

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION

and

Cases 19-CD-269624
19-CD-269637

INTERNATIONAL LONGSHORE AND WAREHOUSE
UNION, LOCAL 19

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT LODGE 160,
LOCAL LODGE 289

and

SSA TERMINALS, LLC

and

PACIFIC MARITIME ASSOCIATION, Party in Interest

Helena Fiorianti, Esq., for the General Counsel
Eleanor Morton and Lindsay Nicholas, Esq.
(Leonard Carder LLP), San Francisco, CA, for the Respondent
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DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried virtually by remote Zoom technology on September 7 through 10, and December 6, 2021. The consolidated complaint alleges an unfair labor practice violation of Section 158(b)(4)(ii)(D) of the National Labor

Relations Act (the Act)¹ based on the efforts of the Respondents International Longshore and Warehouse Union and International Longshore and Warehouse Union Local,19 (collectively ILWU) to acquire maintenance and repair work (M&R work) from employees of SSA Terminals, LLC (the Employer) represented by the International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289 (IAM) at the Port of Seattle. The complaint specifically premises the alleged violation on ILWU’s effort to acquire the disputed M&R work by pursuing a contractual claim with Party-in-Interest, the Pacific Maritime Association (PMA), thereby nullifying the National Labor Relations Board’s (the Board) earlier Decision and Determination in *International Association of Machinists and Aerospace Workers, District Lodge No. 160 and SSA Terminals, LLC*, 369 NLRB No. 126 (2020) (the Section 10(k) award).²

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, ILWU, IAM, PMA, and the Employer, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Delaware corporation, operates a marine terminal at the Port of Seattle, Washington, where it annually derives gross revenues in excess of \$500,000, and purchases and receives goods valued in excess of \$50,000 from points outside the State of Washington. ILWU admits, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and ILWU and IAM are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Parties*

1. PMA

The West Coast ports handle over 50 percent of the nation’s containerized imports and exports.” *U.S. v. PMA*, 229 F. Supp. 2d 1008 (N.D. Cal. 2002). “The domestic business impact of this trade is more than \$2 trillion annually, or 12.5 percent of U.S. GDP.”³ In 1938, the Board certified the multi-employer group that is now the PMA. The Board found that the integrated nature of the industry and history of bargaining struggles and conflict made a coastwise, multi-employer unit the appropriate one and expressly rejected a single employer or facility-by-facility approach. *Shipowners’ Ass’n of the Pac. Coast*, 7 NLRB 1002, 1022-24 (1938), petition for review dismissed

¹ 29 U.S.C. §§ 151-169.

² ILWU’s contends that the Section 10(k) decision “was null and void ab initio” because it lost a quorum when then-Chairman Ring recused himself from the three-member panel. The Board would disagree. See *New Process Steel v. NLRB*, 560 U.S. 674, 688 (2010) (“the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified.”) See also *D.R. Horton, Inc.*, 357 NLRB 2277, 2277 n.1 (2012), enfd. in rel. part, 737 F.3d 344 (5th Cir. 2013); *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 127-128 (3d Cir. 2017).

³ See PMA 2020 Annual Report. (R. Exh. 21 at 35).

sub nom. *AFL v. NLRB*, 103 F.2d 933 (D.C. Cir. 1939), *aff'd*, 308 U.S. 401 (1940) (certifying unit of “all the workers employed at longshore labor in the Pacific Coast ports of the United States”).

PMA consists of 60 members and is controlled by an 11-member Board of Directors and Coast Steering Committee, both of which include the Employer. Pursuant to the Board’s 1938 order, PMA’s multi-employer group includes both “indirect employers” (i.e., ocean carriers or domestic carriers that transport cargo to and from the West Coast) and “direct employers” (i.e., terminal operators, stevedoring companies, maintenance and repair companies) of longshore labor. As the Board explained in a case affirming its earlier decision:

[E]mployers in the shipping industry on the Pacific coast have a direct and vital interest in the terms and conditions of employment for longshoremen. The history of labor relations in that industry has been fraught with extraordinary problems, which have extended beyond the customary employer-employee relationship. As the Board pointed out in 1938, the statute defines the term “employer” to include any person acting as an agent for an employer “directly or indirectly.” All members of PMA have given that agency the authority to act as their agent and PMA, in turn, is clearly the agent of employers employing longshoremen. In this particular industry the community of interest of the participating employers is unmistakable.

ILWU Local 13 (Cal. Cartage), 208 NLRB 994, 996-97 (1974).

2. *ILWU*

ILWU is the collective-bargaining representative of a coastwide bargaining unit consisting of longshore workers, marine clerks and guards at the 29 ports on the West Coast of the United States from Bellingham, Washington to San Diego, California. Nine of those ports include or consist entirely of container terminals: Port of Seattle, Port of Tacoma, Port of Portland, Port of Oakland, Port of San Francisco, Port of Los Angeles, Port of Long Beach, Port of San Diego, and Port Hueneme. Local 19 is the ILWU affiliate that represents longshore workers in the coastwise unit at the Port of Seattle.

Historically, ILWU members have performed all stevedoring work on the West Coast for PMA members, including the Employer. They tie-up ocean vessels, operate cranes to load and unload container cargo from and onto ships, operate yard tractors to transport containers between docks and storage yards, and operate yard tractors to move cargo within the storage yards. ILWU marine clerks record the movement of cargo into and out of the terminal and on the dock and yard. ILWU members also maintain and repair (M&R work) the equipment used by the stevedores to move, including portainer cranes, transtainers, multiple types of gantry cranes, side-picks, top handlers, trucks, forklifts, containers and chassis. Others perform mechanic work in addition to performing other longshore duties. Some are registered mechanics who perform M&R exclusively or almost exclusively; others perform mechanic work in addition to other longshore duties.⁴

⁴ R. Exh. 43.

As of December 2020, PMA members employed nearly 15,000 ILWU members, including casual workers who typically work part-time, at the West Coast ports. Since 2002, when ILWU and PMA agreed to the introduction of widespread use of technology at West Coast ports, and 2008, when they agreed to allow automation at West Coast ports, the registered workforce has
 5 grown by 42 percent and the number of ILWU mechanic shifts per container box increasing in various ports by 36 percent.⁵

From 2008 to 2020, the number of ILWU mechanic shifts performed for PMA members, including the Employer, steadily grew from 0 in 2007 to 25,501 shifts in 2019.⁶ In contrast,
 10 containers loaded and unloaded by PMA members during the same period increased by approximately five percent. As of August 2021, 2,692 ILWU members, mostly full-time, had been assigned to perform M&R work at West Coast ports, including Pier 91 at the Port of Seattle.⁷ Other West Coast ports where ILWU members perform M&R work include the jointly managed
 15 Port of Tacoma, Oakland, Coos Bay, Port Angeles, Longview, Portland, Port Hueneme, and San Diego.

3. *IAM*

IAM's Local 160 is a Seattle-based affiliate that represents the Employer's mechanics at
 20 Terminals 5, 18, and 30 in Seattle. Until 2008, all of the Employer's work in the Ports of Seattle and Tacoma was performed by IAM. The Employer and its predecessors and affiliates have had collective bargaining agreements with the IAM for M&R work on equipment owned or leased by the Employer in the Puget Sound area for decades.⁸ Currently, the Employer has a collective bargaining agreement with IAM, which also covers the Puget Sound.⁹ That agreement states, in
 25 part, that IAM-represented employees shall perform "all M&R work" and repair all equipment owned or leased by the Employer in the Puget Sound area. *Id.* Prior to July 16, 2020, however, IAM had never represented employees who performed M&R work for the Employer at Terminal 5 in Seattle.

4. *The Employer*

The Employer operates marine facilities, including container terminals, around the world. Container terminals accommodate large container ships with container cranes. The Employer's
 35 services include the loading and unloading of containers from ships and trucks, and the maintenance and repair of the equipment used in these operations.

Stevedoring work at the Employer's container terminals is performed by ILWU members. Its West Coast operations include Terminals 5, 18, and 30, and Pier 91 at the Port of Seattle. At
 40 West Coast ports, the Employer employs either ILWU or IAM locals to maintain and repair cargo-handling equipment. In the Port of Seattle, following a similar Section 10(k) proceeding, ILWU-represented workers have performed M&R work for the Employer at Pier 91. See *Machinists*

⁵ R. Exh. 21 at 35.

⁶ Jt. Exh. 3 at 289-90.

⁷ R. Exh. 22-28.

⁸ Jt. Exh. 73 at 18-19.

⁹ CP Exh. 8.

Lodge 160 (SSA Marine, Inc.), 357 NLRB 126 (2011) (awarding work at Terminal 91 in Seattle to ILWU and incorporating by reference a prior vacated decision in *SSA Marine, Inc.*, 355 NLRB 23 (2010). At Terminals 18 and 30, however, the Employer employs mechanics represented by IAM locals.

