

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 19**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS, DISTRICT  
LODGE NO. 160**

**Charged Party**

**And**

**SSA Terminals, LLC**

**Case 19-CD-238096**

**Charging Party**

**And**

**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION**

**Party In Interest**

**SSA TERMINALS, LLC'S POST-HEARING 10(k) BRIEF**

Pursuant to National Labor Relations Act (“NLRA”) Section 10(k) and the National Labor Relations Board’s (“NLRB” or “Board”) Rules and Regulations, employer SSA Terminals, LLC (“SSA”)<sup>1</sup> hereby submits its Post-Hearing Brief as to the above-referenced jurisdictional dispute. The ongoing dispute concerns the maintenance and repair work of SSA’s cranes, stevedoring and terminal service power equipment, and CEM equipment located at

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<sup>1</sup> All parties stipulated prior to and at the Hearing that SSA and its labor provider/contractor Pacific Crane Maintenance Corporation (“PCMC”) and/or PCMC’s affiliate, TESI, would be considered to operate (whether singularly or jointly) as if SSA is the employer for the purposes of the Hearing. The parties further stipulated, for purposes of the Hearing, that SSA was and is the employer of the International Longshore and Warehouse Union-represented employees of PCMC and/or its affiliate TESI given SSA controls the assignment of and details of the disputed work. [See Jnt. Exh. 1 para 6.]

Terminal 5 in Seattle, Washington. The Executive Secretary of the NLRB granted all parties an extension to file Post-Hearing Briefs, which are due on or before July 16, 2019.

## **I. INTRODUCTION**

Both the International Association of Machinists and Aerospace Workers, District Lodge No. 160 (“IAM”) and the International Longshore and Warehouse Union, Local 19 (“ILWU”) claim their members are entitled to perform the available maintenance and repair (“M&R”) work for SSA at Terminal 5 in Seattle, Washington. SSA initially assigned the disputed work to the ILWU given SSA is a member of a multi-employer bargaining association, the Pacific Maritime Association (the “PMA”), that specifically negotiated with the ILWU in 2008 to assign all M&R work to it on new or previously vacated facilities.

The PMA negotiates and administers maritime labor agreements with the ILWU on behalf of its roughly eighty members, which include ocean carriers, terminal operators, and stevedore companies operating along the West Coast (California, Oregon, and Washington). [Jnt. Exh. 1 para. 7.] An omnibus agreement between the two entities exists entitled the ILWU-PMA Pacific Coast Longshore Contract Document (“PCLCD”). [Jnt. Exh. 1 at para. 9 and see Jnt. Exh. 4.] The PCLCD covers a large scope of port-related work for all PMA members, applies to a wide variety of those member companies’ employees – including many of SSA’s employees – and is supplemented by other agreements (Port Supplements and Working Rules) for the specific port areas covered by the PCLCD. The PCLCD is the collective bargaining agreement or contract that is relevant to this dispute. The specific provisions of the 2014-2019 PCLCD at issue here are Sections 1.72 through 1.76.

As noted above, the IAM also claims jurisdiction over the M&R work at the SSA-controlled Terminal 5 in Seattle, Washington. [Jnt. Exh 1 paragraph 7&8.] As such, the IAM contends SSA breached its obligations to the IAM (specifically Local 289, under the SSA-Local 289 collective bargaining agreement) after the employer assigned the work to ILWU-represented employees pursuant to the PCLCD.

At Hearing, the parties submitted evidence and stipulated that the IAM threatened to strike and picket SSA if it did not reassign the disputed work to members of the IAM. [Tr. at p. 29:4-32:7; and Emp. Exh. 1.] Indeed, on March 18, 2019, SSA received a letter from IAM Local 289's Business Agent, Brandon Hemming, threatening that the IAM would take economic action "wherever appropriate" to obtain reassignment of the work to the IAM. [Bd. Exh. 2, para. 10; and Id.] Such conduct constitutes a threat to engage in conduct proscribed by NLRA Section 8(b)(4)(D), and the NLRB has found probable cause to believe so. [Jnt. Exh. 1, para. 1.]

