UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, AFL-CIO

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 8, AFL-CIO Cases 19–CC–100903

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 40, AFL-CIO

and

ICTSI OREGON, INC.

Mara-Louise Anzalone, Esq. & Helena A. Fiorianti, Esq.,
for the General Counsel.
Robert Remar, Esq. & Emily M. Maglio, Esq. (Leonard Carder LLP),
for the Respondent Unions.
Michael T. Garone, Esq. (Schwabe, Williamson & Wyatt) &
Peter Hurtgen, Esq. (Curley, Hessinger & Johnsrud LLP),
for the Charging Party Company.[1]

DECISION

STATEMENT OF THE CASE

JEFFREY D. WEDEKIND, Administrative Law Judge. This is the second of two recent proceedings alleging unlawful secondary conduct by the ILWU and its Locals 8 and 40 (the Unions) in support of their labor dispute with the Port of Portland over the assignment of dockside "reefer" work.[2] The disputed work involves plugging, unplugging, and monitoring refrigerated containers after they are unloaded from vessels at Port terminal 6. The Unions contend that the work should be assigned to the Local 8 longshoremen— who are employed

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[1] Thomas T. Triplett, Esq. (Schwabe, Williamson & Wyatt) also appeared on the Charging Party Company's posthearing brief. Randolph C. Foster, Esq. (Stoel Rives, LLP), made a limited appearance at the hearing on behalf of the Port of Portland, a nonparty to the proceeding, regarding the Port's petition to revoke the ILWU's subpoena duces tecum.

[2] Local 8 represents crane operators, truckdrivers, gearlockermen, and various other longshore workers. Local 40 represents marine clerks and vessel planners. The NLRB's jurisdiction is undisputed and well established.

through the union hiring hall by ICTSI Oregon, Inc., the company that operates the terminal under a 25-year lease agreement with the Port—rather than the electricians, who are directly employed by the Port and are represented by the International Brotherhood of Electrical Workers (IBEW) Local 48.

The complaint in the first proceeding (19–CC–082533 et al.) alleged that the Unions unlawfully threatened to shut down ICTSI's terminal operations in May 2012 if ICTSI did not assign the dockside reefer work to longshoreman pursuant to the ILWU's 2008 coastwise labor agreement with the Pacific Maritime Association (PMA) or otherwise support their demand for the work. The complaint further alleged that, when ICTSI failed to comply with their demands, the Unions carried out their threats by, among other things, directing intermittent slowdowns and work stoppages at the terminal in early June 2012, thereby adversely affecting both ICTSI and the carriers that unload cargo at the terminal.

In July 2012, shortly after the foregoing complaint issued, the federal district court in Portland (Michael H. Simon, J.) granted the General Counsel's requests for a temporary restraining order and an interim injunction against the Unions under Section 10(l) of the Act. The court specifically enjoined the Unions, pending a final decision by the Board, from engaging in slowdowns or work stoppages at terminal 6 or otherwise threatening or coercing ICTSI or any other person engaged in commerce with an object of forcing ICTSI or any other such person to cease doing business with the Port. The court also required the Unions to provide to each of their officers, representatives, employees, agents, and members involved with work performed at terminal 6 a copy of the order and a clear written directive to refrain from engaging in any conduct inconsistent with the order. See GC Exh. 7. See also *Hooks ex rel. NLRB v. ILWU*, 2012 WL 2994056 (D. Or. July 20, 2012) (discussing the July 3 TRO); and 2012 WL 6115046 (D. Or. Dec. 10, 2012) (discussing the July 19 injunction). The court issued another, similar interim injunction against the Unions about 4 months later, which addressed additional alleged secondary conduct related to the reefer work (filing and pursuing lost work opportunity grievances against ICTSI and the carriers) in August 2012. See *Hooks ex rel. NLRB v. ILWU*, 905 F.Supp.2d 1198 (D. Or. Nov. 21, 2012), affd. in relevant part 544 Fed. Appx. 657 (9th Cir. Sept. 30, 2013).

In the meantime, a full, 12-day hearing on the complaint allegations was held before NLRB Administrative Law Judge William L. Schmidt. Based on that hearing record and the parties' posthearing briefs, in August 2013 Judge Schmidt issued a decision finding that the Unions violated Section 8(b)(4)(i) and (ii)(B) of the Act as alleged. Specifically, Judge Schmidt found that the Unions lacked a valid work-preservation claim to the dockside reefer work because the Port's electricians, rather than the longshoremen, had historically performed that work at the terminal.[3] He further found that the Port retained the right of control over the reefer work when it leased the terminal's operations to ICTSI in 2010; that the Port was therefore the "primary" employer in the work-assignment dispute; and that ICTSI and the carriers were

[3] As noted by Judge Schmidt (JD. at 3–4), the Board itself reached a similar conclusion in a related jurisdictional-dispute proceeding under 10(k) of the Act, *IBEW Local 48 (ICTSI Oregon, Inc.),* 358 NLRB No. 102 (Aug. 13, 2012), vacated *Pacific Maritime Assn. v. NLRB*, 3:12–cv–021799–MO (D. Or. June 17, 2013) (Mosman, J.), NLRB notice of appeal filed Sept. 5, 2013, No. 13–35818 (9th Cir.).

"neutrals" in that dispute. Although the Unions contended that their coastwise labor agreement with PMA compelled a different conclusion, Judge Schmidt rejected the argument as the Port was not a member of the PMA or party to that agreement, and ICTSI did not join the PMA until after executing the lease with the Port. He also rejected the Unions' argument that the carriers' ownership interest in the refrigerated containers gave the carriers the right to control who plugged and monitored them after being unloaded at the Port. Finally, Judge Schmidt found that various agents of the Unions did, in fact, threaten ICTSI officials in May 2012 and subsequently orchestrate intermittent slowdowns and work stoppages at the terminal in June 2012 in support of their dispute with the Port. *ILWU ("ILWU I"),* JD(SF)–36–13, 2013 WL 4587186 (August 28, 2013), Respondents' exceptions filed October 30, 2013.[4]

The complaint in this case is similar to the complaint in *ILWU I* except that it covers the subsequent time period beginning September 2012. Specifically, it alleges that the Unions have continued since that time (notwithstanding the district court's July 2012 interim injunction) to engage in secondary conduct in violation of Section 8(b)(4)(i)(B) of the Act by appealing to and ordering the longshoremen employed by ICTSI at terminal 6 to engage in work slowdowns in support of the Unions' work-assignment dispute with the Port, or by condoning and ratifying such conduct by their subsequent acts or omissions.[5]

Following several pretrial conference calls, another 12-day hearing was held regarding these additional allegations on November 12–15 and 18–21, and December 9–12, 2013.[6] The parties subsequently filed posthearing briefs on March 13, 2014.[7] After considering the briefs and the entire record, for the reasons set forth below I find that the ILWU and Local 8 violated the Act substantially as alleged. However, I dismiss the allegations against Local 40.[8]

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[4] The transcripts and exhibits from the hearing in *ILWU I* have been been entered into the record here as Jt. Exh. 1. References to the transcript and exhibits from that case appear herein as "Tr(I)." and "Exh(I)."

