Committee Representative
Blair Smith	- Labor Relations Committee Representative
Keith Snell	- Labor Relations Committee Representative
Joel Weber	- Labor Relations Committee Representative

5.

(a) At all material times, by virtue of § 9(a) of the Act, Respondent Local 23 has been the exclusive collective-bargaining representative of the following employees of Respondent 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 Local 23 and Respondent PMA (the Pacific Coast Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

(b) At all material times, Respondent PMA and Respondent Local 23 (collectively, Respondents) 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 a dispatch hall by longshoremen who are not members of Respondent Local 23 (the dispatch hall).

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

(d) At all material times since at least July 2014, Respondent PMA and Respondent Local 23, through the ILWU, have maintained an agreement and practice requiring that Respondent Local 23 be the exclusive source of referrals of Respondent's Unit members and non-member longshoremen for employment with Respondent PMA member employees at the Port.

(e) At all material times since at least July 2014, Respondents have maintained a Joint Port Labor Relations Committee ("JPLRC") comprised of equal representatives from each of Respondents, whose duties, among other things, are to maintain and operate the dispatching hall, to exercise control of the registered lists of the Port, and to investigate and adjudicate all grievances and disputes according to the procedure outlined in Section 17 of the Pacific Coast Agreement.

6.

(a) Class B registrants working out of the dispatch hall are required by Respondents to work a certain number of shifts, referred to as "availability requirements," in a defined period of time, referred to as "months" by Respondents.

(b) Class B registrants working out of the dispatch hall were required by Respondents to work 25 shifts during the June 2017 "month" time period of May 20 to June 23, 2017.

(c) Class B registrants working out of the dispatch hall were required by Respondents to work 20 shifts during the August 2017 "month" time period of July 22 to August 18, 2017.

(d) Class B registrants working out of the dispatch hall are permitted to provide certain excuses for required shifts not worked, to Respondent Local 23 in order to fulfill the monthly availability requirements.

7.

(a) On or about July 25, 2017, the JPLRC sent Jackson, a user of the dispatch hall, a citation for him to attend a JPLRC meeting to be held on August 17, 2017, at the dispatch hall, following a review of excuses for availability requirements described in paragraph 6(a) for the payroll month of June 2017 as described in paragraph 6(b).

(b) The citation described above in paragraph 7(a) did not identify a specific deficiency with regard to excuses proffered by Jackson for availability requirements.

(c) Jackson appeared at the August 17, 2017 JPLRC meeting pursuant to the citation described in paragraph 7(a).

(d) Jackson proffered a doctor's excuse note at the August 17, 2017 JPLRC meeting, signed by a physician on June 23, 2017, excusing Jackson from shift availability on June 17, 2017, and June 18, 2017.

(e) The JPLRC refused to accept the excuse note proffered by Jackson at the August 17, 2017 JPLRC meeting described in paragraph 7(d) because it had not been date-stamped by Respondent Local 23 by June 23, 2017.



(f) The JPLRC and Respondent Local 23 refused to permit Jackson to obtain a Local 23 date stamp on the excuse note described in paragraph 7(d) on or after August 17, 2017.

(g) Jackson would have met the July 2017 minimum shift availability requirements described above in paragraph 6 had Respondents accepted the excuse note described in paragraph 7(d).

(h) Respondents have permitted other Class B registrants to proffer excuse notes for availability requirements after the excuse note due dates.

(i) By the conduct described above in paragraphs 7(b), 7(e), 7(f), 7(g) and 7(h), Respondent Local 23 has breached the duty of fair representation owed to Jackson as a user of its exclusive dispatch hall.

(j) By the conduct described above in paragraphs 7(b), 7(e), 7(f), 7(g) and 7(h), Respondent Local 23 has breached the duty of fair representation it owes to Jackson.

## 8.

(a) On or about September 26, 2017, the JPLRC issued Jackson a probationary warning for first offense low hours after receiving credit for 24 of 25 required shifts for the month of June 2017 as described in paragraph 6(a); the warning additionally sequenced Jackson at the end of his registration pool or had his Class B to Class A advancement delayed by six additional months, whichever was greater.

(b) Respondent PMA engaged in the conduct described above in paragraph 8(a) through its active participation in the arbitrary decision by the JPLRC to issue a probationary warning to Jackson.

9.

(a) On or about October 9, 2017, the JPLRC sent Jackson a citation for him to attend a JPLRC meeting to be held on October 18, 2017, at the dispatch hall, following a review of excuses for availability requirements described in paragraph 6(a) for the payroll month of August 2017, as described in paragraph 6(c).

(b) The citation described in 9(a) did not identify a specific deficiency with regard to excuses proffered by Jackson for availability requirements.

(c) Jackson appeared at the October 18, 2017, JPLRC meeting pursuant to the citation described in paragraph 9(a).

