#### UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 48, AFL-CIO,	) Case No. 19-CD-080738
and	
ICTSI OREGON, INC.,	
and	
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 8.	) )

# IBEW LOCAL 48'S RESPONSE TO PMA'S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE REGIONAL DIRECTOR'S DECISION TO DENY PMA'S MOTION TO INTERVENE

On May 31, 2012, Pacific Maritime Association (PMA) filed a Motion to Intervene in this case. On May 22, 2012, IBEW Local 48 filed a Memorandum in Opposition to the Motion to Intervene (on file herein.) IBEW Local 48 hereby adopts and by this reference incorporates herein the arguments in that Memorandum.

## PMA argues:

 PMA is the collective bargaining agent for employers in West Coast ports, including ICTSI.

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Response: While this is a true statement, it is not grounds to overturn the Regional Director's decision. PMA does not seek to represent ICTSI here. It seeks to make arguments contrary to ICTSI's interests, a position taken and argued by the ILWU.

2. PMA's interests were not adequately represented by existing parties.

**Response**: What is PMA's interest? PMA seeks to have reefer work assigned to the ILWU. The ILWU has demonstrated that it has devoted able and substantial resources to this same goal.

3. IF PMA had evidence that was relevant, a PMA representative could be called to testify about it.

**Response**: The ILWU called Richard Marzano to testify. His testimony is reported in the Transcript from TR 355 to TR 477. Mr. Marzano is PMA's Director of Contract Administration and Arbitration. (TR 355) Mr. Marzanno was the only PMA representative present at the so-called arbitration settlement. (Ex I-8)

All the evidence that PMA could have presented could have or would have been presented via Mr. Marzano. Mr. Marzano had full opportunity to testify about every aspect of this case and he did.

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4. PMA was denied its due process rights to present relevant evidence such as establishing that "the Port of Portland, a governmental agency that is not an employer under the Act, is the employer of the IBEW-represented employees seeking jurisdiction over the disputed work, and therefore the Board has no jurisdiction under Section 10(k)." (PMA Request, p. 2)

**Response**: There are three things that are noteworthy about this argument:

- 1. The facts that PMA says it wants to put into evidence are already in evidence (i.e., that the Port of Portland is a governmental agency);
- 2. What PMA really wants to do is make the legal argument that the Board has no jurisdiction. Under established Board law, PMA is wrong. The fact that the Port of Portland is a public entity is not relevant to resolving this dispute." (This will be more fully explained in Local 48's Response to PMA's Appeal.)
- 3. PMA states that IBEW Local 48 is seeking jurisdiction over the disputed work. Members of IBEW Local 48 have been performing this work, exclusively, for 38 years. IBEW Local 48 is not seeking to perform this work; the ILWU is trying to take it away.

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PMA has presented no reason with any merit as to why the Regional Director's decision should be overturned. PMA's Request for Special Permission to Appeal should be denied because it is procedurally improper and substantially without merit.

DATED: June 21, 2012

Respectfully submitted,

/s/ Norman D. Malbin
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### CERTIFICATE OF SERVICE

This certifies that today I electronically filed IBEW LOCAL 48'S RESPONSE TO PMA'S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE REGIONAL DIRECTOR'S DECISION TO DENY PMA'S MOTION TO INTERVENE and served it by electronic mail or facsimile on:

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