



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 20, 2018

[REDACTED]
WEINBERG, ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY STE 200
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Re: APM Terminal and/or APM Terminals
Tacoma
Case 19-CA-197070

Pacific Maritime Association
Case 19-CA-197114

International Longshore and Warehouse
Union (APM Terminals/APM Terminals
Tacoma and or Pacific Maritime
Association)
Cases 19-CB-197129
19-CB-197218

Dear [REDACTED]

We have carefully considered your appeal from the Regional Director's decision to dismiss the captioned charges. Based upon our review of the evidence disclosed by the Regional Office's investigation as well as applicable case law, we have decided to deny the appeal, substantially for the reasons explained in the Regional Director's letter dated February 26, 2018.

The charges in this case center around whether the International Longshore and Warehouse Union and its local (collectively, ILWU) colluded with APM Terminal (APM) and the Pacific Maritime Association (PMA) to ensure that a layoff at the Port of Tacoma (the Port) would harm the International Association of Machinists and Aerospace Workers (IAM). Specifically, your charges against the Union allege that ILWU violated Section 8(b)(1)(A) and (2) of the Act by demanding and accepting recognition from APM and PMA, applying and enforcing a security clause against employees represented by IAM, negotiating terms and conditions of employment for employees that it did not represent, and restricting IAM-represented employees' employment opportunities. Your charges against the Employers allege that APM and PMA violated Section 8(a)(1) and (5) of the Act by refusing to bargain with or recognize IAM as the exclusive bargaining representative of maintenance and repair employees at APM after it took over maintenance work formerly performed by Pacific Crane Maintenance

Corporation (PCMC). You also allege that APM and PMA unilaterally imposed terms and conditions of employment on former PCMC employees without bargaining with IAM, in violation of Section 8(a)(1) and (5); failed and refused to hire employees represented by IAM, in violation of Section 8(a)(1) and (3); provided unlawful assistance to ILWU, in violation of Section 8(a)(2); and discriminated against IAM for filing unfair-labor-practice charges, in violation of Section 8(a)(1) and (4).

The Regional Office's investigation disclosed that APM subcontracted out maintenance and repair work to PCMC at its port terminal. Previously, PCMC had unlawfully withdrawn recognition from IAM and unlawfully recognized ILWU. Later, PCMC announced that it was terminating its contract with APM, and APM said that it would take over maintenance and repair work for the remainder of the contract term. Before the termination, PCMC negotiated with ILWU and PMA (which represents both PCMC and APM in collective bargaining) over layoffs. The parties agreed that the terms of the Tacoma Mechanic Port Supplement, which was included in the parties' collective-bargaining agreement (CBA), required that layoffs would be based on seniority at the *Port*, not just at the APM terminal. This meant that several senior employees at the APM terminal could transfer to a second "Evergreen" terminal—lawfully represented by ILWU—which had fewer senior employees and would bear the brunt of the layoffs.

The Regional Office's investigation further disclosed that ILWU, PCMC, and PMA had a legitimate non-discriminatory justification for structuring PCMC's layoff based on seniority at the Port, as it was required by the CBA and arguably protected more senior employees' job security. The investigation also disclosed that the evidence did not support the finding that the parties made the layoff decision based on a discriminatory motive against IAM, or that APM had any involvement with it.

On appeal, you contend that the ILWU's history of advancing its interests at the expense of IAM, and its unlawful representation of employees at the APM terminal, as discussed in *PCMC/Pacific Crane Maintenance Co.*, 362 NLRB No. 120 (June 17, 2015), *enforced*, 890 F.3d 1100 (D.C. Cir. 2018) weighs in favor of issuing complaint. In support of this contention, you argue that past practice and practical business reasons suggest that seniority should be determined by terminal, rather than port-wide, for the affected employees. You further contend that the charged parties concocted a scheme to avoid APM becoming a *Burns* successor to PCMC.

While the Regional Director acknowledged that ILWU has a history of advancing its interests, unlawfully, at the expense of IAM, he reasonably concluded that the evidence does not support the finding that ILWU's demands over the Tacoma Mechanic Port Supplement were motivated by animus against IAM and hence *further* violated the Act. Rather, the evidence shows that ILWU took its position because of legitimate job-security concerns. Furthermore, you provided no evidence on appeal showing that PMA was uninterested in resolving the labor dispute when it agreed to a port-wide, seniority-based layoff, or that PMA acted as an agent for APM during these negotiations. Indeed, you admit that APM was not involved in the layoff decision and contend that APM was harmed by it.

Finally, we concluded that oral argument would not materially advance disposition of the instant matter. Accordingly, we find further proceedings unwarranted.

Sincerely,

Peter Barr Robb
General Counsel



By:

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