It has also been stipulated that both the IAM and ILWU are demanding SSA assign the disputed M&R work to employees represented by their respective unions. *See Hudson General Contractors*, 326 NLRB No. 15 (1998). The parties have further stipulated that no agreed-upon voluntary method to resolve this classic jurisdictional dispute exists. [Bd. Exh. 2 paras. 8 and 9; Jnt. Exh. 1, paras. 8-10.]

Therefore, the dispute is appropriate for determination by the NLRB pursuant to NLRA Section 10(k). *See, e.g., United Brotherhood of Carpenters and Joiners of America, Local 275*, 334 NLRB No. 67 (2001) (before the NLRB may proceed with a determination of a dispute pursuant to NLRA Section 10(k), it must be satisfied that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute). Indeed, all parties have virtually stipulated to the use of the 10(k) proceeding to settle this dispute as well as the appropriate nature of this process under these circumstances. [See Bd. Stipulation, Jnt. Exh. 1 as well as multiple comments of counsel during SSA's case referring to said stipulations and stating the case involves a classic jurisdictional dispute.]

SSA respectfully requests the NLRB decide this dispute via the traditional assignment of work factors. *See, United Union of Roofers, Waterproofers & Allied Workers, Local 189*, 259 NLRB 1320, (1982) (holding that "Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various factors").

## **II. FACTUAL BACKGROUND**

### **A. The Disputed Work**

The M&R work at Terminal 5 involves the M&R of the following equipment: ship-to-shore gantry cranes, rubber tired gantry cranes (“RTGs”), utility tractor rigs (UTRs aka hustlers), various trucks and service vehicles and transport vans, forklifts (aka Hysters), chassis, yard chassis (aka bomb carts), containers, reefers (refrigeration units on chassis and containers), and other stevedore cargo handling equipment and equipment used to assist and transport longshore workers and marine clerks. [See Jnt. Exh. 1, para 19 as well as Tr. p. 15, ll. 2-16 and testimony of various mechanics.]

### **B. SSA, The Employer**

SSA, the employer, operates container cargo terminals along the western seaboard of the United States and throughout the world. For over 50 years, SSA, its affiliates, and its predecessors have operated and managed terminals and provided stevedore services at various ports located on the Puget Sound in Washington. [Jnt. Exh. 1, para 6.] SSA’s predecessor in Seattle was Seattle Stevedoring Company. (Jnt. Exhibit 15, Everett Tr. 205.) In approximately 1984, Seattle Stevedoring Company merged with other companies, which eventually formed SSA. [Tr. at p. 19, ll. 10-16.]

SSA controls work assignments at Terminal 5. At times, those assignments are controlled by a contract with PCMC, which, like SSA, is a member of the PMA and employs ILWU mechanics who are members of the coast-wide longshore bargaining unit. Nonetheless, all parties have already stipulated that the ILWU mechanics currently working at Terminal 5 are SSA employees for purposes of this 10(k) Hearing because SSA assigns and controls the details of the work. [Jnt. Exh. 1, para. 6.]

### **C. The ILWU**

SSA has utilized ILWU-represented employees since SSA’s inception to provide stevedoring and terminal-related services along the waterfront. A vast majority of SSA’s employees are represented by the ILWU. In the Seattle area alone, SSA employs a range of

ILWU-represented employees, which can reach several hundred men and women per day, depending on the number of ships in port. [Tr. p. 272, l. 4- p. 274, l. 8.] Unlike the IAM-represented employees, many of the ILWU-represented employees are not steady employees but are, instead, hired for temporary work out of the ILWU dispatch hall. Given the considerable fluctuation of SSA's labor needs based on the number of ships in port, these temporary arrangements allow SSA to effectively handle its work flow without being detrimentally overstaffed for a significant period of time.

