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

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 48,	)	
	)	Case 19-CD-080738
and	)	
	)	
ICTSI OREGON, INC.,	)	
	)	
and	)	
	)	
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 8.	)	

IBEW LOCAL 48'S MEMORANDUM IN OPPOSITION TO ILWU LOCAL 8'S MOTION TO REOPEN THE RECORD

The ILWU Local 8 moves the Board to allow "admission of evidence of agreements made between" ICTSI, IBEW Local 48, and the Port of Portland.

IBEW Local 48 objects to this Motion on two grounds.

First, there was no formal agreement either made or presented to the court. Second, the portions of the agreement that were made between the parties (other than ILWU) differ substantially from what ILWU Local 8 is representing to the Board.

During our settlement talks in a federal case, the Port of Portland, ICTSI, and IBEW Local 48 made substantial progress in a number of areas. But there was no opportunity to resolve details in the final hours of discussion before the

July 3rd status conference. What Michael Garone stated was a basic outline of where we were insofar as it went.

The ILWU Local 8 now takes those statements and now represents to the Board two outrageous conclusions, The ILWU states that what Mr. Garone stated was "evidence." (ILWU Motion, page 3) The ICTSI's attorney's statements at a status conference are not "evidence" in the case.

IBEW Local 48 did agree to allow the ILWU to perform the reefer work. The reason we did so was because we wanted peaceful working relations while we waited for the NLRB to make a decision. We instructed our members not to engage in fist fights to try to prevent the ILWU from doing their job.

IBEW Local 48 did agree with the Port and ICTSI that if the NLRB decided that the jurisdiction of our work should be awarded to the ILWU then we would abide by that. But that in no way means that if the NLRB decides that it has no jurisdiction that we will walk away from this work.

In my brief comment following Mr. Garone and Mr. Foster, I stated:

> "We expect to follow the 10(k) from the very beginning, and that's all it is, is following the 10(k)." ILWU Local 8's Motion to Re-Open (Ex A- TR 9)

What the ILWU desperately wants is for the NLRB to decide that it has no jurisdiction. That is why the ILWU makes the following two arguments (as if it were "evidence" evident from an "agreement"):

1. If ICTSI's lease from the Port of Portland ever precluded ICTSI from assigning the work in dispute to ILWU Local 8 in accordance with ICTSI's collective bargaining agreement, the lease no longer precludes ICTSI from doing so, and
2. ICTSI is not violating its lease with the Port of Portland by assigning the work to ILWU Local 8 at the present time and would not violate its lease by maintaining the status quo if the NLRB were to award the work to ILWU Local 8 or if the Board were to find that it has no jurisdiction to resolve this dispute, as both ILWU Local 8 and Pacific Maritime Association have argued.

If the NLRB decides that it has no jurisdiction that would be unfortunate but it does not mean the dispute is over; it just means the parties will have to find another way to resolve the dispute. Perhaps the rule of law will apply and IBEW Local 48 will argue that it is entitled to do this work based on contract. Or, perhaps, the Rules of the Wild West will prevail because some parties may believe that whoever is biggest and strongest should win.

Under no circumstances, not once, has IBEW Local 48 ever waived its right to perform the work that it has been performing for the past 38 years under its collective bargaining agreement with DCTU and the Port of Portland. The only thing IBEW Local 48 did was to agree, on a temporary interim basis, to allow ILWU to continue performing work it took away from us by force. This was a

decision based on a desire for peaceful working relations, to facilitate settlement, and a recognition of some practical realities of what would happen if we did not.

In sum, IBEW Local 48 agreed to live by a decision of the NLRB that awards jurisdiction of reefer work. IBEW Local 48 did not agree to walk away from this work in the event that the NLRB agrees with the ILWU that it does not have jurisdiction. There is no evidence to any agreement between the parties to support the conclusions the ILWU now wants the NLRB to adopt.

ILWU Local 8's Motion to Reopen the Record should be seen for what it is and be denied.

DATED: July 31, 2012.

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CERTIFICATE OF SERVICE

This certifies that today I electronically filed **IBEW LOCAL 48'S MEMORANDUM IN OPPOSITION TO ILWU LOCAL 8'S MOTION TO REOPEN THE RECORD** and served it by electronic mail or facsimile on:

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Dated: July 31, 2012.

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