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June 24, 2015

VIA COURIER

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, NW, Suite 100
Washington, DC 20570

Re: *Pacific Crane Maintenance Company L.P. v. National Labor Relations Board*

Dear Ms. Dreeben:

Enclosed please find the Petition for Review and Rule 26.1 Statement filed today with the United States Court of Appeals for the D.C. Circuit for the above-referenced matter.

Best,



Allison Doherty
Paralegal
Paul Hastings LLP

Enclosures

N.L.R.B. COURT BRANCH
APPELLATE COURT
2015 JUN 24 8M 6:30
LITIGATION SERVICES
WASHINGTON, D.C.

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUN 24 2015

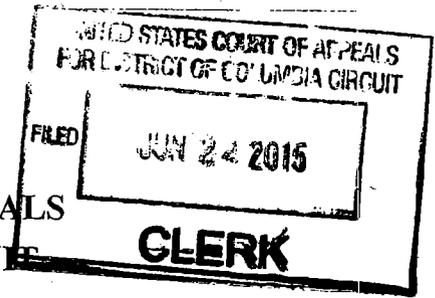
UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 CONSTITUTION AVENUE, NW

WASHINGTON DC 2001-2866

PHONE: 202-216-7000 FACSIMILE: 202-912-219-8530



RECEIVED

Pacific Crane Maintenance Company,
L.P., *for itself and as successor to*
Pacific Crane Maintenance Co., Inc.;
and Pacific Marine Maintenance
Company, LLC,

Case No. 15-1181

Petitioners,

vs.

National Labor Relations Board,

Respondent.

**PETITION FOR REVIEW OF A DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Petitioners Pacific Crane Maintenance Company, L.P., *for itself*
and as successor to Pacific Crane Maintenance Co., Inc.; *and* Pacific
Marine Maintenance Company, LLC, hereby petition the United States
Court of Appeals for the District of Columbia Circuit for review of the
decision and order of the respondent National Labor Relations Board
entered on June 17, 2015, in cases 32-CA-021925, 32-CA-021974

(formerly 19-CA-029645), 32-CA-021977 (formerly 19-CA-029692),

32-CA-02613, and 32-CB-005932, which is found at 362 NLRB

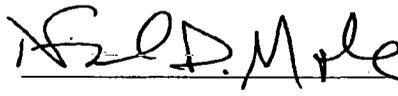
No.120. A copy of the decision and order is attached to this petition.

This petition is proper under 29 U.S.C. § 160(f) and Rule 15 of the

Federal Rules of Appellate Procedure.

DATED: June 24, 2015

Attorney for Petitioners, Pacific Crane
Maintenance Company, L.P., *for itself*
and as successor to Pacific Crane
Maintenance Co., Inc.; *and* Pacific
Marine Maintenance Company, LLC:



~~PAUL HASTINGS LLP~~

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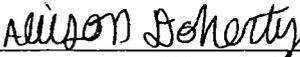
CERTIFICATE OF SERVICE

I, Allison Doherty, a paralegal, hereby certify that on June 24, 2015, pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I caused a true and complete copy of the Petition for Review to be served to counsel for parties admitted to participate in the proceedings before the National Labor Relations Board, as follows:

| | |
|---|---|
| <u>Via Email and U.S. Mail</u> Counsel for ILWU Matthew D. Ross Leonard Carder, LLP 1330 Broadway, Suite 1450 Oakland, CA 94612 Email: mross@leonardcarder.com | <u>Via Email and U.S. Mail</u> Counsel for ILWU Robert Remar Leonard Carder, LLP 1188 Franklin Street, Suite 201 San Francisco, CA 94109-6839 Email: rremar@leonardcarder.com |
| <u>Via Email and U.S. Mail</u> Counsel for Machinists District Lodges 190, 1546, and 160 David A. Rosenfeld Weinberg, Roger & Rosenfeld A Professional Corporation 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501-1091 Email: drosenfeld@unioncounsel.net | <u>Via Email and U.S. Mail</u> Counsel for Machinists District Lodge 1602 Kristina Detwiler Robblee Detwiler & Black P.L.L.P. 2101 Fourth Avenue, Suite 1000 Seattle, WA 98121-2392 Email: kdetwiler@unionattorneysnw.com |
| <u>Via UPS Overnight Delivery Only</u> Counsel for General Counsel Valerie Hardy-Mahoney, Esq. Kathleen Schneider, Esq. Ryan Connolly, Esq. National Labor Relations Board, Region 32 1301 Clay Street, Room 300-N Oakland, CA 94612-5211 | |

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 June 24, 2015, at Washington, D.C.



