

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

EVERPORT TERMINAL SERVICES INC.

and

Case 32-CA-172286

INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE  
WORKERS, DISTRICT LODGE 190,  
LOCAL LODGE 1546, AFL-CIO, AND  
INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, DISTRICT LODGE 190,  
LOCAL LODGE 1414, AFL-CIO

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION

and

Case 32-CB-172414

INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE  
WORKERS, DISTRICT LODGE 190,  
LOCAL LODGE 1546, AFL-CIO, *ET AL.*

**RESPONDENT ILWU'S REPLY TO CHARGING PARTY IAM'S  
ANSWERING BRIEF TO EXCEPTIONS**

Emily M. Maglio (CA SBN 267190)  
LEONARD CARDER, LLP  
1188 Franklin St Suite 201  
San Francisco, CA 94109  
Tel: (415) 771-6400/Fax: (415) 771-7010  
emaglio@leonardcarder.com

Kirsten Donovan (CA SBN 264471)  
ILWU  
1188 Franklin St, 4<sup>th</sup> Floor  
San Francisco, CA 94109  
Tel: (415) 775-0533/Fax: (415) 775-1302  
kirsten.donovan@ilwu.org

*Attorneys for Respondent*  
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION (ILWU)

## I. INTRODUCTION

Respondent International Longshore and Warehouse Union (“ILWU”) hereby submits this reply to Charging Party International Association of Machinist & Aerospace Workers, District Lodge 190, Local Lodge 1546, AFL-CIO and International Association of Machinists & Aerospace workers, District Lodge 190, Local Lodge 1414, AFL-CIO’s (collectively “IAM”) answering brief to Respondent Everport Terminal Services’ (“Everport”) and ILWU’s exceptions to the decision of the Administrative Law Judge (ALJ).

## II. ARGUMENT

### A. ILWU Excepted to the Broad Order Recommended by the ALJ.

Charging Party IAM concedes that ILWU filed an exception to the ALJ’s recommendation that the Board issue a broad order. (See IAM Answering Brief, January 9, 2019, at 1.) Specifically, ILWU excepted to both “the ALJ’s recommendation of a broad order for the ILWU and conclusion that the ILWU is a ‘repeat offender,’” (Exception No. 6) and to each affirmative action the ALJ recommended the Board order against the ILWU, (Exception No. 7). Nonetheless, IAM asserts that ILWU failed to address this issue in its supporting brief and, on that basis, argues that the Board is not free to determine whether or not it should issue a broad order. This argument is completely without merit.

ILWU joined in Respondent Everport’s exceptions as well as pages 17-23 and 26-32 of Everport’s brief in support of its exceptions<sup>1</sup> and ILWU also submitted its own separate brief. The joined pages of Everport’s brief and ILWU’s brief as well as Everport’s exceptions to which ILWU joined include the following arguments, all of which explain the basis for ILWU’s exceptions to the ALJ’s recommended broad order:

(1) That no remedy should issue against the ILWU because Everport lawfully joined the

---

<sup>1</sup> ILWU further notes that it originally joined in the entirety of Everport’s exceptions brief. (See ILWU’s Joinder and Brief in Support of Exceptions, October 26, 2018 at 1). On November 14, 2018, ILWU received an order from the Associate Executive Secretary of the Board instructing the ILWU that it may only join in up to 14 pages of Everport’s brief. On November 20, 2018, ILWU filed a corrected brief only joining in 14 pages of the brief. The ILWU’s position, however, is that because it filed separate exceptions that it should have been allowed to submit a brief of up to 50 pages in support of its separate exceptions and also join in the entirety of Everport’s exceptions brief. Bases of the ILWU’s exceptions to the ALJ’s recommended broad order are set forth in the entirety of Everport’s exceptions brief.

- Pacific Maritime Association (“PMA”) prior to employing any longshore employees, including longshore mechanics, in order to access the pool of longshore employees in the coastwise ILWU-PMA bargaining unit and adopted the Pacific Coast Longshore and Clerks Agreement (“PCL&CA”) as a PMA member employer and, thus, lawfully bargained with the ILWU before commencing operations. (ILWU Exceptions Br. at 23-29, Everport Exceptions Br. at 17-19, 26-28)
- (2) That no remedy should issue against the ILWU because no collective bargaining agreement was unlawfully imposed upon a workforce without the consent of that workforce. (ILWU Exceptions Br. at 24)
- (3) That no remedy should issue against the ILWU because Everport lawfully complied with the PCL&CA in the hiring of longshore employees, including longshore mechanics and, thus, ILWU lawfully accepted all of Everport’s longshore employees, including longshore mechanics as part of the coastwise ILWU-PMA bargaining unit. (Everport Exceptions Br. at 20-21, 29-32)
- (4) That ILWU’s members were harmed by any alleged use of percentages or quotas in the hiring of mechanics at Everport and, thus, ILWU should not be further penalized by a remedial order. (ILWU Exceptions Br. at 29-30)
- (5) That ILWU did not participate in any allegedly discriminatory hiring scheme and was, in fact, unaware of any such scheme, and for this reason no remedy should issue against ILWU and its members. (ILWU Exceptions Br. 30-32)
- (6) That *PCMC/Pac. Crane Maint. Co.*, 369 NLRB 1206 (2013), *aff’d*, 362 NLRB No. 120 (2015), *enfd sub nom. ILWU*, 890 F.3d 1100 (2018) is inapposite because it “turn[ed] heavily on PMMC and PCMC’s single-employer stipulation,” where here there is no finding, let alone an allegation, that Everport and MTC/MMTS are a single employer and, for this reason, *PCMC* fails to establish “repeat” conduct justifying a broad order. (Everport Exceptions Br. at 24-25)

For these reasons, ILWU has properly excepted to the ALJ’s recommendation that the Board issue

a broad remedial order.