SSA and its predecessors have been a party to the collective bargaining agreement with the ILWU through the PMA, a multi-employer bargaining unit agent, since the 1940s. This coast-wide, multi-employer bargaining unit of longshore workers was established by order of the Board over eighty years ago. *See Shipowners' Ass'n of the Pac. Coast*, 7 NLRB 1002 (1938), *petition for review dismissed sub nom. AFL v. NLRB*, 103 F.2d 933 (D.C. Cir. 1939), *aff'd*, 308 U.S. 401 (1940). PMA is the successor to the employer associations named in the original and historic certification. *Cal. Cartage Co. v. NLRB*, 822 F.2d 1203, 1206 (D.C. Cir. 1987). During the 2008 Pacific Coast Longshore Negotiations, the PMA and ILWU reached an agreement whereby the ILWU would permit member employers of the PMA to introduce labor-saving/reducing robotics in their stevedoring operations. In return, the PMA, on behalf of its members, agreed to utilize ILWU-represented mechanics at all "new facilities." [Jnt. Exh 4, Sections 1.72 thorough 1.76.]. This was the express recognition and tradeoff made between PMA employers and the ILWU: modernization in exchange for work preservation – specifically preserving the work lost from mechanization and robotics through an agreement to cover the maintenance and repair of that equipment at new terminals. SSA, as required by the agreement, assigned the currently in dispute M&R work at Terminal 5 in Seattle to ILWU-represented employees.

#### **D. The IAM**

SSA has a long history of assigning certain M&R work on SSA-owned or leased cargo-handling equipment to the IAM-represented mechanics at several ports on the west coast. In the

Seattle area, including Puget Sound, SSA and its predecessors and affiliates have had collective bargaining agreements with the IAM that have covered maintenance work involving equipment owned or leased by SSA. [Jnt. Exh. 3.] In this same area, SSA employs approximately one hundred ten to one hundred twenty IAM-represented mechanics who predominantly operate out of centralized shops located at Terminal 18 (and sometimes Terminal 30). [Tr. p. 145, ll. 19-21 and Jnt. 3 IAM CBA.] SSA steadily employs IAM-represented members. The Terminal 18-based IAM employees either travel to terminals where the power equipment is located to make necessary repairs or the equipment is transported by ILWU-represented employees to Terminal 18 where the IAM represented mechanics will then make the repair. At Terminal 18, there is a crane shop/facility, a power equipment shop, and a CEM facility. [*Id.*]

Specifically, SSA has a collective bargaining agreement with District Lodge 160, Local Lodge 289 of the IAM, which covers the Puget Sound. The agreement states, in part, “IAM-represented employees will maintain and repair all equipment owned or leased by SSA in the Puget Sound area.” [Jnt. Exhibit 3.] This is the IAM collective bargaining agreement at issue here.

#### **E. Terminal 5**

Terminal 5 began operating as a container terminal in 1964. Between 1997 and July 2014, the site was leased and operated by Eagle Marine Services, a subsidiary of American President Lines (“APL”). APL had a collective bargaining agreement with the IAM under which it employed IAM mechanics to perform M&R work at Terminal 5. APL, as a PMA member, also had a collective bargaining agreement with the ILWU under which APL employed longshore workers and marine clerks to handle, move, and track cargo at Terminal 5. In 2013 or 2014, APL terminated its operations at Terminal 5 and vacated the facility. APL and the IAM negotiated to transfer the mechanics working at Terminal 5 to Terminal 18 at the Port of Seattle where they would continue to work for APL. [Jnt Exh. 1 paras. 11-13.]

From the time APL left the facility until late 2018, Terminal 5 was vacant and non-operational and neither ILWU-represented employees nor IAM-represented employees

performed any work at the facility. In or about 2018, the Northwest Seaport Alliance (“NWSA”, a marine cargo operating partnership of the Ports of Seattle and Tacoma) developed the Terminal 5 Modernization Plan. To note, the NWSA constitutes one of the five largest container gateways in the United States. The purpose of the NWSA’s Terminal 5 Modernization Plan is to help the NWSA handle larger-capacity vessels and better compete with other ports. [Jnt Exh. 1 paras. 14-15.]