Allison Doherty

LEGAL_US_W # 82336421.1

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

PCMC/Pacific Crane Maintenance Company, Inc. and/or Pacific Marine Maintenance Co., LLC, a single employer, and/or PCMC/Pacific Crane Maintenance Company, LP, their successor and International Association Of Machinists And Aerospace Workers, AFL-CIO, District Lodge 190, Local Lodge 1546, and District Lodge 160

International Longshore and Ware-House Union (Pacific Crane Maintenance Company, Inc.) and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 190, Local Lodge-1546. Cases 32-CA-021925 and 32-CA-021974 (formerly 19-CA-029645), 32-CA-021977 (formerly 19-CA-029692), 32-CA-023613, and 32-CB-005932

June 17, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

On June 24, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 136. Thereafter, the Respondents filed petitions for review in the United States Court of Appeals for the Ninth Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.¹

¹ Accordingly, the pending motions for reconsideration filed by the Respondent Employer and the Charging Parties are moot. However, we have considered the additional remedies proposed by the Charging Parties in their motion for reconsideration. It is firmly established that remedial matters are traditionally within the Board's province and the Board has "broad discretionary" authority to fashion appropriate remedies. See *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 262-263 (1969); *Schnadig Corp.*, 265 NLRB 147, 147 (1982). Except as provided in the "Amended Remedies" section below, we do not find it appropriate to modify the Order or notices or to impose the additional remedies requested by the Charging Parties.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order only to the extent consistent with the Decision and Order reported at 359 NLRB No. 136, which is incorporated herein by reference. The judge's recommended Order, as modified herein, is set forth in full below.

AMENDED REMEDY

Having found that the Respondent Employer and the Respondent Union have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent Employer shall be ordered to withdraw recognition from the Respondent Union as the collective-bargaining representative of the unit employees unless and until the Respondent Union has been certified by the Board as their collective-bargaining representative. In addition, the Respondent Union shall be ordered to cease accepting the Respondent Employer's recognition unless and until it is so certified. Both Respondents will be ordered to cease and desist from applying the PMA-ILWU Agreement, including its union-security provisions, and any extension, renewal, or modification thereof, to the unit employees.

The Respondent Employer also will be ordered to recognize and, on request, bargain with Machinists District Lodge 190, Local Lodge 1546, and District Lodge 160, affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO (the Machinists) as the joint bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document. As discussed below, we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent Employer's unlawful withdrawal of recognition. The Respondent Employer shall also be required to rescind, on the Machinists' request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after March 31, 2005, and to make the unit employees whole for any loss of earnings

² Member Miscimarra is recused and took no part in the consideration of this case.

and other benefits attributable to its unlawful conduct.³ The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In a supplemental letter filed on February 5, 2015, pursuant to *Reliant Energy*, 339 NLRB 66 (2003), the Machinists urge the Board to order the Respondent Employer to reimburse the Machinists for all union dues that were not checked off as a result of the Respondent Employer's unlawful conduct, citing *A. W. Farrell & Son, Inc.*, 361 NLRB No. 162, slip op. at 1 (2014). The Board customarily directs that dues owed to a union be deducted from employees' backpay. *Ogle Protection Services*, 183 NLRB at 682. However, when an employer has unlawfully repudiated a collective-bargaining agreement, the Board will require the employer to reimburse the union for dues payments that it failed to make where employees signed valid dues-deduction authorizations. See *A. W. Farrell*, supra, slip op. at 1, and cases cited therein. Accordingly, we shall modify the Order to require the Respondent Employer to reimburse the Machinists for any dues not deducted and remitted from the time of the unlawful withdrawal of recognition until the collective-bargaining agreement expired on March 31, 2005, on behalf of its employees who executed dues authorizations prior to or during the period of the Respondent Employer's unlawful conduct, at no cost to the employees.

The Respondent Employer additionally will be required to offer reinstatement to all employees laid off from PPMC on March 30, 2005, and not reemployed by PPMC, and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful layoff. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent Employer also will be required to remove from its files and records any and all references to the unlawful layoffs and notify the affected employees in writing that this has been done and that the discharge will not be used against them in any way.

