UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE 160,
LOCAL LODGE 289,

and

Cases: 19-CD-502;
19-CD-506

SSA MARINE, INC.,

and

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION.

INTERVENOR ILWU'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Intervenor International Longshore and Warehouse Union ("ILWU") excepts to the Decision and Order of Administrative Law Judge Kocol in this matter as follows:

1. To the ALJ's unsupported and erroneous adoption of Arbitrator Cavanaugh's findings from the labor arbitration between Stevedoring Services of America (SSA) and Respondent IAM, which excluded ILWU, and in particular to the ALJ's finding that "Arbitrator Cavanaugh succinctly gave the following overview of the case:

> The Employer operates marine terminals and provides stevedoring services in Puget Sound, including at cruise ship terminals in Seattle. The Union represented the maintenance and repair (M&R) mechanics who have historically serviced the power equipment used at the cruise terminals. During the summer of 2008, the

> Employer, as a member of the Pacific Maritime Association, negotiated a replacement labor agreement covering employees in its International Longshore & Warehouse Union (ILWU) bargaining unit. As part of the PMA/ILWU Agreement for the years 2008-2013, maintenance work on equipment used at "new" facilities was assigned to ILWU mechanics (footnote omitted). For the 2009 cruise ship season, cruise ships will call at the Smith Cove Terminal in Puget Sound, located at Terminals 90-91, instead of at Terminal 30 and Pier 66 as in prior years. Apparently, ILWU has claimed the M&R work at the Smith Cove facility, claiming that it is "new," and the Employer has responded by subcontracting the maintenance work on its equipment to Harbor Industrial. Harbor is a PMA member and employs ILWU mechanics. The Union maintains that by subcontracting its maintenance work to Harbor and its ILWU workforce, the Employer has violated the terms of the SSA/IAM Agreement because that Agreement unequivocally preserves historical maintenance work in the Puget Sound area for the IAM bargaining unit." (D 3:9-29)[1]

2. To the ALJ's unsupported and erroneous adoption of Arbitrator Cavanaugh's findings from the labor arbitration between Stevedoring Services of America (SSA) and Respondent IAM, which excluded ILWU, and in particular to the ALJ's finding that: "Later Arbitrator Cavanaugh summarized SSA's con-tractual obligations to Respondent as follows:

> Under the terms of their Agreement, which preexisted [sic] the provisions of the PMA/ILWU Agreement for a number of years, the Employer has been and

[1] "(D)" references the ALJ's Decision by page and line numbers.

> continues to be obligated to perform this M&R work with the members of the IAM bargaining unit. That is so because Article 2, for example, provides that "work which has been historically performed by the members of the bargaining unit will continue to be performed by the members of the bargaining unit." . . . Similarly, Article 5 ("Recognition, Hiring and Jurisdiction") provides in pertinent part, "to further clarify this Article, it is understood that IAM represented employees will maintain and repair all equipment owned and leased by SSAT in the Puget Sound area. . . . The facts in evidence substantiate the Union's contention that the equipment maintenance work at Smith Cove Terminal is the precise work formerly by the IAM mechanics at Pier 66 and Terminal 30 (emphasis in original).

Given these facts it is entirely unsurprising that Arbitrator Cavanaugh found that SSA had breached its contract with Respondent." (D 3:31-47)

3. To the ALJ's unsupported and erroneous finding that "[F]ollowing issuance of the Board's Decision and Determination of Dispute on July 22, 2011, Respondent has informed the Regional Director that it would comply with the [10(k)] decision." (D 4:41-44)

4. To the ALJ's unsupported and erroneous finding that: "SSA asked for and received from PMA an agreement that promises to reimburse SSA for damages that come about as a result of SSA's breaching its contract with Respondent for the assignment of the disputed work No such agreement had been made in the past. Pursuant to that agreement, requested and reached as described above, PMA agreed to fully indemnify SSA if Respondent were to seek and obtain the "pay-in-lieu" relief. The reimbursement

would be paid entirely from PMA's general assets. Although PMA is a not-for-profit organization, paying the reimbursement would not require PMA to increase its cargo dues materially or to make any special assessments from its members, including from SSA." (D 5:13-22)

5. To the ALJ's unsupported and erroneous finding that: "The parties describe the issues in this case as follows.

> Has Respondent IAM, since on or about July 22, 2011, coerced or restrained any person engaged in commerce or in an industry affecting commerce with an unlawful object in violation of Section 8(b)(4)(ii)(D) of the Act by refusing to withdraw and otherwise continuing to maintain its legal action seeking to obtain any pay-in-lieu or other monetary remedy to enforce Arbitrator Cavanaugh's May 8, 2009, Decision and Award?" (D 5:26-32)

6. To the ALJ's erroneous conclusion of law that "facts in this case, however, do not easily fall within the evil Congress sought to forbid." (D 8: 1-2)