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Edward DeNike is the Executive Vice President of the Employer's parent company, SSA Marine, Inc. (SSA Marine), and has been involved in the management of stevedore companies and marine terminal operations for over 53 years. DeNike has been the Employer's Chief Operating Officer since its inception in 1999. The Employer and SSA Marine, have maintained collective-bargaining agreements with the IAM to perform M&R work in the Puget Sound area dating back to the 1940s. The current agreement between the IAM and the Employer began on July 1, 2017, and expires on June 30, 2023.¹⁰

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B. *The ILWA-PMA Agreement*

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PMA, on behalf of itself and its member companies, negotiates the collective-bargaining agreement with ILWU (the ILWU-PMA agreement). The ILWU-PMA agreement consists of two documents: the Pacific Coast Longshore Contract Document (PCLCD), which covers longshore workers in the coastwide, multiemployer bargaining unit, and the Pacific Coast Clerks Contract Document (PCCCD), which covers marine clerks. The agreement is renegotiated approximately every three years. PMA administers those agreements and provides payroll services for its employer-members.

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In 1978, ILWU and PMA agreed that the maintenance "of containers of any kind and of chassis, and the movement incidental to such maintenance and repair," and "of all stevedore cargo handling equipment." would be performed by ILWU-represented workers.¹¹ The PMA Employers who were doing business with non-ILWU members could continue. During the 2008 negotiations, ILWU agreed to give PMA Employers the right to automate operations and introduce new technologies. In exchange, the PMA Employers agreed to assign ILWU members to perform additional M&R on equipment used to handle cargo and load and unload ships, including electronics and technical equipment. The agreement did not apply to "red-circled" facilities, i.e., those where non-ILWU members already performed M&R work. However, it designated the work for ILWU members at all existing and new facilities. It was also agreed that vacated facilities later occupied would be considered "new marine terminal facilities."

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The most recent ILWU-PMA agreement became effective July 1, 2019, and expires July 1, 2022.¹² The ILWU-PMA agreement is administered by the Coast Labor Relations Committee (CLRC). The CLRC is comprised of PMA members, including the Employer, assisted by PMA staff on one side, and ILWU officers on the other. On the employer side of the table, PMA's chief executive officer chairs a bargaining committee consisting of PMA members, assisted by PMA staff. Any final agreement with ILWU must be approved by PMA's Board of Directors. On the union side of the table, ILWU's President chairs a bargaining committee consisting of representatives elected by ILWU locals based on the West Coast, assisted by staff and counsel.

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¹⁰ Jt. Exh. 3, 35, 56, 81; CP Exh. 15.

¹¹ Jt. Exh. 4(a) at Section 1.71.

¹² Jt. Exh. 4(a)-(b) § 1.1.

Agreements reached must be ratified by the membership. The ILWU-PMA agreement includes the following pertinent provisions:

5 1.51 The individual employer shall not be deemed to be in violation of the terms of the Contract Document assigning work to longshoremen if he assigns work to a nonlongshoreman on the basis of a good-faith contention that this is permitted under an exception provided for herein.

10 1.52 Should there be any dispute as to the existence or terms of any exception, or should there be no reasonable way to perform the work without the use of nonlongshoreman, work shall continue as directed by the employer while the dispute is resolved hereunder.

15 1.53 Any such dispute shall be immediately placed before the Joint Coast Labor Relations Committee by the party attacking any claimed exception or proposing any change in an exception or any new exception. The Joint Coast Labor Relations Committee decision shall be promptly issued and shall be final unless and until changed by the parties or that Committee. The Committee may act on the grounds set forth in Section 1.54 or on any other grounds. Both parties agree that its position on such a dispute shall in no case be supported by, or give rise to threat, restraint or coercion.

20 1.54 Any such dispute that is not so resolved by the Committee within 7 days after being placed before it, may be placed before the Coast Arbitrator on motion of either party. The Arbitrator shall decide whether an exception should be upheld and may do so on the following grounds only:

25 (a) Nonlongshoreman were assigned the skilled or unskilled labor in dispute under practices existing as of January-August 10, 1959, arrived at by mutual consent and as thereafter modified or defined by the parties or the Joint Coast Labor Relations Committee, or;

30 (b) Cranes are not available on a bare boat basis and reasonable bona fide efforts to obtain them have been made and there is no reasonable substitute crane available.

35 1.7 This Contract Document shall apply to the maintenance repair of containers of any kind and of chassis, and the movement incidental to such maintenance and repair. (See Section 1.81.)

40 1.71 This Contract Document shall apply to the maintenance and repair of all stevedore cargo handling equipment. (See Section 1.81.)

45 1.72 It is recognized that the introduction of new technologies, including fully mechanized and robotic-operated marine terminals, necessarily displaces traditional longshore work and workers, including the operating, maintenance and repair, and associated cleaning of stevedore cargo handling equipment. The parties recognize robotics and other technologies will replace a certain number of equipment operators and other traditional longshore classifications. It is agreed that the jurisdiction of the ILWU shall apply to the maintenance and repair of all present and forthcoming stevedore cargo handling equipment in

accordance with Sections 1.7 and 1.71 and shall constitute the functional equivalent of such traditional ILWU work. It is further recognized that since such robotics and other technologies replace a certain number of ILWU equipment operators and other traditional ILWU classifications, the pre-commission installation per each Employer's past practice (e.g., OCR, GPS, MODAT, and related equipment, etc., excluding operating system, servers, and terminal infrastructure, etc.), post-commission installation, removal, maintenance and repair, and associated cleaning of such new technologies perform and constitute the functional equivalent of such traditional ILWU jobs. (See Section 1.81 and Letter of Understanding - Clarification and Exceptions to ILWU Maintenance and Repair Jurisdiction.)

1.73 The scope of work shall include the pre-commission installation per each Employer's past practice (e.g., OCR, GPS, MODAT, and related equipment, etc., excluding operating system, servers, and terminal infrastructure, etc.), post-commission installation, removal, maintenance and repair, and associated cleaning of all present and forthcoming technological equipment related to the operation of stevedore cargo handling equipment (which term includes containers and chassis) and its electronics, that are controlled or interchanged by PMA companies, in all West Coast ports. (See Section 1.81 and Letter of Understanding - Clarification and Exceptions to ILWU Maintenance and Repair Jurisdiction.)

1.731 In accordance with Sections 1.7, 1.71, 1.72, and 1.73, the maintenance and repair work on all new marine terminal facilities that commence operations after July 1, 2008, shall be assigned to the ILWU. New marine terminals shall include new facilities, relocated facilities, and vacated facilities. (See Section 1.81 and Letter of Understanding - Clarification and Exceptions to ILWU Maintenance and Repair Jurisdiction.)

1.74 PMA members and their affiliated companies shall not engage in subterfuge to avoid their maintenance and re- pair obligations under this Agreement to the ILWU. Containers and chassis, owned, leased, or interchanged by a carrier controlling, controlled by or under common control with an agency company that is a PMA member shall be deemed to be owned, leased or interchanged by that PMA member company when that equipment is on a dock.

1.75 All on dock activities associated with the plugging and unplugging of vessels for cold ironing or its equivalent shall be performed by ILWU Longshore Division employees, except for US Flag vessels and crews as to their work on the vessel, as may be contractually assigned to them as of July 1, 2008. (See Section 1.81 and Letter of Understanding - Clarification and Exceptions to ILWU Maintenance and Repair Jurisdiction.)

1.76 The Employers shall assign work in accordance with Section 1 provisions and as may be directed by the CLRC or an arbitration award, which the Employers shall defend in any legal proceeding. PMA shall participate along with the individual Employers assigning the work in any legal proceeding.

1.81 ILWU jurisdiction of maintenance and repair work shall not apply at those specific marine terminals that are listed as being "red-circled" in the July 1, 2008 Letter of

Understanding on this subject. Red-circled facilities, as they are modified/upgraded (e.g., introduction of new technologies), or expanded, while maintaining the fundamental identity of the pre-existing facility, shall not result in the displacement of the recognized workforce and shall not be disturbed, unless as determined by the terminal owner or tenant.

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1.811 This Contract Document shall apply to all movement of containers and chassis under one of the following conditions: (a) when containers or chassis are moved on a dock from a container yard to or from a storage area adjacent to a maintenance and repair facility on the same dock, such movement will be made by ILWU personnel, and (b) when an employer does not use a storage area adjacent to a maintenance and repair facility and the movement is directly between a container yard and a maintenance and repair facility on the same dock, such movement will be made by ILWU personnel. If there is objection by the union having contractual rights at such facility, (a) above shall be applied and ILWU personnel shall move the containers or chassis to a storage area adjacent to a maintenance and repair facility.

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This Section 1.811 does not apply to: (a) movements of containers or chassis to or from roadability check stations in the container yard for repairs required for over the road haulage; or (b) movements for emergency repair and emergency maintenance of laden refrigerated containers.