The Respondent Employer also will be required to make all contractually required contributions to the Machinists benefit funds that it failed to make, including any

³ The Order shall not be construed as requiring or authorizing the Respondent Employer to rescind any improvements in the terms and conditions of employment unless requested to do so by the Machinists.

additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and to make the employees whole for any expenses they may have incurred as a result of the Respondent Employer's failure to make such payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.⁴

The Respondent Employer additionally shall be ordered to compensate affected employees for any adverse tax consequences of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee, as set forth in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, the Respondent Employer and the Respondent Union will be ordered jointly and severally to reimburse all present and former unit employees who joined the Respondent Union on or since March 31, 2005, for any initiation fees, periodic dues, assessments, or any other moneys they may have paid or that may have been withheld from their pay pursuant to the PMA-ILWU Agreement, together with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

We also shall order the Respondent Employer and the Respondent Union to post the Board's standard notice to employees and notice to employees and members, respectively. In addition, in light of the close factual connection between the unfair labor practices committed by the Respondent Employer and the Respondent Union, we will further order each Respondent to post a signed copy

⁴ At compliance, the Respondent Employer may litigate the issue of whether the contributions due the Machinists benefit funds may be offset by payments the Respondent Employer may have made on behalf of the unit employees to the ILWU benefit funds. We observe, however, that employees have a stake not only in receiving agreed-upon benefits, but also in the viability of the benefit funds administered by their own chosen collective-bargaining representative. Diverting contributions from those funds "undercut[s] the ability of those funds to provide for future needs." *Stone Boat Yard v. NLRB*, 715 F.2d 441, 446 (9th Cir. 1983); see *Active Transportation Co.*, 340 NLRB 426, 426 fn. 2 (2003), enfd. 112 Fed. Appx. 60 (D.C. Cir. 2004).

To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent Employer will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent Employer otherwise owes the fund.

of the other Respondent's notice, which will be provided by the Region, in the same places and under the same conditions as each posts its own notice.

Additionally, we shall order the Respondent Employer to mail the notices to any unit employee employed by the Respondent Employer between January 26, 2005, and March 31, 2005. We shall require such mailing because of the lengthy passage of time since the unfair labor practices were committed and because some of the employees who were unlawfully laid off from PPMC on March 30, 2005, were not rehired and therefore would not see the notices physically posted at the facilities of the Respondent Employer or the Respondent Union.

Finally, as stated above, for the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent Employer's unlawful withdrawal of recognition. The Board has consistently held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Id.* at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, *supra* at 738, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: '(1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.'"

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, *supra*, we have examined the particular facts of this case and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by the Respondent Employer's withdrawal of recognition, its resultant refusal to bargain collectively with the Machinists, and its recognition of the ILWU, and by the ILWU's acceptance of that recognition. It is particularly appropriate here, where the Respondent Employer not only laid off the unit employees

and significantly changed their terms and conditions of employment without notice to or bargaining with the Machinists, but also overrode the unit-employees' exercise of their Section 7 rights by their choice to be represented by the Machinists, and further conditioned their continued employment on their acceptance of representation by the ILWU. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Machinists' continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued representation by the Machinists. The duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. It is only by restoring the status quo ante and requiring the Respondent Employer to bargain with the Machinists for a reasonable period of time that the employees will be able to fairly assess the Machinists' effectiveness as a bargaining representative in an atmosphere free of the Respondent Employer's unlawful conduct. The employees can then determine whether continued representation by the Machinists is in their best interest, in light of the changed circumstances resulting from the transfer of the unit work to PCMC.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent Employer's incentive to delay bargaining in the hope of discouraging support for the Machinists. It also ensures that the Machinists will not be pressured by the Respondent Employer's withdrawal of recognition and its readiness to recognize a different union to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent Employer's and the Respondent Union's violations, because it would allow a challenge to the Machinists' majority status before the taint of the Respondent Employer's unlawful withdrawal of recognition and subsequent recognition of the Respondent Union has dissipated. Such a result would be particularly unfair in circumstances such as those here, where the nature of the Respondent Employer's unfair labor practices likely created a lasting negative impression of the Machinists in the bargaining unit, and where the Respondent Employer immediately recognized a replacement union that has been able to develop relationships with bargaining unit employees while the Machinists litigated its charges. We find that those circumstances outweigh the temporary impact the affirmative bargaining order will have on the

rights of employees who oppose the Machinists' continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violations in this case.⁵