In 2018, SSA began to consider leasing Terminal 5 as part of the Terminal 5 Modernization Project. Starting on or about August 20, 2018, SSA began conducting M&R work at Terminal 5 to prepare the facility to begin receiving cargo. In early April 2019, the governing body of the NWSA approved a lease of Terminal 5 to SSA. SSA subsequently informed the ILWU and IAM that the employer intends to continue to assign M&R work at Terminal 5 to employees represented by the ILWU. [Jnt Exh. 1 paras. 16-17.]

SSA believed the PCLCD required the company to assign the disputed work to the ILWU. SSA, after consultation with the PMA, determined that Terminal 5 qualified as a “vacated terminal” that had lost its “Red Circle” and thus would be considered a “new terminal” for SSA to operate for ILWU collective bargaining agreement purposes. [Tr. p.105, ll. 13-19 and Tr. p. 373, l. 12 - p. 375, l. 20.] As a result, SSA, after consultation with the PMA, concluded that the company was obligated under Sections 1.72 to 1.76 of the PCLCD to assign the M&R work at Terminal 5 to employees represented by Local 19 of the ILWU. Since August 2018, SSA has assigned M&R work to ILWU-represented mechanics at Terminal 5. Although SSA initially found it necessary to use the PCMC to obtain additional mechanics as Terminal 5 approached its planned opening day, SSA plans to discontinue this arrangement and exclusively use Local 19 ILWU mechanics in the future. SSA also utilizes the ILWU dispatch hall to employ additional mechanics as needed and intends to do so when it stops utilizing PCMC.

SSA Chief Operating Officer (“COO”) Ed DeNike<sup>2</sup> testified that the ILWU has performed this work since August 2018 and continued to do so when Terminal 5 began to function as a container terminal for Matson vessels on April 26, 2019. He also testified that SSA has not experienced any significant issues with the M&R work at Terminal 5. Indeed, ILWU mechanics have been the only mechanics in all of the shops at Terminal 5 and have demonstrated the requisite skills to perform the necessary work. [Tr. 468, ll. 9-25.] Indeed, Mr. DeNike stated that he is happy with the work of those mechanics (Tr. p. 469, ll. 1-2), and the vessels arriving and departing during the five to six-week period prior to his testimony all remained on schedule. (*Id.* at ll. 3-7.) Mr. DeNike emphasized how important it is that Matson vessels adhere to predetermined schedules so that the island communities Matson services can receive critical supplies and food they need each week, which the ILWU mechanics have been able to achieve thus far. [*Id.* at ll. 8-25.] He is also content with the ILWU mechanics working in Terminal 5’s CEM shop. [*Id.* at p. 472 at ll. 10-15.] SSA also obtained a handful of former TTI ILWU crane mechanics, who Mr. DeNike is also pleased with. [*Id.* at p. 473 at ll. 10-15.] Overall, Mr. DeNike is confident that those ILWU mechanics that came over from TTI, and who would otherwise have been laid off if not for the employment offered by Terminal 5, constitute a skilled workforce. [Tr. at p. 477, ll. 9-24.] His opinions regarding ILWU mechanics’ capability and skill level are based on the fact that they are regularly performing their respective jobs. [Tr. at p. 488, ll. 5-9 and ll. 19-24.] Mr. DeNike is also happy with the ILWU mechanics SSA employs in Tacoma and is aware that ILWU mechanics are doing good work for the company in many other ports throughout the West Coast. [*See* Tr. at p. 272, 1.4-p. 274, 1.8.] As Mr. DeNike summarized at Hearing, he knew he could find skilled people in both unions so he assigned the work based upon his obligations under the PCLCD (Tr. at p. 489, ll. 4-7); however, he is happy and satisfied with the current work assignment. [*Id.* at 8-24.]