7. To the ALJ's unsupported and erroneous findings of fact and/or conclusions of law that: "As the Board has earlier found in its 10(k) award, Respondent has represented employees performing M&R work for SSA and its predecessors for decades and that the then existing collective bargaining indisputably covered that work." (D 8: 2-4)

8. To the ALJ's unsupported and erroneous findings of fact and/or conclusions of law that: "And as Arbitrator Cavanaugh concluded SSA, PMA, and ILWU then decided to take that work away from employees represented by Respondent and give that work to employees represented by ILWU, who had never theretofore performed this work for SSA." (D 8: 4-7)

9. To the ALJ's unsupported and erroneous findings of fact and/or conclusions of law that: "To that extent, SSA was not an innocent bystander caught up in a dispute not of its own making between two unions; rather, it created the dispute." (D 8:7-9)

10. To the ALJ's erroneous conclusion of law that "[y]et in this proceeding the General Counsel seeks to shield SSA from the effects of its breach of contract and even have Respondent reimburse SSA for the costs involved in defending against Respondent's clearly meritorious grievance." (D 8: 9-11)

11. To the ALJ's unsupported legal conclusion that "the manner in which the Board has fulfilled it obligations under Section 10(k) may be contributing to the creation of jurisdictional disputes such as the one in this case." (D 8:17-19)

12. To the ALJ's unsupported finding that "Of course, once the Board awards the work, the employees who normally would have performed the work are likely out of a job." (D 8:28-29)

13. To the ALJ's unsupported finding, in the form of a rhetorical question -- "what about the circumstances here, where Respondent has clearly and unequivocally renounced the disputed work and seeks only damages for SSA's breach of contract? The General Counsel does not directly address this issue." (D 8:41-43)

14. To the ALJ's conclusion that "the General Counsel has failed to show that Respondent's pursuit of monetary damages was for the purpose of forcing SSA to assign the work back to employees represented by Respondent; Respondent has clearly given up on that effort." (D 8:49-52)

15. To the ALJ's erroneous conclusion of law that "[t]he General Counsel also points to wording in some cases that a union may not 'undermine' a Board's 10(k) award. But there is no statutory or direct case authority that bars all undermining" (D 9:52-54)

16. To the ALJ's erroneous conclusion of law that "Nor is it clear that what Respondent has done here results in unlawful undermining …" (D 9:4)

17. To the ALJ's erroneous conclusions that "[n]ot only do I conclude that the General Counsel has failed to show that Respondent's conduct had a prohibited object, I also conclude that he has failed to show that the conduct has restrained or coerced SSA." (D 9: 8-10)

18. To the ALJ's erroneous conclusions that "PMA could confidently assume the Board would affirm SSA's taking of the work from the employees who performed it for decades and, in breach of its collective-bargaining obligations, give the work to the ILWU and then bar Respondent from seeking any effective remedy for that breach." (D 9:11-15)

19. To the ALJ's conclusion that "PMA's conduct has served to assume any coercive effect from Respondent's conduct onto itself and away from SSA." (D 9:15-16)

20. To the ALJ's erroneous conclusions that "Interestingly, in its brief ILWU disagrees with the General Counsel and agrees with Respondent that SSA is not being coerced under these unique circumstances." (D 9:16-18)

21. To the ALJ's erroneous conclusions that: "The problem, however, is that the complaint does not allege, and there is no charge supporting, any unlawful conduct directed towards PMA by Respondent. Respondent should not be required to guess which

employer it has alleged restrained and coerces. At this point due process prevents litigation of that matter in this proceeding." (D 9:20-24)

22. To the ALJ's unsupported and erroneous, wholesale adoption of the Respondent's legal argument: "In its brief Respondent argues:

> Congress surely did not intend for the Board to protect an employer who foments dispute by knowingly and blatantly reneging on a clear agreement with one union by later signing an ir-reconcilable agreement with another union, all while procuring indemnity for grievances that were inevitably to be brought by the IAM. The Board's processes should not be made available to shield an intentionally wrongdoing SSA from the natural consequences of its actions. . . .

I agree." (D 9:26-35)

23. To the ALJ's conclusion of law that "[c]ore policies of the Act support the integrity of the collective-bargaining process, collective-bargaining contracts, and stable, mature collective-bargaining relationships such as existed between SSA and Respondent before SSA's breach of contract." (D 9:37-39)

24. To the ALJ's conclusion that "[c]ore policies of the Act discourage breaches of those contracts, encourage use of the grievance-arbitration process and respect for properly issued arbitration awards." (D 9:39-41)

25. To the ALJ's conclusion that "[c]ore policies under the Act encourage effective remedies for those breaches of contract so that the effects on employees are mitigated to some degree." (D 9:41-43)

26. To the ALJ's conclusion of law that "[a] confluence of factors under Section 8(b(4)(D) and Section 10(k) have seemed to have undermined those policies in cases such as this." (D 9:43-44)

27. To the ALJ's ultimate determination finding no violation of Section 8(b)(4)(D) of the Act and his Order dismissing the complaint in this matter. (D 10:6)

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Respectfully submitted,

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