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C. Automation at Container Terminals

(1) The Pace of Automation¹³

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Automation entails the replacement of equipment operators in the unloading and loading of container ship cargo with robotic and similar technologies, eliminating the need for workers to operate cargo handling equipment including cranes, transtainers, bomb carts, gantry cranes, to move cargo by automated systems. Process automation is the implementation of optical character recognition (OCR) and radio frequency identification (RFID). These processes include gate entry and exit controls, vehicle and container identification, radiation scanning, driver identification, and routing within the terminal. Process automation eliminates marine clerk jobs; robotic technologies eliminate dockside, yard and landside jobs.¹⁴

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¹³ ILWU called John O’Grady, an expert in labor market economics, to testify regarding automation in the container ship industry. O’Grady’s testimony essentially reflected his review and analysis of peer-reviewed literature, industry reports, and data available from public entities. (R. Exh. 41.) The General Counsel challenged his conclusions on the grounds that his report did not focus on marine clerks or the performance of M&R work, he did not interview port employers, and overlooked data specific to the West Coast. O’Grady, however, credibly testified that conducting interviews was not the “preferred research methodology” in his profession because it typically results in biased responses of little to no evidentiary value in objectively identifying industry trends. (Tr. 673-674, 762.) Therefore, I credited O’Grady’s opinion, but only to extent that it was supported by the trade information and reporting that he relied upon in his report. See *Meijer, Inc.*, 329 NLRB 730, 734 (1999) (relying on, inter alia, opinion of labor economist reached based on survey of existing research). See also *In Allen v. Hylands, Inc.*, 773 Fed. Appx. 870, 873 (9th Cir. 2019) (toxicology expert’s opinion admissible where “derived from a literature review citing to several peer-reviewed sources in his field”); *In Larson v. Kempker*, 414 F.3d 936, 941 (8th Cir. 2005) (lower court erred by excluding expert opinion formed from review of other experts’ opinions).

¹⁴ R. Exhs. 7, and 41 at 15.

The automation of ports began in the 1990s. As reported in numerous Journal of Commerce articles over the past 15 years, automation has grown gradually throughout the world. Factors in transitioning to port automation include labor costs, widening of the Panama Canal creating new inter-port competition for cargoes from Asia, and governmental pressures to replace traditional equipment with so-called “green” technologies are all factors driving automation. PMA Annual Reports also mention automation as a strategy to lure additional container business.¹⁵

By 2021, there were approximately 40 partially or fully automated terminals worldwide. Twenty terminals have installed equipment to automate some systems and processes during the past six years. Although the Employer operates ports worldwide, it has semi-automated only two terminals – Manzanillo International Terminal in Panama (2015) and Tuxan Port Terminal in Mexico (2016).¹⁶ Other PMA members have also automated their container terminals throughout the world.¹⁷

Currently, only three West Coast container terminals have automated or are expected to automate their equipment operations. The TraPac terminal in the Port of Los Angeles semi-automated in 2016. Long Beach Container Terminal fully automated its terminal in 2017. In 2019, the Maersk Terminal began the transition of automating its machinery and equipment in the Port of Long Beach.¹⁸ Recently, Total Terminals, Inc. announced that it would be fully automating its terminal at the Port of Long Beach.¹⁹ As explained by the industry reports and studies, however, the fact that more West Coast container terminals have not automated can be attributed to the volume of container traffic into and out of the ports further north.²⁰

(a) McKinsey & Co.

In 2018, global management consulting firm McKinsey & Co. surveyed 40 participants from the United States, China, Europe, the Middle East and Singapore. The companies were leading practitioners from shipping companies, automation equipment suppliers, port-asset management firms, and academic experts. In the ensuing report, McKinsey & Co. explained that automation in port operations was becoming a trend, with a twist:

Executive Summary

Although ports have adopted automation more slowly than comparable sectors, notably mining and warehousing, the pace is now starting to accelerate. Automated

¹⁵ The articles focused on the benefits of automation, but did not explore at length the complexities and costs involved in such transitions. (R. Exhs. 12 at 2, 15 at 2, 13 at 3-4, 46 at 3, 47 at 1, 48 at 1-2, 49 at 1-3, 50 at 2, 52 at 1-2, 53 at 1-2, 55 at 1-3, 58 at 2, 61 at 1-2.)

¹⁶ R. Exhs. 36 at 14, and 41 at 13-14.

¹⁷ R. Exhs. 21 at 8, and 36 at 14-15.

¹⁸ R. Exh. 36 at 14.

¹⁹ This finding is based on Williams’ unrefuted testimony. (Tr. 190-191.)

²⁰ O’Grady concluded, based on industry reports, that competitive pressures will ultimately lead the Port of Seattle and other West Coast container terminals to invest in automation. (Tr. 444; R. Exh. 41 at 9-10, 16, 22.) As explained in the following industry publications, however, that conclusion is undermined by cost considerations.

ports are safer than conventional ones. The number of human-related disruptions falls, and performance becomes more predictable. Yet, the up-front capital expenditures are quite high, and the operational challenges – a shortage of capabilities poor data, solid operations, and difficulty handling exceptions – are very significant. A McKinsey survey indicates that while operating expenses decline, so does productivity, and the returns on invested capital are currently lower than the industry norm.

Nonetheless, successful automated ports show that careful planning and management can surmount these difficulties: operating expenses could all by 25 to 55 percent and productivity could rise by 10 to 35 percent. And in the long run, these investments will lead the way toward a new paradigm—call it Port 4.0—the sift from asset operator to service orchestrator, part of a larger transition to Industry 4.0, or digitally enabled efficiency gains throughout the world economy. Port 4.0 will generate more value for port operators, suppliers, and customers alike, but that value isn’t proportionally distributed across ports and their ecosystems. Innovative business models and forms of collaboration will be required to realize this vision.

The difficult economics of port automation

The first automated container port was developed in Europe in the early 1990s. Since then, many ports – more than 20 in the past six years—have installed equipment to automate at least some of the processes in their terminals (see sidebar, “What is port automation?”). Almost 40 partly or fully automated ports now do business in various parts of the world, and the best estimates suggest that at least \$10 billion has been invested in such projects. The momentum will probably accelerate: an additional \$10 billion to \$15 billion is expected over the next five years.

On the face of it, container ports seem ideal places to automate. The physical environment is structured and predictable. Many activities are repetitive and straightforward. They generate vast amounts of readily collected and processed data. Better still, the value from automation includes not only cost savings but also performance and safety gains for ports and the companies that do business there.

Nonetheless, ports are moving more slowly than sectors with comparable complexities (Exhibit 1), in part because the economics of automating them haven’t lived up to expectations. In the mining sector, which is also process driven and asset intensive, some early movers in automation have improved costs and productivity by 20 to 40 percent. In the warehousing business, the improvements have been estimated at 10 to 30 percent. Manufacturers of cars and trucks have also successfully automated complex processes, and some of the equipment they use, such as automated guided vehicles and materials-handling robots, are highly relevant for ports.

Yet our recent survey of industry leaders indicates that the real-world performance of most automated ports doesn’t increase sufficiently in every material way. Safety improves, the number of human-related disruptions (such as shift changes) falls significantly, and performance becomes more predictable. But practitioners

responding to the survey think that these ports, especially fully automated ones, are generally less productive than their conventional counterparts. The return on invested capital of assets at some automated ports is falling short by up to one percentage point from the industry norm of about 8 percent.²¹

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More than half of the participants expected the partial or total conversion to automation of at least 50% of the top 50 existing ports (brownfield projects) by 2023. With respect to previously undeveloped ports (greenfield projects), 80% of the participants expected at least half of such projects to be semi- or fully automated. The report tempered those expectations, however, cautioning port operators and investors about the costs and impact on productivity at automated terminals:

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Up-front capital outlays are high. We estimate that to justify these investments, the operating expenses of an automated greenfield terminal would have to be 25 percent lower than those of a conventional one or productivity would have to rise by 30 percent while operating expenses fell by 10 percent

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The respondents to McKinsey's survey expect automation to cut operating expenses by 25 to 55 percent and to raise productivity by 10 to 35 percent, in line with our estimates of what might be possible. But today these expectations generally aren't realized, especially in fully automated projects. Our survey indicates that operating expenses at automated ports do indeed fall, but only by 15 to 35 percent (Exhibit 2). Worse, productivity actually falls, by 7 to 15 percent. An executive of a global port operator told us, for example, that at fully automated terminals, the average number of gross moves per hour for quay cranes—a key indicator of productivity—is in the low 20s. At many conventional terminals, it is in the high 30s. With numbers like these, automation can't overcome the burden of the up-front capital expenditures.

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(b) Moody's Investor Services

In a June 2019 industry report, Moody's Investor Services issued a similar mixed assessment of the global prospects for automating ports.²²

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In the last 10 years, a growing number of US and international ports have implemented semi or fully automated container terminal systems, looking to gain operating efficiencies and competitive advantages. We expect more ports to implement automation over the next decade. Automation can lower operating costs, increase throughput capacity, improve service reliability and reduce emissions. However, significant capital investment, uncertain productivity gains, potential disruptions to active operations and labor concerns are key risks.

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²¹ R. Exh. 37 at 2.

²² Moody's tracks the port sector regularly to support its assessment of the credit risk associated with container port operators when they access capital markets to finance their investments in equipment.

Automated terminals have 40%-70% lower labor requirements, one of the most significant expenses for operators. However, peak productivity does not always exceed conventional facilities, and there is significant political and social risk associated with labor unions due to the impact on employment.

