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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 32

PACIFIC CRANE MAINTENANCE CO., INC., and/or PACIFIC MARINE MAINTENANCE Co., LLC, a single employer, and/or PCMC/ PACIFIC CRANE MAINTENANCE CO., LP Their successor *and* INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 190, LOCAL LODGE 1546 AND DISTRICT LODGE 160 Respondents, and. INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, Respondent. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 190, LOCAL LODGE 1546 AND DISTRICT LODGE 160 Charging Party.	Case Nos. 32-CA-021925; 32-CA-021974 (formerly 19-CA-029645), 32CA-021977 (formerly 19-CA-029692); 32-CA-023613 and 32-CB-005932 **MOTION FOR RECONSIDERATION**

Charging Parties hereby request the Board reconsider its decision. Reconsideration is necessary because of the length of time the case has been delayed and because of new Board law not addressed in the Exceptions:

1. Charging Parties request that the Board modify its Decision and Order to conform to the Board's recent decision in *Bud Antle, Inc*., 359 NLRB No. 140 (2013). In particular, the Charging Parties request that the Board apply footnote 2 which requires that the Notice be mailed "to all current and former employees employed by the Respondent at any time from the onset of the unfair labor practices until the date the notices are mailed." Posting is not a sufficient remedy here where the employer has employed workers through a hiring hall and have employed many employees who no longer work for the employer. The current employees are just remotely connected to these unfair labor practices.

   This mailing requirement should equally apply to the Respondent, International Longshore and Warehouse Union. In this regard, the Board expressly relied in footnote 2 upon a prior case involving a union Respondent for holding that the appropriate remedy is to mail the notice to former and current members who may have been affected by the unfair labor practice. Here all employees and members who have worked for PCMC/PMMC in the locations involved are entitled to a dues reimbursement remedy. They specifically need some notice of their rights mailed and the only way to insure that they have notice is to mail it to all members and former members who have worked for Respondent since April 2005. Given however the far reaching effects of this Decision the Notice should be mailed to all members since 2005 until the Notice is mailed.

   Respondents should be required to not only mail the Notice but to do at least 2 internet or other searches for better addresses of any mailed notices that are returned by the Post Office. This is a normal requirement of any due process

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notice in class actions and this same procedure should apply to any mailing notice to insure delivery t those who may have moved.

The Board should apply *Bud Antle, Inc.* in this case and require an appropriate mailing of the Notice.

2. Additionally, Respondents should be required to mail the Board's decision along with the Notice. The mere receipt of the Notice only without the Board's decision is not a sufficient explanation of what occurred. The employees and members of the ILWU should be entitled to read the Board's decision as part of any mailing. This is also necessary to insure that those who are entitled to reimbursement for dues, medical expense and other losses are aware of the remedy. It is likely to be a decade until any remedy is effected. It is thus necessary that effective measures be implemented to insure adequate notice.

3. It is time that a Board Notice identify the website where the Board's decision is available. This will enable employees or members to read the Board's decision or locate it. The Board should adopt a procedure by which all notices have some reference to the electronic location where the Board's decision or other appropriate document can be located. Additionally the Respondents should be required to make the Board Decision available on any intra-net site where they generally provide information to employees.

4. The proposed Notice refers to "the right to refrain." This case involved interference with the right to bargain collectively and to exercise rights guaranteed by Section 7. The Section 7 right (disadvantage) to refrain was not an issue and that portion of the Notice is irrelevant to the unfair labor practices. This part of the Notice is unrelated wholly to the unfair labor practices alleged or found by the Board. To require any party to post a notice unrelated to the unfair labor practices serves no legitimate purpose and is to some degree punitive.

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The Board has traditionally added the "right to refrain" language to the employer notice. It is time to delete that language. We adopt the theory of the Fourth Circuit and the D. C Circuit:

> Reports on early versions of the NLRA indicate that the Board was designed to serve a reactive role, with its "quasi-judicial power" being "restricted to [the enumerated] unfair labor practices and to cases in which the choice of representatives is doubtful." S.Rep. No. 73–1184 (1934), *reprinted in* 1 *NLRA Leg. Hist.* at 1100. There is no indication in the Act's legislative history of an intent to allow the Board to impose duties upon employers proactively; indeed, if anything, it appears to have been the intent of Congress that the Board not be empowered to play such a role. *Cf.* H.R.Rep. No. 74–969 (1935), *reprinted in* 2 *NLRA Leg. Hist.* at 2932 (noting that Section 11 does not grant the Board the powers of a "roving commission").

Chamber of Commerce of U.S. v. N.L.R.B., 12-1757, 2013 WL 2678592 (4th Cir. June 14, 2013); *see also Nat'l Ass'n of Mfrs. v. N.L.R.B.*, 12-5068, 2013 WL 1876234 (D.C. Cir. May 7, 2013) (holding that the Board no authority to mandate that employers post a notice unrelated to any specific unfair labor practice, as this violated lawful 8(c) speech).