[5] The underlying charge was filed by ICTSI on March 22, 2013, and the General Counsel issued the complaint a few months later, on June 28. The Unions subsequently filed a motion for a bill of particulars on October 17 (GC Exh. 1(h)), which I orally granted at the first pretrial conference call on October 31. The General Counsel thereafter provided additional information to the Unions by letter dated November 4 (GC Exh. 1(k)), and also submitted an amended complaint at the start of the hearing (GC Exh. 2).

[6] The General Counsel's unopposed motion to correct the transcript is granted and received in evidence as GC Exh. 71.

[7] The Unions subsequently filed a notice of supplemental authority on March 31, 2014. The General Counsel's motion to strike the Unions' notice is denied.

[8] Specific citations to the transcript, exhibits, and briefs are included where appropriate to aid review, and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant and appropriate factors have been considered, including the demeanor and interests of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences which may be drawn from the record as a whole. See, e.g., *Daikichi Corp.*, 335 NLRB 622, 633 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB,* 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

FINDINGS OF FACT

I. Judge Schmidt's Findings in *ILWU I*

As indicated above, the Unions have filed exceptions to Judge Schmidt's decision, which remain pending, and thus his findings are not final. Nevertheless, contrary to the Unions' contention, it is appropriate to consider and rely on those findings in deciding the issues in this case. The issues decided by Judge Schmidt were fully litigated before him, and relitigating or revisiting those issues de novo in this related proceeding, while the matter is before the Board, would be antithetical to judicial efficiency and economy and potentially lead to inconsistent results and unnecessary delays. See *Wynn Las Vegas, LLC*, 358 NLRB No. 81 fn. 1 & JD. at 4–5 (2012) (Board affirmed judge's ruling that the respondent company was precluded from relitigating lawfulness of suspension, an issue fully litigated and decided by another judge in a prior case, even though that decision was pending before the Board on exceptions); *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 394–395 (1998), enfd. mem. 215 F.3d 1327 (6th Cir. 2000) (judge relied on another judge's findings in an earlier case as evidence of animus even though the case was pending before the Board on exceptions); and *Detroit Newspapers Agency*, 326 NLRB 782 fn. 3 (1998), enf. denied on other grounds 216 F.3d 109 (D.C Cir. 2000) (judge relied on earlier decision of another judge to find that a strike was an unfair labor practice strike, even though the decision was pending before the Board on exceptions).

Further, although provided the opportunity to do so, the Unions failed to present any newly discovered and previously unavailable evidence or changed circumstances since the period addressed by Judge Schmidt that would warrant different findings.[9] In arguing to the contrary, the Unions cite evidence that, beginning sometime in the summer of 2012, ICTSI engaged in negotiations with the carriers to execute new stevedoring contracts to replace the existing contracts expiring on December 31, 2012; that ICTSI's written contract proposals to the carriers in early 2013 specifically included rates for dockside reefer services; and that ICTSI implemented or reached interim agreements including those rates with respect to at least some of the carriers effective January 1, 2013. See Tr. 1477–1519; and R. Exhs. 35–43. However, the Unions have failed to establish that these or other events actually effected or resulted in any material change. ICTSI likewise charged carriers for dockside reefer services under the prior contracts, which had been negotiated by the Port but assigned to ICTSI when it took over the terminal operations in early 2011. Pursuant to the terms of its lease agreement with the Port, ICTSI then reimbursed the Port for its labor, management, and overhead costs of providing the dockside reefer services.[10] There is no evidence that this lease agreement was modified in any material way during the relevant period here (September 2012–June 2013), i.e. there is no

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[9] The relitigation issue first arose during the initial pretrial conference call on October 31. I reserved ruling at that time to permit the parties to brief the issue, which they subsequently did (Jt. Exhs. 2, 3). I thereafter ruled at the second pretrial conference call on November 7 that the Unions would not be permitted to relitigate Judge Schmidt's findings, but could present newly discovered and previously unavailable evidence or evidence of changed circumstances since the period addressed in that case. I reiterated this ruling at the outset of the hearing (Tr. 17–18), and as necessary thereafter.

[10] Tr. 1448; R. Exh. 33. See also *ILWU I*, JD. at 8; R Exhs.(I) 6, 26; and Tr.(I) 1153, 1178–1182, 1261–1266, 1270–1280, 1652–1656.

evidence that the Port relinquished the reefer work to ICTSI's control or that there was any significant change in how the electricians were paid during that period.[11]

Accordingly, for purposes of deciding the issues in this case, consistent with Judge Schmidt's decision in *ILWU I*, I find that the Port's electricians, rather than the longshoremen, historically performed the dockside reefer work at the terminal; that the Port continued to have the right of control over that work and was the "primary" employer with respect to the work assignment dispute with the Unions; and that ICTSI and the carriers were "neutrals" in that dispute, during the relevant period. I further find that agents of the Unions unlawfully threatened ICTSI officials in May 2012 and orchestrated intermittent slowdowns and work stoppages at the terminal in June 2012 in support of their dispute with the Port over the dockside reefer work.

II. The Alleged Unlawful Conduct

Given the foregoing findings, the only remaining issues are: (1) whether the alleged additional slowdowns since September 2012 actually occurred; (2) whether the object of the additional slowdowns was likewise to pressure ICTSI to assign the dockside reefer work to the longshoremen or otherwise support the Unions' dispute with the Port over the assignment of that work; and (3) whether agents of the Unions appealed for, ordered, condoned, or ratified the slowdowns.