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* * *

Adoption of automation is growing globally. While adoption of automation is relatively low globally, it represents an opportunity for ports to address multiple challenges.

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However, it can restrict flexibility, is expensive and potentially disruptive to implement. There are also risks that automation will not deliver the benefits that terminals expect.

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* * *

Automated terminals have 40%-70% lower labor requirements, one of the most significant expenses for operators

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Labor accounts for more than 50% of the cost structure of a conventional terminal operator. In most developed countries, port labor is unionized. In the US, port labor costs have historically risen annually in excess of inflation and continue to do so based on current wage schedules. Incorporating automation into container terminal operations can improve labor productivity, commonly measured as man- hours per lift, by more than 50%, depending on the mix of automated and conventional handling in the operation.

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Automation replaces labor-intensive processes with capital-intensive ones, changing the variable costs associated with the daily hiring of longshoremen into fixed costs associated with robotic handling equipment. This increases fixed costs and can reduce financial flexibility, particularly because the capital outlay is significant. However, in contrast to annually escalating labor costs, the capital/ equipment costs are fixed and amortized over time, and over volume, which affords better predictability of long-term operating costs and better scalability (see [report's] Exhibit 1). Operating cost predictability is also partially attributable to lower performance variability in automated operations, with robotic processes less subject to accident, error, fatigue and other variables.²³

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Moddy's described various benefits to port automation: consistent, reliable productivity; improved asset utilization and the ability to add capacity without degrading productivity; lower emissions with electric vehicles replacing diesel-powered vehicles; and, although the process can expect initial challenges due to periodic refinement, the system can be incrementally modified to resolve issues as necessary.

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On the other hand, efforts to automate can expect political risks associated with opposition to automation due to opposition by organized labor, and state and local governments that regulate and financially port operations. Automation is expensive and potentially disruptive to implement.

²³ R. Exh. 36 at 1-3.

Costs are substantial and there are conflicting studies as to whether the cost of automating is worth the cost. In some cases, it results in reduced productivity.²⁴

Moody's also explained that container terminal automation, while growing globally, was "still quite low" as of 2018 – only 3% of 1,300 terminals worldwide. In its report of "Existing and planned automated container terminals," Moody's listed only five in the United States, including the TraPac and Long Beach Container Terminals on the West Coast.²⁵

(2) Potential Loss of ILWU-Unit Jobs from Automation

The 2002 PCLCD, OCR and RFID technologies implemented at many West Coast ports, including the Employer's four largest terminals, have eliminated clerk positions.²⁶ At the Ports of Los Angeles and Long Beach, the following equipment has also been replaced by robots: straddle carrier, rubber tired gantry, front-end loader, reach stacker, rail-mounted gantry, portainer (ship to-shore crane, yard truck (UTR, hustler truck or tractor), and port forklift truck. As a result, several positions previously performed by ILWU-represented employees have been eliminated: tractor drivers, transtainer operators, side-pick operators, top-pick operators, swingmen, signal jobs, and pin jobs.²⁷

Going forward, the Employer and other PMA members have the right to automate cargo loading and unloading operations. Should the Employer or any other PMA member transition in the future to semi-automate its equipment, 30% to 40% of the ILWU-unit's equipment operators would likely be eliminated. In the case of full automation, the displacement of equipment operators would range from 30% to 90%.²⁸

Although the Employer has automated the systems and processes at its West Coast facilities, it has semi-automated equipment in only one instance. At its three Port of Long Beach terminals, the Employer has approximately 30 ship-to-shore cranes, the primary mechanism of marine terminal productivity. In 2015, it installed a semi-automatic crane and assist mechanism for one ship-to-shore crane. That installation, however, did not result in the elimination of crane drivers.²⁹

²⁴ R. Exh. 36 at 5-12.

²⁵ R. Exh. 36 at 14-15.

²⁶ DeNike has publicly touted the automation of West Coast container terminals with OCR and RFID equipment as a necessary reduction in costs. (Tr. 583-84, 621, 790-91.)

²⁷ The loss of ILWU jobs from automation at the Ports of Los Angeles and Long Beach is undisputed. (Tr. 187, 202, 208-09, 504-05; R. Exh. 6.)

²⁸ O'Grady estimated an average overall reduction in labor costs of 53% based on the elimination of the following ILWU unit positions: container handler – 100%; UTR/tractor driver – 97%; and clerk/supervisors – 80%. Positions that would remain included: supercargo; gearman; foreman; crane operator; signalmen; and swingmen/conemen. (R. Exh. 41 at 18-24; Tr. 444-46.) Based on his assumption that automation will accelerate significantly, O'Grady concluded that over 30% of ILWU-unit jobs would be displaced over the next five to ten years. After ten years, that figure would increase to a level between 50% and 70%. (R. Exh. 42 at 24-25; Tr. 445.)

²⁹ In a September 2015 Journal of Commerce article, DeNike alluded to the PCLCD's requirement that two drivers be assigned to each crane for four hours-on, four hours-off arrangement, will continue: "We're not trying to reduce the number of crane drivers." (R. Exh. 44.)

Notwithstanding the potential threat to equipment operator positions posed by automation, there is no evidence, beyond the four PMA members that have automated or are in the process of automating, that other terminal operators will do so within the next five to ten years. The obstacle is cost since, in order “to achieve the desired return on investment to automation in a reasonable amount of time,” a terminal needs to realize an annual volume of at least 1 million containers (TEUs).³⁰ As the following PMA records show, automation in systems and processes at West Coast ports, as well as automation at the Ports of Los Angeles and Long Beach resulted in a decrease in ILWU-represented active longshore workers and mechanics between 2008 and 2010, and again between 2010 and 2015. By 2020, however, the total number of active longshore workers and clerks increased to a level surpassing the 2010 levels, when the effects of automation kicked in.

Year	Longshore	Clerks	Total	Increase / Decrease
2005	10,106	1,888	11,994	-
2008	11,582	1,898	13,480	+1,486
2010	11,031	1,686	12,717	-763
2015	10,535	1,638	12,173	-544
2020	11,084	1,646	12,730	+557

Moreover, between 2007 and 2019, the number of ILWU-represented mechanics at West Coast ports increased by 31.82 percent, and the number of mechanic shifts per container box increased by 36 percent, including years when volume decreased. During a similar period – 2007 to 2020 – the number of ILWU-represented mechanic shifts worked for the Employer at the Ports of Oakland, Seattle and Tacoma increased by 31.82 percent.³¹

C. The Disputed Work

In the 2008 agreement, Terminal 5 was designated as a “red-circled” facility because it was operated by American President Lines (APL), a PMA Employer that used IAM-represented employers to perform M&R work. However, Terminal 5 lost its “red-circle” status and reverted to “new” status after APL vacated that facility in 2014.³²

In 2018, the Employer leased Terminal 5 from the Northwest Seaport Alliance. The Northwest Seaport Alliance consists of the Ports of Seattle and Tacoma. Initially, the lease was

³⁰ The article also reported that the Employer’s \$400,000 investment in the semi-automated crane had not yet reached the expected level of productivity during its first four months in use. *Id.* at 3. In contrast, the Ports of Los Angeles and Long Beach do not have that problem. Although he recalled PMA’s insistence that during 2008 bargaining that its members had the right to automate, Bartelson’s distinction between the Port of Seattle and the Ports of Los Angeles and Long Beach explained the likely reason why the Employer has yet to automate the Port of Seattle: “[Y]ou could add up, you know, Oakland, Seattle, Tacoma, and combine it together, and it would not be what Los Angeles and Long Beach, moves through its (indiscernible) volumes for instance.” (Tr. 507-08.)

³¹ *Jt. Exh. 98-99.*

³² *J. Exh. 56 at 2; J. Exh. 100 at 2.*

short term while the terminal was being modernized. In accordance with the PCLCD, the Employer hired ILWU-represented mechanics to perform maintenance on a handful of cranes that needed to be certified before they could be used. It also hired additional ILWU mechanics from Los Angeles in January 2019.³³

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On March 18, 2019, IAM informed the Employer that it would take economic action in response to the recent assignment of M&R work at Terminal 5 to non-IAM mechanics. On March 19, 2019, the Employer filed an unfair labor practice charge in Case 19-CD-238056 pursuant to Section 10(k) of the Act alleging that IAM violated Section 8(b)(4)(D) of the Act by threatening to engage in prohibited activity in order to force the Employer to assign the work to employees represented by the IAM instead of employees represented by the ILWU.

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D. The Section 10(k) Award

A hearing on the competing claims was held on April 24 and 25, and June 6, 2019, before Hearing Officer Daniel Hickey. Based on the rulings of, and record developed by, the Hearing Officer, the Board awarded the disputed work to IAM-represented mechanics. In that decision, dated July 16, 2020, the Board provided the relevant background for the disputed work:

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During contract negotiations in July 2008, the PMA and ILWU signed a Letter of Understanding (LOU) providing that, for the years 2008–2013, any terminal operating with a non-ILWU work force would be “red-circled.” This meant that PMA members could continue to use non-ILWU employees at the red-circled terminals but had to use ILWU labor at all other terminals. Importantly, the LOU also provided that a terminal would lose its red-circle status if it is vacated by the terminal operator. The 2014–2019 ILWU-PMA agreement notes that “ILWU jurisdiction of [M&R] work shall not apply at those specific marine terminals that are listed as being ‘red-circled’ in the [LOU].”