The Board is without power to order a notice to be posted which does not remedy the unfair labor practice found. Here there was no interference with the rights of employees to "refrain" from union activity, so that boilerplate language is unnecessary and contrary to law.

5. The Notice should describe what conduct occurred. The proposed Notice only contains what the Respondents will do or not do. There needs to a description such as "The Employer has been found to have unlawfully withdrawn recognition from the International Association of Machinists in April of 2005 for the employees of the employer in locations in Oakland and Tacoma. The Employer has been found to have unlawfully recognized the ILWU when that Union was not entitled by law to be recognized. The Employer unlawfully

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applied the ILWU agreement to those employees." This is a sample and suggested language. It would make any Notice more effective.

6. The Respondent Employer should be required to post the Board's proposed Employee Rights Poster for a period of 5 years. http://www.nlrb.gov/poster Although one Court has ruled that the Board cannot proactively impose this notice requirement, the Court made it clear that nothing prohibits the Board from imposing a notice posting requirement as a remedy. Wherever an employer violates the Act, that employer should be required to post the Employee Rights Notice as a remedy for 5 years minimum.

7. Notice should be posed on the PMA website**.** The employer is a member of the Pacific Maritime Association. That multi-employer association is the principal employer association which bargains with the ILWU. It maintains a website with information about member activities. The Board's Notice with a copy of the Decision should be posted on its website. http://www.pmanet.org/

8. Respondent should be required to post the appropriate notices for the length of time between when the unfair labor practice was committed (April 1, 2005 and following) or alternatively when the initial Complaint issued in this case and until the notices are actually posted. The Board's current rule requiring posting for only sixty days is wholly inadequate. This rule encourages delay on the part of respondents who know that when they eventually post a notice it will be years later, for sixty days only. It is also less effective for the fissured worksite where employees move around, do not come into the worksite or may work from home or remote locations. In order to discourage such delay and to effectively remedy unfair labor practices, the Board should alter its normal remedy to require posting for the length of time when the unfair labor practice is committed or when complaint issues and until notice posting begins. This would be a more effective remedy and moreover will discourage respondents from delaying proceedings so as to delay the posting of the notice

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until a time when the posting becomes meaningless and short-lived. Here, the delay in posting is likely to be almost a decade. A short posting period of 60 days a decade later serves only to encourage the kind of delay which has occurred here.

9. The Notice posting requirement for the ILWU should be corrected so that Notice is not limited to halls in Oakland and Tacoma but all halls or offices.
10. The remedy as to both Respondents should be a broad remedy applicable to "In any manner" not just "In any like or related manner…"
11. Paragraph 1(h) of the Order (page 11) is not clear. Respondent laid off a number of workers and did not rehire them. Although this is remedied in paragraph 2(g) of the remedy provisions, it should be included in paragraph 1(h).
12. Paragraph 2 of the Order should specifically require Respondent employer to implement all conditions which were in effect in April 2005 except to the extent that Charging Parties request that such condition not be implemented.
13. To the extent employees were terminated or laid off or disciplined by Respondent from during the period 2005 to present, Respondent should be required to reinstate them, make them whole and bargain with the Charging Parties over their termination. See *Alan Ritchey*, 359 NLRB No 40 (2012)
14. Footnote 4 incorrectly identifies one entity. The entity is Maersk Equipment Services Co."
15. Throughout the decision the Board has neglected the fact that PMMC still had six mechanics working in Long Beach AFTER the Sea Land terminal closed in late 2002. Those mechanics were members of 1484 who did the power work for Horizon Lines tractors. When PCMC took over in 2005, it decided not to do that work and those six members were laid off.

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16. At page 24 the Board erroneously misstates the extent to which Maersk purchased operations. Maersk in fact purchased the entire Sealand company, save for the domestic services, not just a few west coast assets.

17. Maersk moved OUT of Pier J, not into it. Also, Maersk in 2003 awarded some of the cranes in Oakland to PCMC. The other cranes were maintained by Sailors Union and Marine Engineers Beneficial Association. See page 25

18. The Decision again ignores that six PMMC mechanics in Long Beach. Also, fourth paragraph, the Decision mixes up PMMMC and PCMC. See page 39.

19. Footnote 34. On page 41. This is incorrect. . PMMC never had a contract with TRAPAC.

20. PCMC didn't get the TRAPAC work until June 2005 after Respondent transferred the employees to PCMC. See page 42.

21. The Decision erroneously states PMMC was in business from Match 31, 2005 to Dec 31 2005. See page 43.

On these grounds this Motion for Reconsideration should be granted. In all other respects the Board should adopt its Decision and Order.

Dated: July 22, 2013

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On July 22, 2013, I served the following documents in the manner described below:

MOTION FOR RECONSIDERATION

☑ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

☑ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 22, 2013, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw