



"Foster, Randolph"  
<RCFOSTER@stoel.com>  
08/15/2012 09:25 AM

"csethness@morganlewis.com"  
To <csethness@morganlewis.com>, "cepperson@pmanet.org"  
<cepperson@pmanet.org>  
cc  
bcc  
Subject Public Comments by PMA re 10(k) Decision

Gentlemen:

You recall that I represent the Port of Portland in connection with pending civil litigation involving the PMA and the ILWU.

Under the Interim work assignment agreements between ICTSI and the Port, and between the Port and the DCTU-IBEW, the Port's authorization for ICTSI to temporarily assign the plugging, unplugging and monitoring of refrigerated containers at Terminal 6 (the "Disputed Work") to ICTSI's ILWU employees expired upon Monday's NLRB's 10(k) ruling. In order to avoid possible picketing or other action by the IBEW directed against the Port, the Port has advised ICTSI that the Port's IBEW employees will now be performing the Disputed Work in compliance with the NLRB's 10(k) ruling. It is our expectation that ICTSI will be directing its ILWU employees to stand down from the Disputed Work.

The Port is very concerned about the comments attributed to Mr. McKenna in the attached article. The article makes it sound as if the PMA has no intention of honoring the NLRB's ruling and that it intends to insist that ICTSI comply with the ILWU-PMA agreement directing ICTSI to assign the Disputed Work to the ILWU. As I am sure you are aware, the NLRB's determination in the 10(k) trumps any contrary agreement between the PMA and ILWU regarding who should perform the Disputed Work. *See, e.g., Sea-Land Serv. (Pac. Div.) v. Int'l Longshoremen's & Warehousemen's Union, Locals 13, 63, & 94*, 939 F.2d 866, 872 (9th Cir. 1991) ("[W]hen an arbitrator awards work to one union, but the NLRB gives the work to another union, the NLRB's determination supersedes the arbitration award."); *see also Sheet Metal Workers Int'l Ass'n, Local Union No. 36 v. Murphy Constr. Co.*, 191 F.3d 909, 910 (8th Cir. 1999) ("It is well-established law that courts are not to enforce an arbitration award that conflicts with a § 10(k) determination" (quoting *J.F. White Contracting Co. v. Local 103 Int'l Bhd. of Elec. Workers*, 890 F.2d 528, 529 (1st Cir. 1989))); *T. Equip. Corp. v. Mass. Laborers' Dist. Council*, 166 F.3d 11, 16 (1st Cir. 1999) ("[A] § 10(k) decision trumps an arbitrator's award if the two conflict."); *Standard Drywall, Inc. v. Operative Plasterers' & Cement Masons' Int'l Ass'n, Local 200*, 633 F. Supp. 2d 1109, 1113-147 (C.D. Cal. 2009) (vacating arbitration award inconsistent with 10(k) determination); *Bldg. Trades Emp'rs' Ass'n v. Marchell*, No. 08 Civ. 4564 (DLC), 2008 U.S. Dist. LEXIS 45906, at \*5 (S.D.N.Y. June 13, 2008) ("any decision ultimately made by the NLRB regarding which union is entitled to perform the work at issue here will take precedence over" the arbitration award sought to be enforced).

I would like to discuss this matter with you, or some other person in a position to speak

for the PMA regarding its position concerning the 10(k) ruling and the pending confirmation action directed at ICTSI. In light of Mr. McKenna's quoted comments following the NLRB's 10(k) decision, and the positions he asserted in his letter to ICTSI on Monday, the Port requires some assurances that the PMA will not seek to further interfere with the Port's right to control and direct the Disputed Work, and that the PMA will recognize the NLRB's decision as controlling regarding the Disputed Work.

The Port will take appropriate legal action to protect its rights in this matter. The Port would like to better understand the PMA's position in order to avoid any misunderstandings and unnecessary disputes.

I look forward to the opportunity to discuss this matter with you or one of your colleagues at your earliest convenience.

-- Randy

---

-

**Randolph C. Foster**

**STOEL RIVES LLP | 900 SW Fifth Ave, Suite 2600 | Portland, OR 97204-1268**

Direct: (503) 294-9453 | Mobile: (503) 502-5883 | Fax: (503) 220-2480

[rcfoster@stoel.com](mailto:rcfoster@stoel.com) | [Resume](#) | [www.stoel.com](http://www.stoel.com)

Assistant: Peggy Hall | Direct: (503) 294-9135 | [prhall@stoel.com](mailto:prhall@stoel.com)

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.



- ILWUdispute08.14.12.pdf



(<http://www.joc.com>)

[Home](#) > [Portland Dispute Isn't Over, ILWU Says](#)

---

## Portland Dispute Isn't Over, ILWU Says

Aug 14, 2012 6:17PM GMT

Pacific Maritime Association head also sees jurisdictional battle as continuing  
Bill Mongelluzzo, Associate Editor

**Source:**

The Journal of Commerce Online

International Longshore and Warehouse Union Coast Committeeman Leal Sundet was not speaking in hyperbole Monday when he said the jurisdictional dispute in Portland between the ILWU and the International Brotherhood of Electrical Workers is far from over despite a labor board ruling in favor of the electrical workers.

Sundet lashed out at the National Labor Relations Board for its decision Monday that the IBEW, not the ILWU, has jurisdiction over work on refrigerated containers at the Port of Portland. Sundet implied that the NLRB ruling is worthless because it will be superseded by the coast-wide contract between the ILWU and the Pacific Maritime Association.

Sundet said Portland's terminal operator, ICTSI, and the carriers that call at Terminal 6, including Hanjin Shipping Co. and Hapag-Lloyd, are members of the coast-wide bargaining agreement that covers all waterfront employers on the West Coast.

PMA President Jim McKenna agreed with Sundet that the jurisdictional dispute in Portland is not over. "There will still be more twists and turns," McKenna said.

When Portland two years ago awarded ICTSI the contract to operate Terminal 6, ICTSI joined the PMA and was supposed to inform the employers' group of any agreements it had with unions other than the ILWU, McKenna said. ICTSI did not tell PMA that it had a contract with the IBEW, he said.

Sundet was especially pointed in bringing employers to task for not recognizing what the ILWU believes is the supremacy of the coast-wide waterfront contract.

"No matter how much public money the port throws at ICTSI and the carriers, the ILWU/PMA labor agreement that governs all West Coast employers clearly says that Hanjin and Hapag-Lloyd must assign this work to ILWU-represented longshoremen," Sundet said.

McKenna indicated that the industry should stay tuned for further developments. "This won't go away quietly," he said.

Contact Bill Mongelluzzo at [bmongelluzzo@joc.com](mailto:bmongelluzzo@joc.com). Follow him on Twitter [@billmongelluzzo](https://twitter.com/billmongelluzzo).

[Ports/Terminals](#) [Container Shipping](#) [Labor](#) [United States](#)

---

**Source URL:** <http://www.joc.com/labor/portland-dispute-isn%E2%80%99t-over-ilwu-spokesman-says>