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Terminal 5 at the Port of Seattle is owned by the Northwest Seaport Alliance and, from 1997 to 2014, was leased and operated by PMA-member American President Lines. Because American President Lines used IAM-represented mechanics to perform M&R work, Terminal 5 was red-circled. In 2014, American President Lines ceased its operations at Terminal 5 and, for the next 4 years, Terminal 5 and its cranes remained mostly unused.

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In 2018, the Northwest Seaport Alliance, in a joint partnership between the Ports of Seattle and Tacoma, developed a modernization plan, which included reopening Terminal 5 and leasing its operation to the Employer.⁷ In August 2018, the Employer unveiled plans to reopen Terminal 5 for container cargo and informed IAM that, because the terminal had lost its red-circle status, the Employer would use ILWU labor to perform M&R work at Terminal 5. IAM offered to supply mechanics but, in or about September 2018, on the advice of the PMA, the Employer assigned the work to ILWU-represented mechanics, who have performed it ever since.

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In January 2019, the Employer subcontracted some of the M&R work to Pacific Crane Maintenance, LLP, which used ILWU-represented mechanics from Southern California.

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³³ Jt. Exh. 74 at 373-75.

By letter dated March 18, 2019, IAM informed the Employer that it would take economic action against the Employer, including picketing and striking, unless the Employer assigned the disputed work at Terminal 5 to IAM-represented employees.

5 The Board then considered the following factors in determining the assignment of the disputed work at Terminal 5:

(1) Board certifications and collective-bargaining agreements

10 This factor was neutral. There was no evidence of a Board certification concerning the employees involved in the dispute. On the other hand, the Employer had current labor agreements for M&R work with both unions. Its agreement with IAM applied to all M&R work at Puget Sound Regional Intermodal, Marine or Container Terminals.” Section 1.731 of the ILWU-PMA agreement provided that “the maintenance and repair work on all new marine terminal facilities that commence operations after July 1, 2008, shall be assigned to the ILWU,” and that “[n]ew marine terminals shall include new facilities, relocated facilities, and *vacated facilities*.” (Emphasis in original.)

20 (2) Employer preference and past practice

This factor favored IAM. Although the Employer declined to state a preference during the Section 10(k) hearing, the Board inferred the Employer’s preference from DeNike’s testimony that, but for the IILWU-IAM agreement, the Employer “would have used [IAM represented mechanics] we already had working for us [at terminals 18 and 30].” With respect to past practice, the IAM mechanics performed the M&R work for the previous owner, not the Employer. However, the Board placed decisive weight on the Employer’s stated intention to use cranes at Terminal 5 that were previously used by IAM mechanics.

30 (3) Current assignment of the work

This factor favored ILWU since the disputed work was currently assigned to its members. However, the Board rejected ILWU’s contention “that this factor on its own should result in the work being awarded to ILWU-represented mechanics.” ILWU had argued that in prior Section 10(k) cases between the parties, “the Board has endorsed the employer’s assignment of the work and the maintenance of the status quo.” The Board distinguished this dispute from those cases based on the fact that those employers, unlike the Employer here, expressed a preference for the workers currently assigned the work.

40 (4) Area and industry practice

This factor was neutral, as both IAM- and ILWU-represented mechanics performed M&R work at the Port of Seattle. IAM represented mechanics at Terminals 18, 25, and 30. ILWU represented mechanics at Terminal 46 and, for a brief period, at Terminals 5. While finding that this factor did not weigh in favor of either party, the Board noted that, “[w]ith the July 2019 closing of Terminal 46, a majority of the M&R work at the Port of Seattle would be done by IAM-represented mechanics.” However, “at the nearby Port of Tacoma and other Puget Sound facilities, most M&R work is performed by ILWU-represented employees.”

(5) Relative skills and training

This factor favored IAM. The Board based this finding on several considerations: IAM's established apprenticeship program; the ILWU's failure to establish a union-wide level of skills and training; and IAM mechanics had more experience handling Terminal 5's cranes.

(6) Economy and efficiency of operations

This factor slightly favored IAM. The record established "that there were more costs associated with using ILWU-represented mechanics than there are with using IAM-represented mechanics." This conclusion was based on: the daily hourly cost differentials; payments for ILWU's hiring hall based on an hourly assessment on labor; the cost of providing tools for ILWU-represented mechanics; the loss of efficiency attributable to the inability of ILWU-represented mechanics to take the tools with them as they work in the Employer's various terminals; the ability to transfer IAM-represented mechanics from other terminals to Terminal 5 without having to spend time calling for additional mechanics from a hiring hall and interviewing them.

(7) Job loss

This factor favored ILWU, as the closure of Terminal 46 was projected to result in the layoff of 45 ILWU-represented mechanics. If they were awarded the disputed work, that job loss would be partially mitigated by the Employer's hiring of approximately 15 ILWU-represented mechanics at Terminal 5. IAM-represented mechanics, on the other hand, would only experience a loss of hours since they would continue performing M&R work at the Employer's other terminals in the area.

(8) Conclusion

Based on the foregoing, the Board concluded that the factors of employer preference, past practice, skills and training, and economy and efficiency of operations favored an award of the disputed work to IAM, while current assignment of work and jobs loss favored an award to ILWU-represented employees. In making this determination, the Board noted that "we are awarding the work to employees represented by IAM, not to the IAM. This determination is limited to the controversy that gave rise to this proceeding." *Id.* at 3-6.³⁴

E. The Arbitration

On October 5, 2020, the Employer began assigning the disputed work at Terminal 5 to two or three IAM-represented mechanics on a daily basis. In response, ILWU pursued a claim against the PMA Employers at a special meeting of the CLRC on September 14, 2020. After ILWU and PMA failed to resolve the grievance, it went to arbitration (the Claim). The Claim was heard by Coast Arbitrator John Kagel (the Coast Arbitrator) on October 13-14, 2021. The Coast Arbitrator framed ILWU's position as follows:

³⁴ The parties stipulated that the Section 10(k) hearing was "a classic jurisdictional dispute that certainly did not arise out of any conduct on [the Employer's] part in any way." (Jt. Exh. 73 at 23.)

The [ILWU] stated that the [PMA] are in violation of Section 1.76 at Terminal 5 in Seattle. Section 1.76 . . . requires the [PMA] to legally defend all work assignments required by Section 1 of the PCLCD. However, In total disregard for Section 1.76, [the Employer] initiated legal proceedings before the NLRB in the form of Section 10k work dispute hearing where [the Employer] failed and refused to defend the work assignment of maintenance and repair work to ILWU-represented mechanics at Terminal 5 in Seattle. In fact, [the Employer] used the NLRB Section 10k legal proceeding to undo and evade ILWU maintenance and repair jurisdiction by stating and/or implying preference for the work to be assigned to workers represented by another union which the NLRB endorsed in its July 16, 2020 Decision. PMA did not stop or correct the violation.

The [ILWU] further stated that Section 1.76 was negotiated in 2008 as a key part of the *quid pro quo* over automation. At that time, the [PMA] agreed in various new subsections to Section 1, including Section 1.76, to assign maintenance and repair work and its functional equivalent to the ILWU Section 1.76 was the parties agreed mechanism to make sure that the Employers stood by these commitments and did not use outside legal proceedings in particular the NLRB's Section 10k work dispute proceedings to escape or override their Section 1 work assignment commitments to the ILWU. As such Section 1.76 is a material and indispensable part of the parties' *quid pro quo* and bargain for the Employers contractual ability to undertake automation on the terms described in the PCLCD. [The Employer's] violation of Section 1.76 and PMA's failure to prevent or remedy such violation nullifies the bargain concerning automation.

ILWU initially requested that the Coast Arbitrator issue the following remedies against the Employer and PMA Employers:

One. That the employer [SSA] be held to have violated Section 1.76 of the PCLCD as described, with a clear statement that 1.76 was violated.

Two. That their violation of 1.76, as described, nullifies the 2008 bargain and contractual provisions enabling automation.

And, Mr. Arbitrator, if you can't find in your determination to go that far, you obviously, as the Arbitrator, have the authority to remedy what you see appropriate with your findings.

And three, our third motion, that any PMA member company that should subcontract to SSA Terminal 5 in Seattle the handling of ships, containers, cargo equipment under the member company's control without utilizing ILWU represented mechanics is financially obligated to pay all lost wages and benefits, including benefit fund contributions, related liquidated damages, and attorney's fees available under the plans and ERISA.