ORDER

A. The Respondent Employer, PCMC/Pacific Crane Maintenance Company, Inc. and/or Pacific Marine Maintenance Co., LLC, a single employer, and PCMC/Pacific Crane Maintenance Company, LP, as a successor to PCMC/Pacific Crane Maintenance Company, Inc., Oakland, California, and Tacoma, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively, on request, with Machinists District Lodge 190, Local Lodge 1546, and Machinists District Lodge 160, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO (collectively the Machinists) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All employees performing work described in and covered by "Article 1, Section 2. Work Jurisdiction" of the April 1, 2002 through March 31, 2005 collective-bargaining agreement between the [Machinists and Pacific Marine Maintenance Co., LLC (PMMC)] ; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Withdrawing recognition from the Machinists as the exclusive collective-bargaining representative of the unit employees.

(c) Granting assistance to International Longshore and Warehouse Union (ILWU or the Respondent Union) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when the ILWU did not represent an unassisted and uncoerced majority of the employees in the unit, and when the Machinists was the exclusive collective-bargaining representative of the unit employees.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between the Respondent Employer and the ILWU (the PMA-ILWU Agreement), including its union-security provisions, to the unit employees at a time when the ILWU did not

represent an unassisted and uncoerced majority of the employees in the unit, and when the Machinists was the exclusive collective-bargaining representative of the unit employees.

(e) Notifying the Machinists and the unit employees that the unit employees would be laid off and that they could continue performing unit work only if they were hired as employees of Pacific Crane Maintenance Company, Inc. (PCMC) and were represented by the ILWU.

(f) Bypassing the Machinists and directly offering unit employees continued employment in the unit on the basis of terms and conditions of employment different from those set forth in PPMC's 2002-2005 collective-bargaining agreement with the Machinists (the Machinists Agreement) and on condition that they be represented by the ILWU.

(g) Unilaterally modifying the Bulletin Board Provision of the Machinists Agreement by imposing new restrictions concerning what materials could be placed on the bulletin board located in its Oakland, California facility.

(h) Laying off unit employees without first notifying the Machinists and giving it a meaningful opportunity to bargain regarding the decision to lay off unit employees.

(i) Altering the unit employees' terms and conditions of employment without first notifying the Machinists and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

(j) Assigning unit employees to nonunit positions and locations, or assigning nonunit employees to perform unit work, without first notifying the Machinists and giving it a meaningful opportunity to bargain about such assignments and the effects of such assignments.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Withdraw and withhold all recognition from the ILWU as the exclusive collective-bargaining representative of the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with the ILWU, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

⁵ We shall substitute new notices in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

PCMC/PACIFIC CRANE MAINTENANCE CO.

(c) Recognize and, on request, bargain with the Machinists as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

(d) Notify the Machinists in writing of all changes made to the unit employees' terms and conditions of employment on and after March 31, 2005, and, on request of the Machinists, rescind any or all changes and restore terms and conditions of employment retroactively to March 30, 2005.

(e) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(f) Within 14 days from the date of this Order, offer full reinstatement to all employees laid off from PPMC on March 30, 2005, and not reemployed by PCMC, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(g) Make whole all employees laid off from PPMC on March 30, 2005, and not reemployed by PCMC on March 31, 2005, for any loss of earnings and other benefits suffered as a result their unlawful layoff, in the manner set forth in the remedy section of this decision.

(h) Compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file a report with the Social Security Administration allocating the unit employees' backpay to the appropriate calendar quarters.

(i) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs and, within 3 days thereafter, notify the affected employees in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

(j) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Make all delinquent contributions to the Machinists benefit funds on behalf of the unit employees that have not been paid since March 31, 2005, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.

(l) Make the unit employees whole for any expenses ensuing from the failure to make the required contributions to the Machinists benefit funds, in the manner set forth in the remedy section of this decision.

(m) Jointly and severally with the ILWU, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the PMA-ILWU Agreement, with interest.

(n) Reimburse the Machinists for all dues that, following the unlawful withdrawal of recognition, it failed to deduct and remit pursuant to the dues-checkoff provision of the collective-bargaining agreement before it expired on March 31, 2005, in the manner set forth in the amended remedy section of this decision.

(o) Rescind the unlawfully imposed restrictions concerning what materials could be placed on the bulletin board located in its Oakland, California facility.