A. Whether the alleged slowdowns occurred.

The complaint alleges that Local 8 longshoremen continued to engage in slowdowns during the relevant period—i.e., deliberately worked in a less productive manner—by operating their cranes at a reduced speed, refusing to hoist their cranes in "bypass mode" to discharge high

[11] See Tr. 1463–1464 (testimony of Sam Ruda, the Port's chief commercial officer). See also District Court Judge Simon's March 15, 2013 order in a related action the ILWU and the PMA filed under Section 301 of the LMRA to enforce certain arbitration decisions awarding the disputed reefer work to ILWU members, *ILWU v. ICTSI Oregon, Inc.,* 932 F. Supp.2d 1181 (discussing the Port's counterclaims and requests for declaratory and injunctive relief establishing that the Port controls the assignment of the reefer work and prohibiting ICTSI from assigning the reefer work to ILWU members). In their March 31, 2014 notice of supplemental authority, the Respondent Unions cite Judge Simon's more recent order in the foregoing proceeding, which dismissed portions of ICTSI's antitrust counterclaim against the ILWU and PMA on the ground that the ILWU's coastwise agreement with the PMA and attempts to obtain the disputed reefer work under that agreement had a work-preservation objective. 2014 WL 1218116 at *5, 10–11 (D. Or. March 24, 2014). However, Judge Simon— who as discussed above previously granted the General Counsel's requests for interim injunctions against the Respondents based on the conduct alleged in *ILWU I*—clearly did not thereby hold that the Respondents' alleged conduct against ICTSI in that case (or this case) was lawful. Indeed, as both Judge Simon and the Ninth Circuit noted in granting or upholding the interim injunctions, the Respondents' work-preservation defense to the General Counsel's 8(b)(4) allegations fails if the Port controls the work. See 905 F.Supp.2d at 121; and 544 Fed.Appx. at 659. And Judge Simon made clear in his March 15, 2013 order that he would stay a ruling on the control issue pending the Board's final resolution of that issue.

containers, refusing to move two 20-foot containers ("twin 20s") at a time on older trailers, and driving their trucks slowly and taking long routes around the yard. As summarized below, there is ample record evidence supporting these allegations.

(1) Kelly Roby, ICTSI's assistant terminal manager, credibly testified that he regularly observed Local 8 crane operators unnecessarily working their cranes in a slow "box" pattern (rather than a smoother "arc" pattern) throughout the relevant period (Tr. 1110–1112). He also observed Local 8 truckdrivers driving slow, at 3–5 mph instead of the usual 15 mph, and taking indirect routes around the yard, for no apparent reason. Indeed, on one occasion in late 2012, he observed at least four of the five trucks in one gang taking the long way around the yard, even though there was only one ship docked. Moreover, some of the drivers refused to comply with the foreman's order to take the direct route until after he threatened them with discharge. (Tr. 1115–1118, 1124–1126).[12]

(2) James Mullen, ICTSI's director of labor relations and terminal services (and the former terminal manager for 8 years), credibly testified that he likewise personally observed Local 8 crane operators working unnecessarily slowly. After observing two crane operators operating in such a manner 2 days in a row in late September 2012, he reviewed the supercargo logs for the shifts, which confirmed that both performed only about 15 net container moves per hour, far below normal. He therefore filed slowdown complaints against both operators under the provisions of the coastwise agreement between the PMA and the ILWU.[13]

Mullen credibly testified that he also personally witnessed an incident in late 2012 when most of the Local 8 truckdrivers on two gangs were taking the "scenic route" around the yard and leaving the crane hook hanging for no apparent reason. As in the incident described by Roby, many of the drivers refused to comply with the foreman's order to take the direct route until after he threatened them with discharge (Tr. 333–340; GC Exh. 4).

(3) Brian Yockey, ICTSI's terminal manager (and the former marine manager for 10 years), credibly testified that, in late November 2012, he overheard an experienced Local 8 crane operator on the radio state that the operators were no longer "allowed" to use the bypass mode to hoist their cranes past a certain safety limit to discharge high containers. Yockey immediately contacted Craig Bitz, a Local 8 Labor Relations Committee (LRC) representative and relief business agent, and reminded him of the parties' longstanding agreement and practice of using

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[12] Judge Schmidt found that Local 8 crane operators and truckdrivers engaged in similar conduct in early June. See *ILWU I*, JD. at 25–26, and 35–36.

[13] See Tr. 826–827; and GC Exhs. 14, 19, 20, 62. These and several other similar slowdown complaints against Local 8 or its members remained pending at the time of the hearing. See Tr. 813; and GC Exh. 56. However, the Unions appear to have abandoned any contention that the allegations in this proceeding should be stayed or deferred under *Collyer Insulated Wire*, 192 NLRB 837 (1971), pending final resolution of those complaints under the contractual grievance-arbitration procedures. Compare Tr. 246 with R. Br. 104, fn. 50. In any event, I reaffirm my ruling at the hearing that such deferral is unwarranted. See *Iron Workers Pacific Northwest (Hoffman Construction*), 292 NLRB 562, 577–578 (1989), enfd. 913 F.2d 1470 (9th Cir. 1990) (finding that pre-arbitral deferral of 8(b)(4) charges under *Collyer* was inappropriate because, inter alia, the arbitrator had no authority to decide if the alleged conduct was secondary).

the bypass mode in such situations. Bitz responded that operating in the bypass mode was an OSHA violation, and that the Union was "not going to work in a manner to help [ICTSI] as they have in the past" because of the complaints ICTSI had filed against Local 8 members.[14] ICTSI therefore had to shift ballast to get the ship lower in the water, which added several hours to the operation. (Tr. 342–347, 505–511).

Yockey also credibly testified that, beginning in the summer of 2012, Local 8 crane operators and truckdrivers refused to move more than one 20 foot container at a time on older trailers or "bomb carts." Again, they reportedly refused to do so for safety reasons—initially asserting that the older carts could not hold weight; then asserting that there were problems with the tires; and then asserting that they could not trust the weights of the containers— even though, like using the bypass mode, it had been the normal practice for years to move two 20-foot containers at a time on the carts, and there had been no recent incidents or accidents doing so. The matter was only resolved after months of investigation and discussions with Bitz. See Tr. 357–361, 615–618. See also Mullen's testimony, Tr. 827–828, 1028–1029.