ILWU did not assert a work preservation basis for the Claim. As explained by the Coast Arbitrator, the absence of a requested remedy for the reassignment of the disputed work back to ILWU-represented mechanics was attributable to the Board's Section 10(k) award:

The witnesses in this arbitration case were legal counsel for the ILWU, SSA and PMA. They concurred, as the T-5 NLRB decision stated, that a major factor in the Board's 10(k) determination of which of the competing unions prevail is which union the employer prefers. And, at least at the time of these hearings, that preference, as adopted by the Board, precludes the losing union from making a direct legal appeal of, or attack on, the work assignment the Board awards. (Tr. 80, 83) The losing union could not seek lost work opportunity claims on pain of an unfair labor practice charge against it from the victorious union or the employer. ([Arbitration] Tr. 135)

In addition to the aforementioned remedies, the Coast Arbitrator granted ILWU's motion to amend the remedies for time lost work opportunities for all Terminal 5 M&R work not performed by ILWU-represented mechanics. On the second day of the arbitration, the Ninth Circuit denied enforcement of the Board's decision in *International Longshore and Warehouse Union and International Longshore and Warehouse Union Local 4*, 367 NLRB No. 64 (2019), which upheld the PCLCD's terms for M&R work assignments to ILWU-represented electricians at a terminal in Vancouver, Washington. In that case, the court held that past Section 10(k) rulings by the Board did not foreclose further review of work assignment issues. Based on the Ninth Circuit decision, ILWU modified its request for remedies to also include "the traditional contractual remedies from [the Employer], including the assignment of the work to the ILWU workforce consistent with the PCLCD and lost work opportunity claims for any future violations of Section 1 M&R jurisdiction at Terminal 5." However, ILWU's request for a remedy nullifying the Employer's "right to automate Coastwide until such time as it complies with Section 1.7 (and subsections) at Terminal 5," was denied.

During the arbitration, PMA argued that, since the 2008 agreement, it been increasing ILWU's jurisdiction at West Coast ports in exchange for the right to automate and mechanize equipment. In support of that assertion, it referred to evidence that the Employer and other PMA members increased mechanic shifts from 0 in 2007 to 25,501 in 2019. PMA further noted the Employer had worked with ILWU to expand the latter's jurisdiction pursuant to the 2008 agreement by assigning M&R work to ILWU-represented mechanics at Pier 91, "even though historically [it] assigned [M&R] work in the Puget Sound to machinists under [the] IAM Contract."³⁵

In his decision dated, November 30, the Coast Arbitrator determined that the Employer violated Section 1.76 and ordered that the Employer "will pay lost work opportunity claims for any future [Terminal 5] M&R work not performed by ILWU-represented [m]echanics." He considered the Board's conclusions in the Section 10(k) decision, but distinguished the issues there from the one posed by the Claim. As explained in his decision, the Coast Arbitrator based the Employer's violation of Section 1.76 solely on its position during the Section 10(k) litigation:

SSA's Requirement to State a Preference:

According to the record in this case, during the 2008 bargaining, a specific issue arose with reference to [the Employer]. At that time, and now, [the Employer] has

³⁵ Jt. Exh. 2 at 164-166; Jt. Exh. 3 at 252, 291-92; Jt. Exh. 34, n.2.

operations at facilities both which are, and are not, red-circled. PMA told the Union that [the Employer] had given it assurances that [the Employer] would "...go with the ILWU" in 10(k) proceedings as would all PMA employers. "Ed DeNike had given his personal assurance on behalf of [the Employer], which included designating the ILWU as the employer's preference in such proceedings." ([arbitration transcript] Tr. 60-63)

With reference to Section 1.76, a knowledgeable PMA representative, in sworn testimony, stated:

"... It [Section 1.76] was intended so that in a 10(k) proceeding or any court proceeding the member company would abide by the agreement, defend its position to employ the ILWU and, as you said, to prefer the ILWU." (Un. Ex. 34, p. 439, see also Un. Ex. 35, p. 1997)

He was asked if a CLRC decision designating the ILWU be assigned to the work "was intended to affect [the Employer's] decision as to how it should present its employer preference at the 10(k) hearing?" He responded:

"Well, first of all, the contract should do that. But the CLRC in referencing 1.76 was certainly expecting that. But, again, also Section 1 of the contract requires that." (Un. Ex. 35, p. 1997)

Asked if Section 1.76 "...was intended to take away the right of a PMA member to prefer non-ILWU labor in a Section 10(k) hearing, ...", his answer was:

"It was intended so that in the event of a 10(k) hearing that the PMA member would not only prefer to utilize the ILWU work force but would defend the decision to do so." (Un. Ex. 35, pps. 2079-2080)

From the foregoing, Section 1.76 requires an employer to assign PCLCD Section 1 M&R non-red-circled work to the ILWU; and, if that assignment is attacked in a 10(k) proceeding, to defend it. That defense is to include a statement of employer preference for the ILWU.

The wording of Section 1.76 itself supports that view by including the requirement to "defend." The ILWU's work assignment in this case was attacked by the IAM. SSA had pledged to defend against that attack. That required an active affirmative defense, not a passive attempt to evade one, as occurred here. Neutrality, in this context, where employer preference is crucial, if not necessarily totally determinative, is no such defense.

By not preferring the ILWU employee assignment, SSA knocked out the significant weight given by the Board decision by that required preference, particularly where two other 10(k) factors were found to favor the ILWU as the decision states. It further hamstrung the Union, which could then not argue that that factor favored the Union in the Union's statement of its position. It

forced the PMA to fall back, in its suggestions to the Union, on an argument only about industry practice in support of the ILWU, where there was no statement of employer preference. (Er. Exs. 28-30, Tr. 237) And, ultimately, SSA even forfeited its claimed neutrality by that position allowing the Board to draw its inference that SSA favored the IAM, contrary to its obligation under the PCLCD.³⁶

LEGAL ANALYSIS

I. APPLICABLE LAW

In order to establish a violation of section 8(b)(4)(ii)(D), "[t]here must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group." *Carpenters Local 1307 (Dearborn Village LLC)*, 331 NLRB 245, 247 (2000). In relevant part, Section 8(b)(4)(ii) states that it is an unfair labor practice for a labor organization to "threaten coerce, or restrain any person engaged in commerce or an industry affecting commerce," where the object is:

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work[.]”

The Board’s jurisdictional determination in a Section 10(k) decision, although not res judicata, carries heavy weight in a subsequent unfair labor practice proceeding regarding the disputed work. *Plasterers’ Local 79*, 404 U.S. 116, 126-127 (1971) (“for all practical purposes the Board’s [§ 10(k)] award determines who will prevail in the unfair labor practice proceeding.”); *Intl. Longshoremen’s Union Local 6 (Golden Grain)*, 289 NLRB 1, 2 (1988) (parties may relitigate “factual issues concerning the elements of the 8(b)(4)(D) violation” even if they were raised and decided in the underlying Section 10(k) proceeding). A party may not, however, relitigate “threshold matters that are not necessary to prove an 8(b)(4)(D) violation.” *Intl. Longshoremen’s Union Local 6*, 289 NLRB at 2, n.4; *Operative Plasterers & Cement Masons Intl. Assn. Local 200, AFL-CIO*, 357 NLRB 2212, 2214 (2011) (threshold matters that may not be relitigated in the Section 8(b)(4)(D) proceeding include whether the dispute was properly before the Board); *Intl. Longshoremen’s Union, Local 14 (Sierra Pacific Industries)*, 318 NLRB 462, 464 (1995) (Board rejected challenge to its Section 10(k) jurisdiction and analysis of the traditional factors in the unfair labor practice proceeding). As the Board explained in *ILWU (Kinder Morgan)*, supra at 3:

When an unfair labor practice complaint is issued related to a prior 10(k) proceeding, a respondent may relitigate factual issues concerning the elements of the 8(b)(4)(ii)(D) violation that were raised in the underlying 10(k) proceeding; that is, a respondent may litigate the issue of whether it has engaged in forbidden conduct with a forbidden objective. See *Teamsters Local 216 (Granite Rock Co.)*, 296 NLRB 250, 250 (1989), enf. 940 F.2d 667 (9th Cir. 1991). But it is well settled that a party to a Board 10(k) proceeding cannot

³⁶ Jt. Exh. 100 at 11-13.

relitigate the Board's ultimate work assignment in a subsequent 8(b)(4)(ii)(D) case. *Marble Polishers Local 47-T (Grazzini Bros.)*, 315 NLRB 520, 522 (1994), citing *Longshoremen ILA Local 1566 (Holt Cargo)*, 311 NLRB No. 166, slip op. at 2 (1993) (not reported in Board volumes). From this, "[i]t logically follows that a party cannot relitigate the various factors . . . that the Board considers in making its 10(k) determination." Id.

In cases where a respondent union is permitted to contest the Board's Section 10(k) findings, it must present evidence to show that the findings were not correct. *Marble Polishers Local 47-T (Grazzini Bros.)*, 315 NLRB at 522 (Board's finding in Section 10(k) proceeding regarding lack of Board certification of union confirmed in subsequent unfair labor practice proceeding where union failed to present evidence showing the Board's finding was not correct).