(p) Within 14 days after service by the Region, post at its facilities in Oakland, California, and Tacoma, Washington, copies of the attached notice marked "Appendix A."⁶ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent Employer has gone out of business or closed the facilities involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent Employer at its Oakland and Tacoma facilities at any time since January 26, 2005.

(q) Within 14 days after service by the Region, post at the same places and under the same conditions as in the preceding subparagraph signed copies of the Respondent Union's notice to employees and members marked "Appendix B."

⁶ 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."

(r) Within 14 days after service by the Region, duplicate and-mail, at its own expense, after being signed by the Respondent Employer's authorized representative, copies of the attached notices marked "Appendix A" and "Appendix B" to the last known addresses of all current and former unit employees employed by the Respondent Employer at its Oakland or Tacoma facility between January 26, 2005, and March 31, 2005.

(s) Furnish the Regional Director with signed copies of the Respondent Employer's notice to employees marked "Appendix A" for posting by the Respondent Union at its facilities where notices to employees and members are customarily posted. Copies of the notice, to be furnished by the Regional Director, shall be signed and returned to the Regional Director promptly.

(t) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Employer has taken to comply.

B. The Respondent Union, International Longshore and Warehouse Union, Oakland, California, and Tacoma, Washington, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting assistance and recognition from Respondent Pacific Crane Maintenance Company, Inc. or its successor Pacific Crane Maintenance Company, LP (collectively PCMC) as the exclusive collective-bargaining representative of the employees in the unit described below (the unit) at a time when the Respondent Union did not represent an uncoerced majority of the employees in the unit, and when the Machinists District Lodge 190, Local Lodge 1546, and Machinists District Lodge 160, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO (collectively the Machinists) was the exclusive collective-bargaining representative of the employees in that unit:

All employees performing work described in and covered by "Article 1, Section 2. Work Jurisdiction" of the April 1, 2002 through March 31, 2005 collective-bargaining agreement between the [Machinists and Pacific Marine Maintenance Company, LLC (PMMC)] . . . ; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Maintaining and enforcing the PMA-ILWU Agreement, or any extension, renewal, or modification thereof, including its union-security provisions, so as to cover the unit employees, unless and until it has been certified by the Board as the collective-bargaining representative of those employees.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Decline recognition as the exclusive collective-bargaining representative of the unit employees, unless and until ILWU has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Jointly and severally with the Respondent Employer, reimburse all present and former unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the PMA-ILWU Agreement, with interest.

(c) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its headquarters and at its offices and meeting halls in Oakland, California, and Tacoma, Washington, copies of the attached notice marked "Appendix B."⁷ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, post at the same places and under the same conditions as in the preceding subparagraph signed copies of the Respondent Employer's notice to employees marked "Appendix A."

(f) Furnish the Regional Director with signed copies of the Respondent Union's notice to members and employees marked "Appendix B" for posting by the Respondent Employer at its facilities where notices to employees are customarily posted. Copies of the notice, to

⁷ See fn. 6, supra.

PGMC/PACIFIC CRANE MAINTENANCE CO.

be furnished by the Regional Director, shall be signed and returned to the Regional Director promptly.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

Dated, Washington, D.C. June 17, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

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 with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with Machinists District Lodge 190, Local Lodge 1546, and Machinists District Lodge 160, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO (collectively the Machinists) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All employees performing work described in and covered by "Article 1, Section 2. Work Jurisdiction" of the April 1, 2002 through March 31, 2005 collective-bargaining agreement between [the Machinists and Pacific Marine Maintenance Company, LLC (PMMC)] . . . ; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT withdraw recognition from the Machinists as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize the Machinists as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT grant assistance to the International Longshore and Warehouse Union (the ILWU) or recognize it as the exclusive collective-bargaining representative of the unit employees at a time when the ILWU does not represent an unassisted and uncoerced majority of the employees in the unit, and when the Machinists is the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT apply the terms and conditions of employment of our collective-bargaining agreement with the ILWU (the PMA-ILWU Agreement), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to the unit employees unless and until the ILWU has been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT notify the Machinists or the unit employees that the unit employees will be laid off and that they can continue performing bargaining unit work only if they are hired as employees of Pacific Crane Maintenance Company, Inc. or Pacific Crane Maintenance Company, LP (collectively PCMC) and are represented by the ILWU.