(4) Bitz acknowledged that he told longshoremen not to operate cranes in bypass mode for safety reasons, and that he also spoke to them about moving twin 20s (Tr. 1766–1768).[15] Moreover, he admitted that the longshoremen did not work as productively during the relevant period because they were "upset" and would not "go the extra mile" or "cut through the yards like they used to" (Tr. 1803). And he did not deny telling Yockey during their conversation about the bypass mode that the Union was not going to help the Company as it had in the past because of all the recent complaints against Local 8 and its members.

(5) Steven Cox, a Local 8 crane operator, likewise admitted that he and other longshoremen did not work as productively during the relevant period because they and the Local Unions refused to "babysit" or "take care of the company" anymore (Tr. 688, 692–694).

(6) Jan Holmes, the standing area arbitrator at the terminal for many years, specifically found that three Local 8 crane operators engaged in a slowdown while working a Hapag Lloyd vessel on April 6, 2013, based on their exceptionally low production figures (11.8, 13.5, and 11.7 net container moves per hour), and other evidence presented at the formal hearing, including videotape of the operation (CP Exh. 4). There is no dispute that the facts relevant to the slowdown allegations were fully and fairly litigated before Arbitrator Holmes, and that she has substantial expertise in the industry (Tr. 230, 915, 987).[16]

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[14] Although Bitz did not identify the complaints, as indicated above Mullen had recently filed several additional complaints alleging that individual Local 8 members had operated their cranes in a nonproductive manner in late September (GC Exhs. 14, 18–20).

[15] I discredit Bitz' uncorroborated testimony that the twin-20 issue arose because longshoremen were concerned about overloading the carts and the gearlockermen had been making a lot of repairs to them. Cf. *ILWU I*, JD. at 31–32, and 37–38 (discussing Local 8's use of alleged safety concerns as a pretext for unlawful work stoppages in June 2012).

[16] I therefore give substantial weight to Arbitrator Holmes' findings that the longshoremen engaged in a slowdown. See generally *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 59–60 & fn. 21 (1974); and *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 271 (1964). Consistent with the allegations in ICTSI's complaint, Arbitrator Holmes also found that Local 8 was

As noted by the Unions, Arbitrator Holmes rejected certain other ICTSI claims or complaints alleging similar slowdowns during the relevant period. See R. Exh. 17 (alleged slowdown on June 3, 2013); CP Exh. 5 (alleged slowdown on March 19, 2013); R. Exh. 18 (alleged slowdown on October 6, 2012); and R. Exh. 23 (alleged slowdown on September 30, 2012).[17] However, the General Counsel does not rely on the specific conduct at issue in those arbitrations as support for the allegations in this case. Further, as indicated by Arbitrator Holmes' findings regarding the April 6, 2013 shift, the mere fact that she found that longshoremen did not engage in slowdowns on some shifts, does not establish that they did not do so on other shifts. Nor are those decisions sufficient to rebut the substantial other evidence discussed above (which Arbitrator Holmes may not have had before her at the time) that longshoremen engaged in a pattern of such slowdown activity across the relevant 9-month time period. See also Dr. Ward's expert testimony, below.

(7) Bryce Ward, Ph.D., a senior economist at ECONorthwest, performed a microeconomic analysis of terminal productivity for ICTSI in 2013 and found that both average gross moves per hour (total moves divided by total hours paid) and average net moves per hour (total moves divided by total hours actually worked, i.e., not including downtime or delays caused by late arriving vessels, equipment breakdowns, etc.) were substantially lower during the relevant period. Specifically, the number of moves averaged 23.1 gross and 27.3 net moves per hour during the 29 months prior to June 1, 2012, but dropped significantly in the first 6 weeks thereafter to 16.9 gross and 19.7 net moves per hour, and rose only about half as much after ICTSI began filing slowdown complaints under the coastwise agreement and the district court issued the July 19 interim injunction, remaining relatively low at between 19.4–20 gross and 23.1–23.8 net moves per hour through the end of the relevant period. In short, overall production remained about 3–4 moves below the previous gross and net averages, a highly statistically significant and economically meaningful difference. Dr. Ward also conducted a regression analysis of various internal and external productivity factors or determinants, and concluded that a deliberate labor slowdown was the most probable explanation for the productivity decline. (Tr. 1130–1255; GC Exhs. 45–48).

Dr. Ward has performed labor and employment microeconomic analyses for both employers and unions, and his qualifications to analyze and provide expert testimony about terminal 6's productivity are not disputed. See GC Exh. 45; and Tr. 1130–1134. Nor did the Unions object to the introduction of his written reports and analyses or dispute the underlying statistical evidence he relied on showing a significant decline in productivity.

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responsible or "guilty" of the slowdown. However, she apparently did so pursuant to contract provisions that require the Union to ensure that its members do not engage in slowdowns. See CP Exh. 3, p. 3, citing Secs. 11 and 18 of the coastwise agreement (R. Exh(I). 1). She did not address whether Local 8 actually called for, ordered, ratified, or condoned the slowdown, as alleged in this case. Nor did she address the additional factual issue presented here whether the slowdown was motivated in whole or in part by the reefer dispute. Accordingly, as discussed infra, I do not accord Arbitrator Holmes' decision any weight on these factual issues, or with respect to the ultimate legal issue presented in this case. See generally *Olin Corp.*, 268 NLRB 573 (1984).

[17] Two of these arbitration decisions, CP Exh. 5 and R. Exh. 18, were issued after "informal" or "on the job" hearings conducted at the terminal during or shortly after the subject shift.

Nevertheless, the Unions argue that Dr. Ward's conclusion about the cause of the decline is fundamentally flawed. Specifically, the Unions assert that Dr. Ward failed to consider the significant change in shipping schedules that occurred effective September 22, 2012[18]—when Hapag Lloyd, the terminal's second largest customer, began docking at the terminal on weekends, the same day as the terminal's largest customer, Hanjin, rather than midweek as it had in the past—and the increased yard congestion that occurred as a result of having two ships berthed and worked at the same time. See R. Br. 99–101; and Dr. Ward's testimony, Tr. 1201–1202, 1211, 1243 (although he considered the number of gangs per vessel, he did not consider the total number of gangs working at the same time or yard congestion as separate productivity factors or determinants).