A respondent may also relitigate factual issues by introducing new or previously unavailable evidence, or show that the Board's findings in a Section 10(k) decision are incorrect. It may not, however, seek to undermine such an award to another union by enforcing a collective-bargaining agreement through arbitration in order to coerce an employer. See *Plasterers Local 200*, 357 NLRB 2212, 2214 (union had an illegal objective when it responded to a Board decision awarding the work to employees represented by another union by seeking to obtain the work, or monetary damages in lieu thereof, and then seeking to confirm the arbitration award in district court). *Intl. Longshoremen's Local 13 v. NLRB*, 884 F.2d 1407, 1413 (D.C. Cir. 1989), enforcing *Intl. Longshoremen's Union Local 13 (Sea-Land)*, 290 NLRB 616 (1988) (the Section 10(k) award "trumps the collective-bargaining agreement"); *Marble Polishers Local 47-T (Grazzini Bros.)*, 315 NLRB at 522 (respondent violated Section 8(b)(4)(d) by seeking to enforce a collective-bargaining agreement through the state employment relations agency after the Board's Section 10(k) decision awarded the work to another union). As the Board explained in *ILWU (Kinder Morgan)*, supra at 5:

It is well settled that a union's pursuit of a lawsuit or arbitration to obtain work that the Board previously has awarded to employees represented by another union has an illegal objective and violates Section 8(b)(4)(ii)(D). See *Sheet Metal Workers, Local 37 (E.P. Donnelly)*, 357 NLRB 1577, 1578 (2011), and cases cited therein, enfd. 737 F.3d 879 (3d Cir. 2013). See also *Machinists Lodge 160 (SSN Marine, Inc.)*, 360 NLRB 520, 521-22, 315 NLRB at 522-52.

II. THE WORK IN DISPUTE

ILWU contends that, notwithstanding the Board's jurisdictional award of the disputed work to IAM, it had a lawful objective in grieving the Employer's breach of Section 1.76 of the PCLCD because the Employer failed to express its preference for ILWU in the Section 10(k) proceeding. With the exception of testimony by O'Grady, an expert in labor market economics regarding automation in the industry, and evidence regarding the presence of ILWU-represented mechanics at West Coast ports, the parties made the same arguments, and submitted essentially the same evidence in support thereof, to the Board in the Section 10(k) hearing:

- (1) the PCLCD Section 1.731's requirement that M&R work at new terminals be assigned to ILWU mechanics;

- (2) but for the PCLCD, the inference that the Employer would have used IAM mechanics to use cranes at Terminal 5 that were previously used by IAM mechanics;
- 5 (3) the PCLCD's assignment of the work in dispute to ILWU mechanics at all non-red-circled, including new, terminals;
- (4) the performance of M&R work by IAM and ILWU mechanics in the Ports of Seattle, Tacoma and other Puget Sound facilities;
- 10 (5) the relative skills, experience and training of IAM and ILWU mechanics; and
- (6) the relative daily hourly and other costs, efficiencies and transferability in using either IAM or ILWU mechanics; and the job loss that would result to either IAM- or ILWU-represented mechanics by not being awarded the work in dispute.

15 After assessing the aforementioned evidence and arguments, the Board concluded that the factors of employer preference, past practice, skills and training, and economy and efficiency of operations favored an award to IAM-represented employees, while the current assignment of work and jobs loss favored ILWU-represented employees.

20 Following the Section 10(k) award, ILWU succeeded in pursuing the Claim before the Coast Arbitrator. That is certainly a new development, as is the Coast Arbitrator's decision that the Employer breached the ILWU-PMA agreement by failing to state a preference during the Section 10(k) hearing. On the other hand, the Coast Arbitrator's decision essentially confirmed the Board's Section 10(k) jurisdictional determination that PCLCD Section 1.76 assigned the work in dispute at "new" port facilities, including Terminal 5, to ILWU-represented mechanics. Constrained by that contractual provision, the Employer was reluctant to express a preference at the Section 10(k) hearing. During this unfair labor practice hearing, the Employer again failed to state its partiality in awarding the work to either ILWU or IAM.

30 Regardless of ILWU's primary motive in pursuing arbitration – the Employer's breach of its duty to defend the work of ILWU-represented mechanics in the Section 10(k) proceeding – its contractual rights cannot force an employer to ignore a Section 10(k) award. *Otis Elevator*, 309 NLRB 273, 274 (union unlawfully sought enforcement of arbitral awards that were inconsistent with the Board's Section 10(k) decision). The reason for this is because such post-Section 10(k) conduct "directly undermines the § 10(k) award, which, under the congressional scheme, is supposed to provide a final resolution to the dispute over which group of employees are entitled to the work at issue." *Roofers Local 30 (Gundle Construction)*, 307 NLRB 1429, 1430 (1992). *Accord Plasterers Local 200*, 357 NLRB at 2214; *Marble Polishers Local 47-T (Grazzini Bros.)*, 315 NLRB at 523.

III. THE WORK PRESERVATION DEFENSE

45 Notwithstanding ILWU's effort to circumvent the Board's jurisdictional determination through arbitration, it proffered new evidence in this proceeding insisting that it sought to preserve the work of ILWU-represented mechanics at a "new" terminal. ILWU first asserted this defense before the Coast Arbitrator. The fact that it did not raise the work preservation defense at the

Section 10(k) proceeding, however, does not preclude such an argument now. Although the Board does not engage in *de novo* consideration of the merits, it does consider new evidence and arguments in Section 8(b)(4) proceedings following a Section 10(k) decision. See *Marble Polishers Local 47-T (Grazzini Bros.)*, 315 NLRB at 522 (respondent permitted to proffer new or previously unavailable evidence that a genuine issue of material evidence exists). Cf. *ILWU (Kinder)*, supra at 3 (rejecting the same arguments made in the Section 10(k) proceeding).

A. The Applicable Standard

As explained by the Supreme Court, a labor organization with contractual rights to work that it has “traditionally” performed at a jobsite may lawfully undertake actions whose “sole objective” is to protect its members from the diminution of that work. *Nat'l Woodwork Mfr. Assn.*, 386 U.S. 612, 648 (1967) (union's boycott in support of a contractual restriction was primary, and therefore lawful, because it had as the "sole objective the protection of Union members from a diminution of work" that "traditionally had been performed . . . on the jobsite."). More specifically, the union’s actions must, (1) have as its objective the preservation of work traditionally performed by employees represented by the union; and (2) the contracting employer must have the power to give the employees the work in question – the so-called “right of control” test. *NLRB v. Longshoremen (ILA I)*, 447 U.S. 490, 504 (1980). See also *NLRB v. International Longshoremen's Ass'n (ILA II)*, 473 U.S. 61, 81, n.21 (1985) (the loading and unloading of containers is the “functional equivalent” of the traditional longshore work, i.e., handling cargo going onto or coming from a ship).

The Board has consistently applied the Supreme Court’s standards regarding the work preservation defense by rejecting union efforts to claim disputed work based on secondary objectives. To be claimable, the work in question must either have been actually performed by unit members or be the functional equivalent of, or sufficiently related to, the work they performed before it was eliminated by technological changes. See, e.g., *Service Employees Local 32B-32J (Nevins Realty Corp.)*, 313 NLRB 392, 400 (1993) (rejecting a union’s claim over the disputed work solely because it falls within the union’s trade jurisdiction). In that respect, the functional equivalent will be deemed to include employees that have performed the disputed work for the specific employer, not whether such work has been performed by employees in the multiemployer bargaining unit as a whole. See, e.g., *Longshoremen ILWU Local 19 (Seattle Tunnel Partners)*, 361 NLRB 1031, 1035, 1036 (2014); *Laborers Local 310 (Donley's, Inc.)*, 360 NLRB 903, 907, 908-909 (2014). Finally, the duration of the work is critical, as performance of the disputed work for a brief, temporary period is insufficient to establish the work as “claimable.” *United Food & Commercial Workers, Local 367 (Quality Food Centers, Inc.)*, 333 NLRB 771, 772 (2001).

B. Applicability of *Kinder Morgan*

ILWU relies heavily on the Court of Appeals for the Ninth Circuit’s decision in *Kinder Morgan*, another case in which ILWU contested its members’ rights to M&R work under the 2008 PCLCD. 978 F.3d 625 (9th Cir. 2020). In a Section 10(k) decision, the Board awarded PMA-member company *Kinder Morgan*’s electrical M&R work at the Port of Vancouver to another union, the International Brotherhood of Electrical Workers (IBEW). IBEW’s members had performed the disputed work at that facility for many years. After that decision, ILWU continued

to pursue its contractual grievances through arbitration, asserting its entitlement to the M&R work under the 2008 M&R provisions in the Coast Agreement. Automation had not been introduced at Kinder Morgan’s terminal or anywhere else in the Port of Vancouver. Kinder Morgan and the IBEW filed unfair labor practice charges and a complaint issued alleging that ILWU violated Section 8(b)(4)(ii)(D).

After a hearing, Administrative Law Judge William Schmidt dismissed the complaint on the ground that the PCLCD recognized, and ILWU’s enforcement against Kinder Morgan demonstrated, a work preservation objective. He found that ILWU’s objective in seeking M&R work from Kinder Morgan was to offset job losses that ILWU and PMA anticipated from West Coast terminal automation and robotics. The Board reversed, finding the *ILA* cases inapplicable because the case was allegedly not a “complex” one concerning “technological displacement.” The Board also held that because ILWU was seeking work that another union had previously performed for Kinder Morgan at the Port of Vancouver, ILWU’s objective was unlawful “work acquisition” and not “work preservation.”