**B. A Broad Order Should Not Issue Against the ILWU.**

IAM's arguments regarding the issuance of a broad order against ILWU are likewise of no weight. Following IAM's counsel's conduct at hearing, much of IAM's argument on this issue is hyperbole and distortion of the facts. IAM repeatedly misrepresents the position and legal analysis of the ILWU in order to elicit maximum effect. Drawing upon these misrepresentations, IAM contends that a broad order is warranted against the ILWU. Review of the ILWU's legal arguments in this matter, however, demonstrate the ILWU's true position on the application of its collective bargaining agreement with the PMA and Board law on the nature of the ILWU-PMA bargaining unit. ILWU refers the Board to its Exceptions Brief for an accurate description and explanation of the ILWU's legal position in this case, which is fully supported under its CBA as well as under Board law. Accordingly, IAM's efforts to twist the ILWU's carefully articulated legal positions to serve its own ends must be rejected.

IAM, nonetheless, makes two arguments in its answering brief that must be addressed: First, the sole decision cited by IAM in support of its argument as to why it contends a broad order should issue here is *Port Chester Nursing Home*, 269 NLRB 150 (1984). This decision, however, is distinguishable on the facts. The Board issued a broad order in *Port Chester* for the following reason:

The General Counsel urges that a broad remedial order is appropriate in the instant case, particularly in view of the Board's decision in *Sanford Home for Adults*, 253 NLRB 1132 (1981), *enfd.* 669 F.2d 35 (2d Cir. 1981), wherein the respondent union was found to have committed various violations of Section 8(b)(1)(A) and (2) of the Act including violations similar to those found here. We agree that such a broad remedial order is appropriate and shall modify the judge's recommended Order and notice accordingly.

*Id.* at 150. The decision provides no further discussion of the reasons why it determined a broad order was appropriate. The violations in *Sanford Home*, however, that were found to be "similar to those found here," are notably different from the findings and factual record in this case. In *Sanford Home*, the Respondent Union enforced a union security provision upon workers for whom it did

not represent an un-coerced majority, terminated employees who refused to become union members, threatened employees with discharge if they did not sign union authorization cards, and coercively interrogated employees about their union activities and sympathies. In contrast, here, none of the 13 former MTS/MMTS employees hired by Everport are members of the ILWU and are, thus, not subject to the PCL&CA's union security provisions; ILWU likewise at no point made any threats to any of these employees, did not attempt in any way to enforce its union security clause against any of them, and did not coercively interrogate any of them. *Port Chester*, thus, provides no support to IAM's contention that a broad order should issue against ILWU – the violations in *Port Chester* and *Samson Home* are not similar to the ALJ's findings here.

IAM also boldly contends that the ALJ “inadvertently provided limited language” in the remedy she recommended to issue against the ILWU. The ALJ, however, at no point issued an amended order to correct any such “inadvertent provision.” It is inappropriate to infer that the ALJ intended something different from what is written in the decision. This is especially the case here where the ALJ issued an amended decision to correct an actual inadvertent mistake in her original decision. Accordingly, IAM's speculations as to the ALJ's true intent should be given no weight.

### III. CONCLUSION

For the above reasons and as set forth in Everport's and the ILWU's exceptions briefing, ILWU respectfully requests that the Board vacate the ALJ's Decision in its entirety, including the ALJ's recommendation that the Board issue a broad remedial order.

Respectfully submitted,

LEONARD CARDER, LLP

Dated: January 23, 2019

By: \_\_\_\_\_



Emily M. Maglio

1188 Franklin St., Suite 201

San Francisco, CA. 94019

Tel: (415) 771-6400 / Fax: (415) 771-7010

[emaglio@leonardcarder.com](mailto:emaglio@leonardcarder.com)

*Attorneys for Respondent ILWU*

**PROOF OF SERVICE**

I am employed in the County of San Francisco, State of California. I am over the age of 18 years old and not a party to the within action; my business address is 1188 Franklin Street, Suite 201, San Francisco, CA 94109. On **January 23, 2019**, I served a true and accurate copy of the foregoing document(s):

**RESPONDENT ILWU’S REPLY TO CHARGING PARTY IAM’S ANSWERING BRIEF TO EXCEPTIONS**

on all interested parties in this action as follows:

**D. Criss Parker**  
**Coreen Kopper**  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612  
D.Parker@nlrb.gov

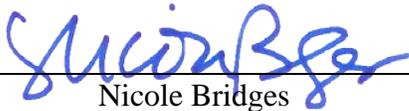
**David A. Rosenfeld**  
**Caroline N. Cohen**  
Weinberg Roger & Rosenfeld, PC  
1001 Marina Village Pkwy., Suite 200  
Alameda, CA 94501  
DRosenfeld@unioncounsel.net  
CCohen@unioncounsel.net

**Joseph N. Akrotirianakis**  
King & Spalding LLP  
633 West Fifth Street  
Suite 1700  
Los Angeles, CA 90071  
JAKro@kslaw.com

**Brigham M. Cheney**  
Atkinson, Andelson, Loya, Ruud & Romo  
12800 Center Court Drive S, Suite 300  
Cerritos, CA 90703  
BCheney@aalrr.com

- BY E-MAIL:** I caused the documents to be sent to the person at the electronic notification address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 23, 2019** at San Francisco, California.

  
\_\_\_\_\_  
Nicole Bridges