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<sup>2</sup> As COO, Mr. DeNike’s duties include determining work assignments for employees, a task he has been involved with for over fifty years with SSA and its affiliates, meaning he is familiar with the labor agreements involving both the ILWU and IAM. [TR. p. 13 ll. 21-p.16 ll. 16.]

### **III. THE NLRB SHOULD ASSIGN THE DISPUTED M&R WORK REGARDLESS OF SSA'S UNWILLINGNESS TO STATE AN EMPLOYER PREFERENCE**

When determining which union to assign work to, the NLRB makes a common sense evaluation and balances a number of relevant factors. Such factors include: collective bargaining agreements and certifications, past practice, relative skill, industry and area standards, employer preference, economy and efficiency of operation, and gain or loss of employment.<sup>3</sup> *J.A. Jones Construction*, 135 NLRB 1402 (1962); *Holt Cargo Systems, Inc.*, 309 NLRB 377 (1992) (gain or loss of employment).

#### **A. The NLRB Has Ample Information to Assign the Work Regardless of SSA's Lack of a Stated Preference.**

There is no dispute SSA assigned ILWU-represented employees the M&R work at Terminal 5. It did so based on a rational business decision involving SSA's obligations under the PCLCD. As discussed further below, SSA was convinced it was in the best interest of the industry to agree to assign the M&R work in such a manner as it continued to allow PMA-represented employers operating at new terminals throughout the West Coast to introduce robotics and other technological developments to increase workplace efficiency. As demonstrated below, friction between the two unions does exist, and thus the assignment of the work by the NLRB would serve the NLRB's purpose of restoring labor harmony. It would reduce any tensions that may result from a perception that the assignment arose directly or even partly out of the actions of the employer.

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<sup>3</sup> As discussed previously, this case is clearly one that is appropriate for resolution under Section 10(k) of the NLRA because both unions have stipulated that: (1) they claim the disputed work; (2) neither party is certified by the NLRB to perform the work; (3) the IAM has threatened to picket if the work is not reassigned to their members; (4) there is no voluntary method to resolve this dispute; and (5) all parties have stipulated to the use of the 10(k) proceeding to resolve the dispute. *See Jos. Berning Printing Co*, 331 NLRB 846, fn.4 (2001). Further, the dispute is clearly between two competing labor organizations over which unions' membership performs the disputed work and not over which union represents the workers.

The employer's individual preference is not a prerequisite for the NLRB to make a work assignment decision. For example, at the 10(k) hearing in *Laborers Local 171 (Henkels & McCoy)*, 313 NLRB 978, at 979 (1994):

The Employer's chairman . . . declined to state a preference for either of the competing Unions, but emphasized the need for a Board resolution of [the jurisdictional] dispute because it has faced several similar jurisdictional disputes involving unions from these two trades. Because, he asserts the Employer is likely again to face similar disputes in the future, he requests a Board determination outlining the factors appropriately to be considered by the Employer in making work assignments in the future.

There, as here, the NLRB recognized that an employer may remain neutral and “[disclaim] a preference for either group of employees to perform the work in dispute.” *Id.*, at 981. Thus, SSA does not need to express a preference for one union over another. Indeed, doing so would only compound already existing labor relations issues and result in the union not receiving the work experiencing severe dissatisfaction with the employer. Here, a NLRB determination has the greatest chance of restoring labor harmony at SSA throughout the West Coast.