After granting review, the Ninth Circuit granted denied enforcement and vacated the Board’s order.³⁷ Essentially, the court disagreed with the Board’s application of the *ILA I* and *ILA II* decisions, and held that ILWU’s work preservation defense was lawfully premised on the application of the PCLCD to the disputed electrical M&R work. 978 F.3d at 637-639. The court disagreed with the Board’s “narrow work preservation analysis” and interpreted the PCLCD to encompass the work at issue. *Id.* at 639-642.

Kinder Morgan is distinguishable from the instant matter and inapplicable to the facts here. First, ILWU did not raise, and the Board did not address, the work preservation defense in the Section 10(k) decision awarding the disputed work to IAM. Second, the primary issues in *Kinder Morgan* were whether the PCLCD encompassed electrical M&R work, and whether or not ILWU had a primary or secondary object by pursuing the work. Here, it is undisputed that the work in dispute was covered by the M&R work provisions of the PCLCD. Moreover, as discussed below, ILWU’s efforts to acquire the disputed work at Terminal 5 was secondary to its prime objectives of acquiring the M&R work at “new” West Coast ports in order to ameliorate the potential threats to unit jobs from automation.

C. *ILWU Failed to Establish a Legitimate Work Preservation Objective*

Other than the temporary assignment of M&R work prior to the issuance of the Board’s Section 10(k) decision, ILWU-represented mechanics never performed M&R work for the Employer at the Port of Seattle. See *Longshoremen ILWU Local 19 (Seattle Tunnel Partners)*, 361 NLRB 1031, 1035, 1036 (2014) (functional equivalent will be deemed to include employees that have performed the disputed work for the specific employer, not whether such work has been performed by employees in the multiemployer bargaining unit as a whole). Although ILWU pursued M&R work in the 1978 PCLCD for its members, there was no such assignment of M&R work to members of ILWU by the Employer at any of its locations until 2008, and not at the Port of Seattle, except for a brief period of time in 2018.

³⁷ See *Longshoremen ILWU Local 4*, 367 NLRB No. 64 (2019).

Thus, ILWU cannot meet its burden of establishing that the work in dispute has been work traditionally performed by its members. *Contra Machinists District 190 1414 (SSA Terminals, LLC)*, 344 NLRB 1018 (2005), *affd.* 253 Fed. Appx. 625 9th Cir. 2007) (ILWU had a legitimate work preservation objective where unit employees historically performed reefer work for targeted employer). See also *Laborers Local 310*, 360 NLRB at 907 (“isolated assignments . . . provide [the union] no basis to raise a valid work preservation claim regarding the disputed work”), quoting *Stage Employees IATSE Local 39 (Shepard Exposition Services)*, 337 NLRB 721, 723 (2002).

Even were the functional equivalent be deemed to include the ILWU’s West Coast multiemployer bargaining unit, ILWU’s work preservation defense would still fail. In cases where, as here, the work involves a complex case of technological displacement, it is necessary to analyze the traditional work patterns that the parties allegedly seek to preserve, and how the agreement seeks to accomplish that result under the changed circumstances created by the technological advance. *ILA I*, 447 U.S. at 505-507. That analysis must consider “all the surrounding circumstances, including nature of the work both before and after the innovation.” *National Woodwork*, 386 U.S. at 644. Here, the “innovation” at issue is automated cargo handling equipment, and the intent of the language in the parties’ 2008 PCLCD was to protect “traditional longshore work and workers” in the face of the anticipated introduction of this equipment.

It is undisputed that several West Coast ports have automated, or are in the process of automating, the operation of cargo-loading and unloading equipment (tractors, top picks, reach stackers, automatic stacking cranes, front-end loaders and reach stackers). However, the preponderance of the evidence – provided mostly by ILWU – does not establish that the Employer or other PMA members *will* automate more terminals over the next five to ten years. Notwithstanding DeNike’s past comments extolling the benefits of port automation and the need to do “more and more of this automation,”³⁸ the record established a major hurdle in such a transition – the capital costs. As O’Grady confirmed, in order to offset the costs of transitioning to automation, ports require a significant increase in container traffic – approximately one million containers per year. Indeed, in the past 14 years, only four PMA members, all in the Southern California region, have automated or announced an intention to introduce automated cargo-handling equipment. The Employer is not one of them.

Finally, while automation has displaced some traditional longshore work and workers, specifically stevedores, it has not reduced M&R shifts at West Coast ports, much less at the Port of Seattle. Under the circumstantial analysis required in *National Woodwork*, M&R work, which does not fall within the PCLCD’s description of the traditional longshore work of loading and unloading cargo, is not the functional equivalent of traditional stevedoring work.

D. Relationship of the Employer’s Breach of the PCLCD to the Charge

Finally, ILWU challenges the validity of the Employer’s charge on the ground that the Coast Arbitrator found that it breached the PCLCD. Aside from any evidence that the Employer’s actions or intended actions pose a “genuine job threat” to the ILWU-represented mechanics, however, its neutral position during arbitration does not preclude it from relief under Section

³⁸ R. Exh. 39; Tr. 583-84, 621.

8(b)(4)(ii)(D). See, e.g., *NLRB v. Plasterers' Local Union No. 79*, 404 U.S. at 130 (Section 8(b)(4)(ii)(D) was enacted to protect both partisan and neutral employers); *Intl. Longshoremen's Union v. NLRB*, 884 F.2d 1407, 1412 n.7 (D.C. Cir.1989) (“that an employer may prefer one group of employees over another ... does not render the dispute non-jurisdictional”).

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In conclusion, ILWU violated Section 8(b)(ii)(D) by seeking to acquire M&R work at Terminal 5 in the Port of Seattle through arbitration after the Board's Section 10(k) decision awarded the work to IAM.

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CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. ILWU and IAM are labor organizations within the meaning of Section 2(5) of the Act.

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3. By continuing to pursue its lost work opportunity claims under the 2008 PCLCD after the Board's Section 10(k) decision issued in order to force the Employer to assign the maintenance and repair work at Terminal 5 in the Port of Seattle to ILWU-represented employees, rather than employees represented by IAM, ILWU has engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(D).

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4. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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Having found that that ILWU has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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ILWU shall be ordered to cease efforts to require the Employer to assign the disputed work its members maintenance and repair work at Terminal 5, rather than IAM-represented employees. ILWU shall also be ordered to cease efforts to enforce the Coast Arbitrator's award, notify the Joint Coast Labor Committee that it has withdrawn its lost work opportunity claims, and asked the Coast Arbitrator to vacate his award.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁹

³⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, International Longshore & Warehouse Union and International Longshore & Warehouse Union, Local 19, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening, coercing, or restraining SSA Terminals, LLC, or any other person engaged in commerce or in an industry affecting commerce, where an object of our actions is to force or require SSA Terminals, LLC to assign maintenance and repair work at Terminal 5 in the Port of Seattle to employees who are members of, or are represented by the International Longshore & Warehouse Union and International Longshore & Warehouse Union, Local 19, rather than to employees who are members of, or represented by, International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289.

(b) Pursuing lost work opportunity claims and seeking to enforce the arbitration award of the Coast Arbitrator in order to obtain maintenance and repair work performed at Terminal 5 in the Port of Seattle by employees represented by the International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Notify the Joint Coast Labor Committee established by the 2008 PCLCD, in writing, that it has withdrawn its lost work opportunity claims filed on September 14, 2020 against SSA Terminals, LLC, and request, in writing, that the Coast Arbitrator vacate his November 30, 2020 award on those claims.

(b) Within 14 days after service by the Region, post at their respective offices and meeting halls copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. March 4, 2022

Michael A. Rosas

Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT threaten, coerce, or restrain SSA Terminals, LLC, or any other person engaged in commerce or in an industry affecting commerce, where an object of our actions is to force or require SSA Terminals, Inc. to assign maintenance and repair work at Terminal 5 in the Port of Seattle to employees who are members of, or are represented by us, rather than to employees who are members of, or represented by, International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289.

WE WILL NOT pursue lost work opportunity claims and seek to enforce the arbitration award of the Coast Arbitrator in order to obtain maintenance and repair work performed at Terminal 5 in the Port of Seattle by employees represented by the International Association of Machinists and Aerospace Workers, District Lodge 160, Local Lodge 289.

WE WILL notify the Joint Coast Labor Committee established by the 2008 PCLCD, in writing, that we have withdrawn our lost work opportunity claims filed on September 14, 2020 against SSA Terminals, LLC, and **WE WILL** request, in writing, that the Coast Arbitrator vacate his November 30, 2020 award on those grievances.

International Longshore and Warehouse Union
(Labor Organization)

Dated: _____ **By:** _____
(Representative) (Title)

**International Longshore and Warehouse Union,
Local 19**

(Labor Organization)

Dated: _____ **By:** _____
(Representative) (Title)

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.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/19-CD-269624 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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 (206) 220-6340.