The Unions' argument has some surface appeal, as it is undisputed that two vessels did not usually dock at the same time prior to September 22, 2012, and that working two vessels at a time requires additional gangs, increases yard congestion, and can affect the truckdrivers' routes (Tr. 526–527, 1116–1117, 1126, 1711–1717, 1797, 1995). However, the argument ultimately fails to withstand scrutiny for several reasons. First, the terminal is configured to accommodate up to three vessels at a time (GC Exh. 11; R. Exh. 59; and Tr. 307, 1116). Second, the Unions themselves have not mentioned the schedule change or increased yard congestion in their public comments about the terminal's production problems. See GC Exh. 45, pp. 5, 20 (summarizing Local 40 Secretary-Treasurer/Business Agent Dana Jones' January 9, 2013 testimony before the Port Commission); and GC Exh. 57 (ILWU Coast Committeeman Leal Sundet's November 2, 2013 editorial in OregonLive.com).[19] Third, while Local 8 has occasionally cited the presence of two vessels and yard congestion, along with numerous other factors, in defending against ICTSI's slowdown complaints during the relevant period, Arbitrator Holmes effectively rejected the Union's argument in ruling for ICTSI in one case (see CP Exh. 4), and did not expressly rely on it in ruling against ICTSI in another (R. Exh. 23).[20]

Moreover, while the schedule change and increased yard congestion were not considered as separate factors or determinants by Dr. Ward, they were effectively incorporated into his analyses of net moves per hour. As indicated above, the calculation of net moves per hour subtracts any external or internal delays, including standby time when the crane's hook is hanging waiting for labor or trucks to arrive through the yard (Tr. 856, 1150, 1201, 1706). Indeed, after ICTSI began filing slowdown complaints in June 2012, at the urging of Local 8 the longshoremen began diligently recording and notifying the marine clerks (who as noted above are represented by Local 40) of such delays to ensure that they were reflected in the supercargo

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[18] See CP Exh. 12; and Tr. 2153–2157. I discredit Bitz' uncorroborated testimony to the extent it indicates that the regular schedule change began earlier, in late June (Tr. 1712–1714).

[19] Sundet and Jones are admitted agents of the International and Local 40, respectively (Jt. Exh. 5).

[20] Local 8 also argued in the former arbitration proceeding that production on the Hapag vessel was low because Hapag vessels now dock at berth 604. Berth 604 has older, shorter, and slower cranes than berth 605, where Hapag vessels used to dock midweek, when Hanjin vessels were not docked there (Tr. 1116, 1709–1713, 1716, 1796–1797). However, Arbitrator Holmes effectively rejected this argument as well. Moreover, Dr. Ward specifically considered berths as a factor or determinant in his regression analyses. See, e.g., GC Exh. 45, p. 18 fn. 35, and p. 20 fn. 48; and GC Exh. 47, p. 19 fn. 36, p. 22 fn. 49, and p. 23.

logs and operations reports that were used by ICTSI to calculate net moves. See GC Exh. 30; R. Exh. 58; and Tr. 400, 532, 793, 1793–1794, 1824. Nevertheless, as indicated above, average net moves per hour remained significantly below normal throughout the relevant period.

The Unions also generally argue that various other factors outside the longshoremen's control, such as management turnover and inexperience and certain changes in the yard (e.g. changing stop signs to yield signs in late June or early July 2012) and other policies and practices, caused or contributed to the relatively low productivity during the relevant period. However, these factors were either specifically considered by Dr. Ward in his regression analyses or, as with the schedule change and increased yard congestion, were captured by his analyses of net moves per hour.[21] Moreover, as discussed above, there is substantial other evidence that the slowdowns were deliberate. Thus, this argument fails as well.

The complaint additionally alleges that Local 8 crane operators engaged in slowdowns by arriving late to their assigned cranes. However, unlike the allegations above, the General Counsel has failed to prove this allegation by a preponderance of the evidence. The record indicates that late-arriving crane operators was a recurring problem even before June 2012. While the problem increased during the relevant period, it was due in large part to the gearlockermen's failure to finish their crane inspections as quickly (which the General Counsel does not allege to be part of a deliberate attempt to lower production). Further, there was significant improvement after Mullen requested Local 8's assistance in resolving the problem in early November 2012. See Tr. 351–352, 356, 406–407, 644, 821; and GC Exh. 40. See also Arbitrator Holmes' decision, R. Exh. 19 (reinstating an operator who was fired by ICTSI for arriving late to his crane on November 9, 2012). Accordingly, this allegation is dismissed.

Finally, the complaint alleges that Local 40 marine clerks also engaged in a slowdown during the relevant period by refusing to schedule "twin 20" container moves. (This is the only complaint allegation that Local 40 members directly engaged in slowdowns during the relevant period.) However, the testimony given by Yockey and Mullen about the marine clerks' involvement in the matter is too vague and sketchy to make such a finding. Accordingly, this allegation is likewise dismissed.

B. Whether an object of the slowdowns was the reefer dispute

In *ILWU I*, Judge Schmidt found that there was strong evidence that the object of the June 2012 slowdowns was to pressure ICTSI to support Local 8's demand for the reefer work given their timing and the explicit threats by ILWU and Local 8 officers at that time to shut down ICTSI if it did not assign the work to the longshoremen (JD. at 21–25, 27, 34–37, 45–47). As the General Counsel and ICTSI concede, there is no evidence of any similar explicit threats during the relevant period here. And, as discussed above, productivity increased somewhat in

[21] At least one of the specific changes cited by the Unions as hurting production—requiring longshoremen to work up until 10 minutes, rather than 15 minutes, before the end of the shift—did not occur until after June 2013. See Tr. 859, 1727–1731, 1802–1803; and R. Exh. 15.

mid-July 2012 after ICTSI began filing slowdown complaints against both Local 8 and individual longshoremen and the district court issued the first interim injunction.[22]

Nevertheless, there is strong circumstantial evidence that ICTSI's failure to support Local 8's claim to the reefer work continued to be an object of the slowdowns and low productivity. As discussed above, productivity never fully recovered after June 2012 and remained consistently and significantly depressed throughout the relevant 9-month period. Further, as summarized below, there is abundant evidence that the Unions never notified all of the longshoremen about the district court's July 19 injunction.