WE WILL NOT bypass the Machinists and directly offer unit employees continued employment in the unit on the basis of terms and conditions of employment different from those set forth in our 2002-2005 collective-bargaining agreement with the Machinists (the Machinists Agreement), or on the condition that they be represented by the ILWU.

WE WILL NOT unilaterally modify the Bulletin Board Provision of the Machinists Agreement by imposing new restrictions concerning what materials can be placed on the bulletin board located in our Oakland, California facility.

WE WILL NOT lay off unit employees without first notifying the Machinists and giving it a meaningful opportunity to bargain regarding the decision to lay off the unit employees.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying the Machinists and giving it a meaningful opportunity to bargain about such changes.

WE WILL NOT assign unit employees to nonunit positions and locations, or assign nonunit employees to perform unit work, without first notifying the Machinists and giving it a meaningful opportunity to bargain about such assignments and the effects of such assignments on the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL withdraw and withhold all recognition from the ILWU as the exclusive collective-bargaining representative of our employees in the unit described above, unless and until the ILWU has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL refrain from applying the terms and conditions of employment of a collective-bargaining agreement with the ILWU, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

WE WILL recognize and, on request, bargain with the Machinists as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

WE WILL notify the Machinists in writing of any changes made on and after March 31, 2005, in the rates of pay, hours of work, job benefits, and other terms and conditions of employment of the unit employees, and WE WILL, on the Machinists' request, rescind any or all of our unlawfully imposed changes and restore the terms and conditions of employment that existed as of March 30, 2005.

WE WILL make the unit employees whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, benefits, and other terms and conditions of employment.

WE WILL, within 14 days from the date of the Board's Order, offer full reinstatement to all unit employees laid off from PPMC on March 30, 2005, and not reemployed by us, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole all unit employees laid off from PPMC on March 30, 2005, and not reemployed by us on March 31, 2005, for any loss of earnings and other benefits suffered as a result of their unlawful layoff, less any net interim earnings, with interest.

WE WILL compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and WE WILL file a report with the Social Security Administration allocating the unit employees' backpay to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the March 30, 2005 layoffs of the unit employees, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that we will not use the unlawful layoffs against them in any way.

WE WILL make all delinquent contributions to the Machinists benefit funds on behalf of the unit employees that we have not made since March 31, 2005, with interest.

WE WILL make whole the unit employees for any expenses ensuing from our failure to make required contributions to the Machinists benefit funds, with interest.

WE WILL, jointly and severally with the ILWU, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the PMA-ILWU Agreement, with interest.

WE WILL reimburse the Machinists for all dues that, following our unlawful withdrawal of recognition, we failed to deduct and remit pursuant to the dues-checkoff provision of the Machinists Agreement before it expired on March 31, 2005.

WE WILL rescind the restrictions that we unlawfully imposed concerning what materials could be placed on the bulletin board located in our Oakland, California facility.

PCMC/PACIFIC CRANE MAINTENANCE COMPANY, INC. AND/OR PACIFIC MARINE MAINTENANCE CO., LLC, A SINGLE EMPLOYER; AND PCMC/PACIFIC CRANE MAINTENANCE COMPANY, LP, AS SUCCESSOR TO PCMC/PACIFIC CRANE MAINTENANCE COMPANY, INC.

The Board's decision can be found at www.nlr.gov/case/32-CA-021925 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations

PCMC/PACIFIC CRANE MAINTENANCE CO.

Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B

NOTICE TO EMPLOYEES AND 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 with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance or recognition from Pacific Crane Maintenance Company, Inc. or its successor Pacific Crane Maintenance Company, LP (collectively PCMC), as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the unit), at a time when we do not represent an uncoerced majority of the employees in the unit, and when Machinists District Lodge 190, Local Lodge 1546, and Machinists District Lodge 160, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO (collectively the Machinists) is the exclusive collective-bargaining representative of those employees:

All employees performing work described in and covered by "Article 1, Section 2. Work Jurisdiction" of the April 1, 2002 through March 31, 2005 collective-

bargaining agreement between the [Machinists and Pacific Marine Maintenance Co., LLC (PMMC)] ; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT maintain or enforce our collective-bargaining agreement with PCMC (the PMA-ILWU Agreement), or any modifications, renewals, or extensions of that agreement, including its union-security provisions, so as to cover the unit employees, unless and until we have been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL decline recognition as the exclusive collective-bargaining representative of PCMC's employees in the unit described above, unless and until we have been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL, jointly and severally with the Respondent Employer, reimburse all present and former employees in the unit described above for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the PMA-ILWU Agreement, with interest.