**B. SSA Has Tried to Avoid Aggravating Either Union and Thus Has Not Stated a Preference.**

As SSA's COO Mr. DeNike stated, the Terminal 5 M&R work is a “Holy Grail Issue” to each union. [Tr. at p. 384, ll. 10-12.] Counsel for both unions have demonstrated both in this case and in 2009-CD-502 that friction has existed for some time between the ILWU and the IAM on this issue. [2009- CD-502; Tr, 76:8-14.] Mr. DeNike's testimony demonstrates that while he had not seen evidence of day-to-day friction before the Terminal 5 assignment, he was convinced that while the IAM members begrudgingly accepted the assignment at Pier 91, they were not willing to stand-by and allow the ILWU to divert their M&R work at SSA to the ILWU whenever work moved to a new terminal. [Tr. at p. 272, 1.4- p. 274, 1.8.] The atmosphere at the Hearing as demonstrated by the comments made on the record by representatives and members of both unions suggest Mr. DeNike was correct when he indicated this had become a “Holy

Grail” issue for both unions. Indeed, IAM members have stated to Mr. DeNike that they view the ILWU as trying to take away their traditional jurisdiction over time, which, in turn, undermines their job security. *See, e.g., ILWU v. NLRB*, 890 F.3d 1100 (D.C. Cir. 2018), *aff’g PCMC*, 362 NLRB 988 (2015), *reaff’g* 359 NLRB 1206 (2013); *Ports America Outer Harbor*, 366 NLRB No. 76 (May 2, 2018); *Everport Terminal Svcs., Inc.*, No. 32-CA-172286, 2018 WL 3655798 (N.L.R.B. Div. Judges July 27, 2018); *Int’l Ass’n of Machinists*, 355 NLRB 23 (2010) (Pier 91); and other SSA jurisdictional cases cited or referred to during the Hearing.

As Mr. DeNike emphasized to the Hearing Officer, the company has attempted to avoid stating a preference throughout this dispute in order to try to be fair to all workers. [Tr. at p. 384, ll. 13-14.] He is therefore adamant that he cannot state a preference even though SSA has assigned the work in dispute to the ILWU. Indeed, if he does state or even imply a preference, he will have a problem with the other. [*Id.* at ll. 17-18.] Although this may frustrate the unions and even the NLRB itself, he hopes that SSA’s position can be respected, and that the NLRB can make a decision on the relative merits without employer preference. [*Id.* at 10-21.]

#### **IV. PMA’S POSITION IS THAT IT PREFERS THE ILWU BE AWARDED THE WORK IN DISPUTE**

SSA is part of a multiemployer association (i.e., the PMA) comprised of approximately eighty international ocean carriers and portside maritime employers, many of which are major employers under the Board’s jurisdiction [Jnt. Exh. 1 para. 7.]. Although, SSA does not state a preference for purposes of this proceeding, it has been informed that PMA’s position is that PMA prefers assignment of the work to the ILWU pursuant to the PCLCD because of commitments made during contract negotiations in 2008. However, the above should not be construed as any indication of SSA’s preference; SSA remains neutral concerning the work assignment.

**V. SSA DECLINES TO EXPRESS AN OPINION ON THE OTHER SECTION 10(K) DETERMINATION FACTORS BUT ACKNOWLEDGES THAT BOTH UNIONS' COLLECTIVE BARGAINING AGREEMENTS APPLY, BOTH HAVE SKILLED MECHANICS, AND SSA HAS ASSIGNED THE WORK TO BOTH UNIONS IN THE PAST UNDER VARIOUS CIRCUMSTANCES**

SSA acknowledges that both contesting unions' collective bargaining agreements cover the dispute, both unions have skilled mechanics in their ranks, and both unions have been assigned M&R work by SSA under various circumstances. As such, SSA, for those and other reasons, does not believe it is necessary or appropriate to state a preference.