(1) On July 20, 2012, the day after the district court's order, the ILWU emailed a press release to the Locals stating that the Union had actually been "vindicated" because the court's decision had "confirm[ed] that longshoremen are being unfairly blamed for PMA member carriers leaving the Port" (GC Exh. 58).[23] There was no mention whatsoever of the injunction in either the email or the press release. And the only attachments were certain email exhibits "associated with" the court proceeding, which assertedly showed that carriers had left the Port because of ICTSI rather than the ILWU.

(2) Only one of the five crane operators who testified at the hearing (Gregory Carse) recalled ever seeing an injunction posted. See Tr. 708–709 (testifying that one was posted in the union hall). Further, it was never established which injunction Carse saw or when he saw it. A July 23 notice authored by the ILWU's attorney about the July 19 injunction was introduced into the record (GC Exh. 8), but there is no evidence that the notice and attached injunction (GC Exh. 7) were actually posted or distributed to ILWU members. Although Bitz testified (Tr. 1700–1701) that he posted an injunction "all over the terminal," he identified it as the later injunction issued by the court on November 21, 2012, which the record indicates was not posted until January 3, 2013 at the earliest (R. Exh. 56).[24]

(3) Although Bitz testified that the injunction was discussed at several union meetings to ensure that all Local 8 members were informed about it (Tr. 1702–1705), no meeting minutes were introduced to corroborate his testimony. The minutes of only one union meeting were introduced on the matter: the union meeting on July 11, over a week before the interim injunction issued, where the TRO was mentioned (R. Exh. 57). Further, none of the Local 8 members who testified recalled an injunction being mentioned at a union meeting, notwithstanding that they attended regularly as required by union rules. See Tr. 669–671, 697

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[22] With respect to ICTSI's June 2012 slowdown complaints, see, e.g., Tr. 395; and R. Exh. 62 (discussing the June 2012 slowdown complaints and arbitrations). See also Dr. Ward's September 19, 2013 report, GC Exh. 47, at p. 9 (the increase in production after July 19 "may stem from ICTSI's increased willingness to file complaints when very low productivity occurs.")

[23] It is unclear what July 19 court decision the press release was referring to (there is no opinion accompanying the court's order).

[24] As indicated by the Unions, it is possible that Bitz was simply confused when he initially identified the November injunction as the one he posted. See Tr. 1704. However, regardless of which injunction Bitz meant to identify, his testimony that he posted the injunction "all over the terminal" is uncorroborated and contrary to the weight of the evidence, and I discredit it.

(Cox); 716 (Carse); 735–736, 741 (John Mulcahy); 772, 775 (Ted Gray); and 893–894 (Terrandy Hudson).[25]

Moreover, even assuming arguendo that the July 23 injunction notice authored by the ILWU's attorney was timely and prominently posted, it was hardly an exhortation to cease pressuring ICTSI to support Local 8's claim to the reefer work under the ILWU/PMA coastwise agreement. The notice both began and ended by saying that the district court's July 19 order was "wrong," and was being posted "under protest." And its final words to the longshoremen were,

> We will win this dispute; justice will prevail; ICTSI will be required to comply with the directives of the maritime industry! (GC Exh. 8).

Similarly, the January 3, 2013 notice regarding the court's November 21, 2012 injunction stated:

> We strongly believe the Court's order is wrong and that the ILWU has acted lawfully to protect and defend its collectively-bargained rights. We see this company's actions as an attack on collective bargaining, an attack on the ILWU and an attack on the ILWU-PMA West Coast bargaining relationship . . .We will appeal the Court's order. We are confident that we will prevail and that, in the end, ICTSI will be held to account. (R. Exh. 56)

Whether or not the ILWU had the right to post such notices with the injunctions,[26] the notices were certainly not drafted to maximize the impact of the court's orders.

In response, the Unions argue (Br. 75) that "temporal proximity alone" does not support an inference that the slowdowns continued to have a secondary objective, citing *Shafer Redi-Mix, Inc. v. Teamsters Local 7*, 643 F.3d 473, 480 (6th Cir. 2011). However, *Shafer* is inapposite, as the issue there was whether temporal proximity is enough to infer that an employer actually suffered damages "by reason of" a union's unlawful secondary activity as required by Section 303 of the Labor Management Relations Act. Compare *Service Employees Local 87 (Trinity Building)*, 312 NLRB 715, 749 (1993); and *K & K Construction Co. v. NLRB*, 592 F.2d 1228, 1233 fn. 3 (3d Cir. 1979) (citing timing of picketing as evidence of its secondary object). In any event, as discussed above, the inference here is supported by more than temporal proximity.

The Unions also argue that there were many other reasons that Local 8 longshoremen were upset with ICTSI, particularly ICTSI's installation of video cameras in the yard and closer supervision, stricter enforcement of rules, and filing of contractual complaints against the longshoremen individually. According to the Unions, these and certain other actions by ICTSI—cutting the longshoremen's paid time by quarter hours if they arrived late, paying for certain

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[25] For the same reasons, therefore, I discredit Bitz' testimony that the July 19 injunction was discussed at union meetings.

[26] See *NLRB v. Union Nacional de Trabajadores*, 611 F.2d 926 (1st Cir. 1979). Whether the Unions had a right to post such notices with the district court's injunctions, or otherwise adequately complied with the court's orders, is not at issue in this proceeding, and is for the court itself to decide.

occasional longshore work at a lower skill level and pay rate ($37.08 rather than $39.35/hr), and removing the gearlocker television and vending machine—reduced morale among the longshoremen, which in turn impacted their production.

5 There is some record support for this argument, as it is undisputed that these changes occurred during the relevant period and upset the workforce. See Tr. 637, 1561, 1718–1722, 1797–1798; R. Exh. 57 (video cameras); Tr. 342–347, 449–442, 460, 606–607, 692–694, 757–759, 834, 898–901, 1030 (closer supervision, stricter enforcement of rules, and filing of complaints); 629–631, 1723–1726; R. Exhs. 10–11 (cutting time for late arrival); Tr. 441–442, 10 1740–1744, 1763, 1808–1810 (paying for occasional work at lower skill rate); and Tr. 633–634, 1732–1734; R. Exh. 12 (removing gearlocker tv and vending machine).[27] However, it is clear that the first two changes above were instituted by ICTSI in response to the Unions' work stoppages, slowdowns and other unlawful conduct in June 2012 regarding the reefer dispute. Thus, as indicated by the following colloquy with Local 8 crane operator Cox, to the extent the 15 longshoremen reduced their production in response to those changes, they did so indirectly because of the reefer dispute.