(d) The JPLRC informed Jackson during the October 18, 2017, meeting that one of his doctor excuses was deficient because it excused him from work from August 22, 2017, through August 27, 2017, and from August 29, 2017, to August 31, 2017, instead of the month of July 2017.

(e) The JPLRC and Respondent Local 23 refused to permit Jackson to correct the excuse and rejected a proffered revised doctor's excuse note on or about October 18, 2017, which corrected the dates of the deficient excuse to the month of July 2017.

(f) Jackson would have met the shift availability requirements for the month of August 2017 had Respondents accepted the proffered revised doctor's excuse note described in paragraphs 9(d) and 9(e).

(g) Respondents have permitted other Class B registrants to proffer excuse notes for availability requirements after the excuse note due dates.



(h) By the conduct described above in paragraphs 9(b), 9(e), 9(f), and 9(g), Respondent Local 23 has breached the duty of fair representation it owes to Jackson.

(i) By the conduct described above in paragraphs 9(b), 9(e), 9(f), and 9(g), Respondent Local 23 has breached the duty of fair representation it owes to Jackson.

10.

(a) On or about October 27, 2017, the JPLRC issued Jackson a letter notifying him that he had been deregistered from the dispatch hall for a second offense for failing to meet the availability requirements due to low hours for the payroll month of August 2017.

(b) Respondent PMA engaged in the conduct described above in paragraph 10(a) through its active participation in the arbitrary decision by the JPLRC to deregister Jackson.

11.

(a) On or about December 28, 2017, Jackson, pursuant to the provisions of the Pacific Coast Agreement and Respondent Local 23's practice, requested in person and in writing that Respondent Local 23 provide him with copies of the following documents:

- (i) Minutes from the JPLRC meetings from May 2017 to November 2017 involving Jackson; and
- (ii) Minutes from the JPLRC meetings from April 2016 to August 2016 involving Jackson.

(b) Jackson requested the information described in paragraph 11(a) in order to investigate whether the JPLRC had properly issued him the warning and deregistered him.

(c) Respondent Local 23's request for information form completed by Jackson on December 28, 2017, indicated that the information would be available within 2-3 weeks of the request being submitted.

(d) On January 19, 2018, April 5, 2018 and July 6, 2018, Respondent Local 23 provided certain documents to Jackson responsive to Jackson's request as described in paragraph 11(a).

(e) The documents provided to Jackson as described in paragraph 11(d) were either in draft form, contained incomplete information, and/or were redacted.

(f) Since on or about December 28, 2017, Respondent Local 23 has refused to provide Jackson with all of the, or the complete, documents requested as described in paragraph 11(a).

(g) Respondent Local 23 unreasonably delayed providing certain documents requested as described paragraph 11(a).

(h) By the conduct described above in paragraphs 11(e), 11(f) and 11(g), Respondent Local 23 has breached the duty of fair representation owed to Jackson as a user of its exclusive dispatch hall.

(i) By the conduct described above in paragraphs 11(e), 11(f) and 11(g), Respondent Local 23 has breached the duty of fair representation it owes to Jackson.



12.

By the conduct described above in paragraphs 7(b), 7(e), 7(f), 7(g), 7(h), 7(i), 7(j), 9(b), 9(e), 9(f), 9(g), 9(h), 9(i), 11(e), 11(f), and 11(g), Respondent Local 23 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.

13.

By the conduct described above in paragraphs 7(b), 7(e), 7(f), 7(g), 7(h), 7(i), 7(j), 8, 9(b), 9(e), 9(f), 9(g), 9(h), 9(i), and 10, Respondent PMA has been interfering, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

14.

By the conduct described above in paragraphs 8 and 10, Respondent Local 23 has been restraining and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(b)(2) of the Act.

15.

By the conduct described above in paragraphs 8 and 10, Respondent PMA has been discriminating in regard to hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(1) and (3) of the Act.

16.

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

**WHEREFORE**, as a part of the remedy for the unfair labor practices alleged in this Consolidated Complaint, the General Counsel seeks an Order holding Respondents jointly and severally liable for all remedies flowing from the issuance of the warning to Jackson described in paragraph 8 and Jackson's deregistration as described in paragraph 10.

#### **ANSWER REQUIREMENT**

Respondents are notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be **received by this office on or before January 31, 2019, or postmarked on or before January 30, 2019.** Respondents 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



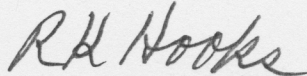
a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing 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 complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT, beginning at 9 am on **the 21<sup>st</sup> day of May, 2019**, in the James C. Sand Hearing Room of the Jackson Federal Building, 915 Second 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, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this 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 17<sup>th</sup> day of January, 2019.



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RONALD K. HOOKS  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 19  
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Attachments