**A. SSA's Opinion Regarding the Relative Skills Factor Should Not Be Used in Determining which Union Is Awarded the Work.**

Mr. DeNike has testified frankly that both the ILWU-represented mechanics and IAM-represented mechanics possess the skills necessary to perform M&R work on SSA's equipment at Terminal 5. SSA COO Mr. DeNike testified that SSA was satisfied with the ILWU-represented mechanics' performance of the disputed work, that the work was running "smoothly," and that he was pleased with the work performance of the ILWU-represented employees since the terminal opened. [Tr. at p. 472:10-475:24.] As a group, Mr. DeNike is confident that the ILWU mechanics that came over from TTI, and who would otherwise be laid off if not for employment at Terminal 5, are a skilled workforce. [Tr. at p. 477, ll. 9-24.] Mr. DeNike knows that the ILWU mechanics are capable and skilled because they are doing the job right now. [Tr. at p. 488, ll. 5-9 and ll. 19-24.]

But, he also testified that he knows the IAM-represented mechanics possess the necessary skills and competence to perform the disputed work on the cranes and other equipment at Terminal 5 because he has experienced their work performance at Terminal 18 and Terminal 30 in Seattle over the years, and he knows those mechanics well. [Tr. at p. 33:23-34:18; 46:23-47:7; 63:7-10.]

Additionally, in either case, SSA can solicit applications from outside the ILWU to fill the positions if there are no mechanics available on the dispatch hall to fill mechanic positions. Alternatively, an employer short of qualified mechanics can acquire skilled mechanics from the ILWU-represented workforce by having the mechanics travel from other ports or transfer from

different employers in the same port, transfer from different ports, or solicit mechanics from outside the ILWU-PMA coast-wide bargaining unit through the Herman Flynn Doctrine and procedure. But, SSA also has a large pool of IAM-represented mechanics in Seattle (100 to 120) and elsewhere throughout the United States from which it can draw qualified mechanics if needed.

Further, neither union has an advantage as to skill level given specific training on particular equipment and cranes at Terminal 5 is most important to SSA. Both the PCLCD and SSA-ILWU contracts permit employees to take courses at local community colleges or attend equipment specific training. Similarly, the IAM contract provides for an apprentice program in which mechanics acquire job-related skills. Both unions' personnel can also attend manufacturer training seminars. Indeed, as testified to by both the IAM and ILWU mechanics at the Hearing, the specialized experience and training on the peculiar and particular stevedoring, yard, and logistics equipment makes the difference in whether one can successfully work the equipment used in SSA's operation.

Ultimately, the fact that SSA is satisfied with the performance of mechanics represented by both unions shows that this factor favors neither union in its opinion. *See Millennium Construction*, 336 NLRB No. 91 (2001) (NLRB found relative skill did not favor either union given that the employer indicated complete satisfaction with Laborers' skills and work quality and where the apprenticeship and training program that was asserted to make the Carpenters highly skilled was not taken by all Carpenters and, consequently, many Carpenters simply acquired their skills from on-the-job training.). Thus, the qualifications of both union's represented mechanics are sufficient and certainly do not disfavor awarding the disputed work to either of them.

#### **B. The Company's Past Practice**

SSA has assigned M&R work to IAM-represented mechanics in the Port of Seattle and other large Ports on the West Coast in the past. But, the ILWU-represented employees also perform M&R work for SSA and other employers at various ports along the West Coast under

the coast-wide agreement. Specifically, Mr. DeNike stated he is happy with the ILWU mechanics employed by SSA in Tacoma (a large container port), and he is aware that ILWU mechanics are doing good work up and down the West Coast, including at Pier 91 in Seattle, in the Ports of San Diego, Portland, Coos Bay, Port Angeles, and other similar terminals. [Tr. at p. 268:14-272:3.] Thus, SSA's past practice of assigning M&R work is somewhat ambiguous and any attempt by SSA to explain or interpret what those practices mean here is not likely to lead to greater labor harmony. As a result, SSA shall not argue the facts and law on this issue. Yet, that does not mean it favors or disfavors assigning the disputed work to the IAM or ILWU at Terminal 5 on any such basis.

**VI. CONCLUSION**

Based on the evidence presented and entered into the record, SSA respectfully requests that the NLRB issue a Determination of Dispute and render a work assignment despite SSA stating no preference.

Dated: July 16, 2019

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By:



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