> Q. [The] failure to babysit ICTSI started as a direct result of the labor dispute in June of 2012, correct?
> 20 A. I would say so, yes.
> Q. And it's continued ever since, correct?
> A. I would say so, probably, yes.
> Q. And the continued failure or refusal to babysit ICTSI, in your opinion and based on your experience, is a direct result of the labor dispute regarding the
> 25 plugging and unplugging of reefers, correct?
> A. I wouldn't say directly no. I would say it's a lot to do with being harassed on the job, cited for issues that you shouldn't be – wouldn't have been [cited] for prior to. (Tr. 693.)

30 See also Dr. Ward's February 26, 2013 report, GC Exh. 45, p. 19 (noting that "the union's perception of changes in climate or a change in management attitude may be the byproduct of the labor dispute and not the source of the decline in labor productivity"). To disregard such a connection or relationship in evaluating the object of union action would ignore industrial

[27] Contrary to ICTSI's posthearing brief (pp. 95–97), Bitz' testimony that other longshoremen complained to him about several of ICTSI's changes is not barred by the hearsay rule, as his testimony was offered to show their state of mind, not to prove the truth of the facts underlying their state of mind. See *Wagner v. County of Maricopa*, --- F.3d ---, 2013 WL 7219510 (9th Cir. Dec. 30, 2013) (discussing FRE 803(3)), amended and petition for rehearing denied, 706 F.3d 942 (9th Cir. 2013), cert. denied 133 S.Ct. 1504 (2013). Moreover, as reflected by the record citations above, Bitz' testimony about the longshoremen's unfavorable reaction to the changes was corroborated by other evidence, including testimony by other longshoremen and ICTSI's own managers. See generally *Midland Hilton & Towers*, 324 NLRB 1141, fn. 1 (1997) (hearsay evidence may be admitted in NLRB proceedings "if rationally probative in force and if corroborated by something more than the slightest amount of other evidence").

realities and potentially discourage employers from engaging in self-help efforts to prevent or document continued unlawful conduct.[28]

In any event, as indicated by the text of Section 8(b)(4), a violation is sufficiently established if *an* objective of the conduct is secondary; it need not be the only objective. See *Laborers District Council (Lake Area Fence),* 357 NLRB No. 29 (2011), enfd. 688 F.3d 374 (8th Cir. 2012); *Food and Commercial Workers Local 367*, 333 NLRB 771,773 fn. 15 (2001); *NLRB v. Ironworkers Local 272*, 427 F.2d 211, 213 (5th Cir. 1970), and cases cited therein. Even considering management's various post-June 2012 changes as separate events unrelated to the reefer dispute, the Unions have failed to adequately rebut the strong inference, discussed above, that forcing ICTSI to support Local 8 in that dispute did, in fact, continue to be a direct object of the slowdowns during the relevant period.

C. Whether the Respondent Unions are responsible for the slowdowns

This leaves the issue of whether the Unions are responsible for the above-described slowdowns during the relevant period. In *ILWU I*, Judge Schmidt found that there was strong evidence that all three Unions—the International, Local 8, and Local 40—were responsible for the slowdowns and other secondary conduct in June 2012 given the explicit threats and direct participation in much of the conduct by their admitted agents and other circumstantial evidence. JD. at 45–46. As discussed above, there are no similar explicit threats during the period at issue in this case. And the General Counsel has failed to prove the only new complaint allegation directly involving Local 40 officers and members.

Nevertheless, there is ample evidence that Local 8 and the ILWU were responsible for the subject slowdowns by Local 8's members. As discussed above, Bitz, an admitted agent of Local 8, overtly supported the longshoremen's refusal, on pretextual safety grounds, to operate cranes in bypass mode and to move twin 20s on older carts. Further, there is compelling circumstantial evidence, particularly in light of the recent history described by Judge Schmidt, that the longshoremen's other conduct was directed or coordinated by Local 8 and the ILWU as well. Thus, as indicated above, Roby and Mullen observed multiple Local 8 truckdrivers in one or more gangs deliberately taking the "scenic route" around the yard at the same time in late 2012. Similarly, Arbitrator Holmes found that three of four Local 8 crane operators deliberately operated their cranes more slowly on the same shift in April 2013. And Dr. Ward's statistical analysis of the entire period revealed that the productivity of every crane and nearly every crane operator remained depressed throughout—"a remarkable coincidence" (GC Exh. 45, pp. 4–5, 16, 22; GC Exh. 47, pp. 4–5, 17, 23). Cf. *Iron Workers Local 272 (Presstress Erectors),* 172 NLRB 207 (1968), enfd. 427 F.2d 211 (5th Cir. 1970) (finding union responsibility for work stoppage based on circumstantial evidence alone).

Moreover, even if Local 8 and the ILWU did not affirmatively support or direct all of the subject conduct during the relevant period, they were undisputedly aware of it and took no action to stop it. Rather, in response to the increasing number of slowdown complaints filed by ICTSI, the Unions tried to coerce the Company into dropping the complaints (by refusing to resume

[28] There is no record evidence that any of ICTSI's post-June 2012 changes violated either the coastwise agreement or ICTSI's bargaining obligations under Section 8(a)(5) of the Act.

operating cranes in bypass mode unless it did so), urged the longshoremen to document other causes of delays, and continued to blame the Company for the terminal's productivity problems.[29] There is no evidence that the Unions reminded the longshoremen of the district court's July 19 injunction (indeed, as discussed above, there is no credible evidence that they *ever* informed all the longshoremen of the injunction), or took any other significant actions to ensure that the injunction was not violated. In these circumstances, Local 8 and the ILWU effectively condoned or ratified the conduct, and are therefore properly held accountable for it. See *NLRB v. Union Nacional de Trabajadores*, 540 F.2d 1, 9 fn. 7 (1st Cir. 1976), cert. denied 97 S.Ct. 736 (1977); *NLRB v. Bulletin Co*., 443 F.2d 863, 865–867 (3d Cir. 1971), cert. denied 92 S.Ct. 682 (1972); and *Seattle Times Co. v. Seattle Mailer's Union Local 32*, 664 F.2d 1366, 1369 (9th Cir. 1982). See also *New York State Nurses Assn*., 334 NLRB 798, 799 fn. 6 (2001); and *Laborers Local 616*, 302 NLRB 841, 843 (1991).

