

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC MARITIME ASSOCIATION

Case No. 21-CA-39434

And

ERIC ALDAPE, an Individual

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL NO. 13,
AFL-CIO

Case No. 21-CB-14966

(Pacific Maritime Association)

And

ERIC ALDAPE, an Individual

**RESPONDENT PACIFIC MARITIME ASSOCIATION'S ANSWERING BRIEF TO
GENERAL COUNSEL'S EXCEPTIONS TO ALJ'S DECISION**

Submitted by:

Clifford D. Sethness
Jason M. Steele
MORGAN, LEWIS & BOCKIUS LLP
300 S. Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Tel.: 213.612.2500 / Fax: 213.612.2501
csethness@morganlewis.com
jsteele@morganlewis.com

Counsel for Respondent
PACIFIC MARITIME ASSOCIATION

In this case, the General Counsel alleged that Respondents Pacific Maritime Association (“PMA”) and the International Longshore and Warehouse Union, Local 13 (“Local 13”) violated Sections 8(a)(1) and (8)(b)(1) of the National Labor Relations Act (the “Act”) by taking certain actions against Charging Party Eric Aldape. The ALJ dismissed the Complaint against both Respondents. (ALJ Dec., p. 10.)

The General Counsel has excepted to the ALJ’s decision on various grounds. PMA submits this answering brief in opposition to General Counsel’s exception no. 7 (ALJ’s failure to find that “Respondent Pacific Maritime Association’s (“Employer”) conduct violated Section 8(a)(1) of the Act”) and exception no. 9 (ALJ’s failure to find that “[a]n appropriate remedy for the violations of the Act committed by the Employer and the Union should issue”).

The ALJ dismissed the Complaint against PMA solely on the ground that none of Mr. Aldape’s conduct was protected by Section 7 of the Act. Although the parties extensively briefed the issue, the ALJ did not address whether PMA violated the Act even if Mr. Aldape’s conduct was protected under Section 7. PMA submits that, even if Mr. Aldape’s conduct was protected, PMA’s conduct did not violate Section 8(a)(1) of the Act. This argument is set forth in detail in PMA’s brief in support of its cross-exceptions, which is incorporated here by reference.

There is no merit to the General Counsel’s exceptions 7 and 9 because PMA did not violate the Act. The Board therefore should affirm the dismissal of the Complaint.

Dated: November 28, 2011

Respectfully Submitted,

By _____ / s / Clifford D. Sethness

Clifford D. Sethness, Esq.
Jason M. Steele, Esq.
Counsel for Respondent
Pacific Maritime Association

PROOF OF SERVICE

I, Shari Sanders, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On November 28, 2011, I served the within documents:

**RESPONDENT PACIFIC MARITIME ASSOCIATION’S ANSWERING BRIEF TO
GENERAL COUNSEL’S EXCEPTIONS TO ALJ’S DECISION**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Gillian Goldberg, Esq.
Holguin, Garfield, Martinez & Quiñonez, APLC
800 West Sixth Street, Suite 950
Los Angeles, CA 90017

David B. Reeves, Esq.
NLRB Region 20
901 Market Street, Suite 400
San Francisco, CA 94598

Eric Aldape
3524 Walnut Ave.
Long Beach CA 90807

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 28, 2011, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

By _____ / s / Shari Sanders
Shari Sanders