INTERNATIONAL LONGSHORE AND WAREHOUSE
UNION

The Board's decision can be found at www.nlrb.gov/case/32-CA-021925 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.



UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

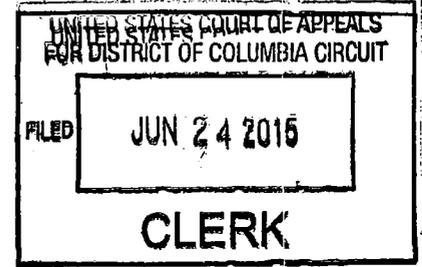
JUN 24 2015

RECEIVED

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 CONSTITUTION AVENUE, NW
WASHINGTON DC 2001-2866

PHONE: 202-216-7000 FACSIMILE: 202-912-219-8530



Pacific Crane Maintenance Company,
L.P., *for itself and as successor to*
Pacific Crane Maintenance Co., Inc.,
and Pacific Marine Maintenance
Company, LLC,

Petitioners,

vs.

National Labor Relations Board,

Respondent.

15-1181

Case No. _____

RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1,

Petitioners by their attorneys, Paul Hastings LLP, hereby identify the following parent corporations and publicly held corporations that own 10% or more of its stock:

Pacific Crane Maintenance Company, L.P.'s parent is PCMC Holdings, LLC. PCMC Holdings, LLC has the following ownership by public companies greater than 10%:

GE Business Financial Services 16.84%

GE Electric Capital Corporation 16.81%

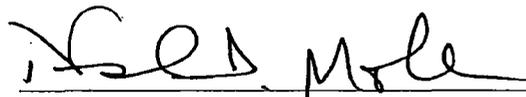
ING Recoveries LLC 12.61%

Bank of Ireland 12.99%

Pacific Crane Maintenance Company, L.P. is the majority owner of Pacific Marine Maintenance Company, LLC. The minority owner, Ports America, is privately held.

DATED: June 24, 2015

Attorney for Petitioners, Pacific Crane Maintenance Company, L.P., *for itself and as successor to Pacific Crane Maintenance Co., Inc.*; and Pacific Marine Maintenance Company, LLC:



PAUL HASTINGS LLP
Neal Mollen, Esq.
815 15th Street, N.W.
Washington D.C. 20005
(202) 551-1738
D.C. Bar No. 413842

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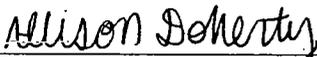
CERTIFICATE OF SERVICE

I, Allison-Doherty, a paralegal, hereby certify that on June 24, 2015, pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I caused a true and complete copy of the Rule 26.1 Statement to be served to counsel for parties admitted to participate in the proceedings before the National Labor Relations Board, as follows:

| | |
|---|--|
| <p><u>Via Email and U.S. Mail</u> Counsel for ILWU Matthew D. Ross Leonard Carder, LLP 1330 Broadway, Suite 1450 Oakland, CA 94612 Email: mross@leonardcarder.com</p> | <p><u>Via Email and U.S. Mail</u> Counsel for ILWU Robert Remar Leonard Carder, LLP 1188 Franklin Street, Suite 201 San Francisco, CA 94109-6839 Email: rremar@leonardcarder.com</p> |
| <p><u>Via Email and U.S. Mail</u> Counsel for Machinists District Lodges 190, 1546, and 160 David A. Rosenfeld Weinberg, Roger & Rosenfeld A Professional Corporation 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501-1091 Email: drosenfeld@unioncounsel.net</p> | <p><u>Via Email and U.S. Mail</u> Counsel for Machinists District Lodge 1602 Kristina Detwiler Robblee Detwiler & Black P.L.L.P. 2101 Fourth Avenue, Suite 1000 Seattle, WA 98121-2392 Email: kdetwiler@unionattorneysnw.com</p> |
| <p><u>Via UPS Overnight Delivery Only</u> Counsel for General Counsel Valerie Hardy-Mahoney, Esq. Kathleen Schneider, Esq. Ryan Connolly, Esq. National Labor Relations Board, Region 32 1301 Clay Street, Room 300-N Oakland, CA 94612-5211</p> | |

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 June 24, 2015, at Washington, D.C.



Allison Doherty

LEGAL_US_W # 82336422.1