The complaint also alleges that the relatively long delay in processing ICTSI's slowdown complaints is evidence of condonation and ratification. However, while there is some evidence that supports the allegation, the record as a whole does not. Rather, the record indicates that the delays have been due primarily to many other factors during the relevant period, including: (1) an unusually large number of slowdown complaints were filed and arbitrations scheduled in a relatively short period of time (Tr. 1642–1643, 1854–1858, 1866, 1917–1918); (2) Bitz and other members of the Local 8 LRC were also full-time working longshoreman (Tr. 1674, 1863–1864); (3) Local 8 was also involved in contentious contract negotiations and resulting labor disputes with other companies (Tr. 1673–1674, 1863–1864, 1930, 2127–2130; GC Exh. 39; R. Exh. 54); (4) the PMA itself had a difficult time handling all of the slowdown complaints on behalf of ICTSI and had to cancel and reschedule meetings with the Local 8 LRC (Tr. 1858, 1865, 1922; CP Exh. 9); and (5) various other matters on the meeting agendas had priority, including previously filed complaints and availability and registration issues (Tr. 1649, 1660, 1664, 1860–1862, 1920). Accordingly, this allegation is dismissed.

CONCLUSIONS OF LAW

1. By inducing and encouraging, since September 2012, longshoremen employed by ICTSI Oregon, Inc. at the Port of Portland to unnecessarily operate cranes and drive trucks in a slow and nonproductive manner, refuse to hoist cranes in bypass mode, and refuse to move two

[29] As the ILWU concedes (Br. 69), an international union may be held liable for the actions of an affiliated local if it instigated, supported, ratified, or encouraged them. *Carbon Fuel Co. v. Mine Worker*s, 444 U.S. 212, 217 (1979). Here, although there is no evidence that the ILWU directly participated in some of Local 8's actions, ILWU Coast Committeeman Leal Sundet (who Judge Schmidt found was a key player in the reefer dispute and made several explicit threats to "fuck" and shut down ICTSI over the dispute in May 2012) acknowledged, consistent with the documentary evidence, that he talked to Local 8 daily, and assisted, advised, and guided it with respect to ICTSI's slowdown complaints during the relevant period. See Tr. 2064–2065, 2078–2082; and GC Exhs. 60–70. See also his July 20, 2012 and August and November 2013 public comments about the dispute, GC Exhs. 57–58; and CP Exh. 1. As indicated by the General Counsel and ICTSI, it is reasonable and appropriate in these circumstances to infer and find that the ILWU authorized, directed, condoned, and/or ratified Local 8's actions. See, e.g., *Meat Cutters Local 222 (Iowa Beef Processors)*, 233 NLRB 839, 849–851 (1977).

20-foot containers at a time on older carts, in order to force or require ICTSI and carriers who call at terminal 6 to cease doing business with the Port, Respondents ILWU and Local 8 have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(6) and (7) of the Act.

2. Respondents ILWU and Locals 8 and 40 have not otherwise violated the Act in the manner alleged in the amended complaint.

REMEDY

The appropriate remedy for the violations found is an order requiring the ILWU and Local 8 to cease and desist from engaging in such unlawful secondary conduct. Like Judge Schmidt's previous order, this order, if adopted by the Board and enforced by a court of appeals, may provide a basis for seeking contempt sanctions against the Unions in the event of subsequent unlawful secondary conduct. See, e.g., *NLRB v. Ironworkers Local 118*, 908 F.2d 977 (9th Cir. 1990), cert. denied 111 S.Ct. 1309 (1991).

As requested in the complaint, the ILWU and Local 8 will be required to post a notice regarding the cease and desist order at their offices and dispatch hall and to mail a copy of the order to all of their members who have worked at terminal 6 since September 1, 2012. The Unions shall also be required to distribute and post the notices electronically, such as by email or on their intranet or internet sites, to the extent the Unions customarily communicate with their members by such means. In addition, the Unions shall be required to provide sufficient signed copies of the notices to the NLRB Regional Office for posting by ICTSI and the carriers who call at terminal 6, if willing.[30]

Accordingly, on the foregoing findings of fact and conclusions of law and the entire record, I issue the following recommended[31]

ORDER

The Respondents, International Longshore and Warehouse Union, AFL-CIO, San Francisco, California, and its affiliate ILWU Local 8, Portland, Oregon, their officers, agents, and representatives, shall

1. Cease and desist from inducing or encouraging employees of ICTSI Oregon, Inc. or any other employer to engage in a slowdown or otherwise refuse to handle or work on goods or refuse to perform services if an object is to force ICTSI Oregon, Inc., the carriers who call at terminal 6, or any other person to cease doing business with the Port of Portland.

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[30] The complaint requests notice remedies that are even broader with respect to both location (all facilities in Oregon) and time period (since March 9, 2012). However, the General Counsel has offered no rationale or justification for broadening the notice remedies in this manner. In any event, the foregoing notice remedies are sufficient and appropriate under the circumstances.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at the Local 8 dispatch hall and their offices in Portland, Oregon and San Francisco, California, copies of the attached notice marked "Appendix."[32] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their members by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, mail copies of the notice, at their own expense, to all members who have been employed by ICTSI Oregon, Inc. at terminal 6 since September 1, 2012. The notice shall be mailed to the last known address of each of the members after being signed by the Respondents' authorized representatives.

(c) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by ICTSI Oregon, Inc. and the carriers who call at terminal 6, if willing, at all places or in the same manner as notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. May 30, 2014

Jeffrey D. Wedekind
Administrative Law Judge

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT induce or encourage employees of ICTSI Oregon, Inc. or any other employer to engage in a slowdown or otherwise refuse to handle or work on goods or refuse to perform services where an object is to force ICTSI Oregon, Inc., the carriers who call at terminal 6, or any other person to cease doing business with the Port of Portland.

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, AFL-CIO

Dated _____ By _____
(Representative) (Title)

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 8, AFL-CIO

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CC-100903 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.