

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

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 19 (SSA
TERMINALS, LLC),

and

KAREY MARTINEZ, an individual

Case 19-CB-186889

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 19
(PACIFIC MARITIME ASSOCIATION)

and

JAMES TESSIER, an individual

Case 19-CB-224117

**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION
LOCAL 19's MOTION TO MODIFY CONSENT ORDER**

Respondent ILWU Local 19 (Union or Local 19) moves to modify the settlement language appended to its Motion for Consent Order filed on September 27, 2019.

Background

The Union filed its Motion for Consent Order on September 27, 2019. As summarized by Judge Eleanor Laws' Prehearing Conference Summary, the parties convened for a prehearing conference on October 8 to address the foregoing motion. However, the Judge did not rule on the motion at that time but indicated she would wait until the allegations relating to membership minutes were withdrawn. That has subsequently happened, by order dated October 10 issued by the Regional Director. In the Conference Summary the Judge expressed a preference for convening on October 15 in order to rule on the Union's motion for a consent order.

Previously, the Judge directed Respondent and Counsel for the General Counsel to confer in order to prepare an updated settlement agreement. Local 19, through undersigned counsel, and Counsel for the General Counsel have done so. Respondent has notified Counsel for the General Counsel of its proposed modification.

Respondent files this Motion to Modify Consent Order to reflect a revision to one paragraph of the settlement agreement it initially offered. The sole modification Local 19 seeks is in the “we will” paragraph of the notice posting. That provision currently reads:

WE WILL provide Karey Martinez with copies of JPLRC minutes from January through August 2016 and February 1, 2018, with redactions only as to personal health and medical information.

Local 19 seeks to modify it as follows:

WE WILL provide Karey Martinez with copies of JPLRC minutes from January through August 2016 and February 1, 2018, with redactions only as to personal, health and medical information.

The modified version contains a comma after the word “personal.” The Union seeks the modification to ensure that it can protect employee confidentiality and ensure that personal information is not inadvertently disclosed.

Discussion

The Union seeks to make a minor modification of the settlement language by adding a comma so that the “we will” provision would now read “WE WILL provide Karey Martinez with copies of JPLRC minutes from January through August 2016, with redactions only as to personal, health and medical information.” The addition of the comma ensures that personal information could be redacted even if it falls outside of the health or the medical contexts. Respondent recently learned of information regarding the publication by one of the Charging Parties of a confidential sexual harassment grievance at another Port. The incident led to the

Union's re-examination of the language at issue in the instant case and yielded this proposed modification.

As mentioned in Local 19's initial motion, meeting minutes of the Seattle Longshore Joint Port Labor Relations Committee (JPLRC) contain information on a range of subjects, including personal, medical or health information. *See Motion for Consent Order* at 3. They differ from traditional hiring hall records and contain information typically stored in personnel and human resource files.

One of the charging parties here maintains a website on which he frequently posts derisive, pugilistic and provocative content, including, apparently, information that is confidential and not intended for publication.¹ Local 19 recently became aware that Charging Party Tessier posted a confidential sex discrimination grievance filed under the ILWU-PMA special grievance and arbitration procedure for complaints concerning discrimination and harassment under Section 13.2 of the Pacific Coast Longshore & Clerks Agreement. This streamlined procedure affords employees a direct expedited means for having their discrimination or harassment complaint heard directly by an arbitrator. It is supposed to remain confidential.

Given the nature of discrimination and harassment grievances, the special 13.2 process is designed to preserve the confidentiality of the grievant and does not follow the regular process or procedure used for regular grievances. *Letter of Understanding "A", ILWU-PMA Equal Employment Opportunity Policy and Procedures*, ¶ 4.² ("Grievances will be addressed and resolved as quickly, fairly and **confidentially** as reasonably possible.")(emphasis added). *Letter of Understanding "B" Re ILWU-PMA Special Grievance/Arbitration Procedures For The*

¹ Charging Party Tessier maintains <https://longshore-labor-relations.com/>

² Available at http://apps.pmanet.org/?cmd=main.content&id_content=2142606388

*Resolution Of Complaints Re Discrimination And Harassment Under Section 13.2 Of The Pacific Coast Longshore & Clerks Agreement, Section III, ¶ 5.*³ (“Only parties, (including two persons on behalf of, respectively, the involved ILWU Local(s), PMA, the involved Employer, those representatives designated under paragraph four (4)), and witnesses directly involved in the matter, may attend the hearing as the proceedings are to **be treated as confidential to protect the privacy rights of those involved.**”)(emphasis added).

Despite a special grievance 13.2 procedure designed to preserve the confidentiality of discrimination grievances, a recent grievance involving a dispute at the Port of LA/Longbeach appeared on Charging Party’s website. It contained a female employee’s detailed account of physical intimidation and threatening conduct by another employee at the workplace. Local 19 has no knowledge of how Tessier obtained the confidential Sec. 13.2 grievance that he posted.⁴

Under the special grievance procedure for discrimination or harassment grievances, the local union does not track or even necessarily know about a Section 13.2 grievance. The special grievance procedure is designed to facilitate an individual discriminatee being able to directly pursue an allegation without having (though s/he may opt to) to involve their local. JPLRC minutes do not contain Section 13.2 grievances.

Local 19 seeks to modify the settlement language simply to clarify and ensure that in the event employee personal information surfaces in JPLRC meeting minutes the Union has the ability to redact such information as needed. Learning about this unauthorized posting of an employee’s confidential Section 13.2 discrimination grievance triggered Local 19’s re-examination of the settlement language, and highlighted the perils of information not being

³ Available at <http://apps.pmanet.org/pubs/ilwu/grievance/13.2-SGP-LOU-B-082201-Rev-101205.pdf>

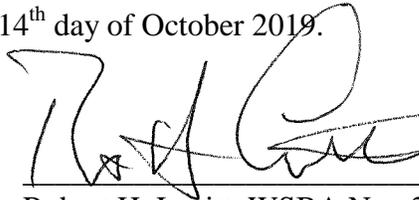
⁴ The offending web posting can be seen at <https://longshore-labor-relations.com/?p=4585>. Local 19 is reluctant to submit a copy of it for the record without a protective order in place. See generally *ALJ Benchbook*, §8-600 Protective Orders.

properly safeguarded. Adding the proposed comma to the pending settlement language would assuage Respondent's concerns as it attempts to make JPLRC minutes reasonably accessible while safeguarding members' personal information.

Conclusion

Based on the foregoing reasons, Local 19 urges the Administrative Law Judge to grant Respondent's Motion to Modify Consent Order. Local 19 has conferred with the Counsel for the General Counsel and he does not oppose this motion. Respondent has not yet communicated with Charging Party.

Respectfully submitted this 14th day of October 2019.



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Attorney for Respondent ILWU Local 19

DECLARATION OF SERVICE

I declare under penalty of perjury that:

1. On October 14, 2019, the forgoing was sent electronically to the following:

Eleanor Laws
Eleanor.Laws@nlrb.gov

Richard Fiol
Richard.Fiol@nlrb.gov

Jim Tessier
LaborRelations@comcast.net
JimTessier@comcast.net

Todd Amidon
tamidon@pmanet.org

Karey Martinez
Kareymartinezlocal19@gmail.com

2. On October 15, 2019, I caused the foregoing to be electronically filed with the National Labor Relations Board at www.nlrb.gov and a copy to be emailed to the following:

Eleanor Laws
Eleanor.Laws@nlrb.gov

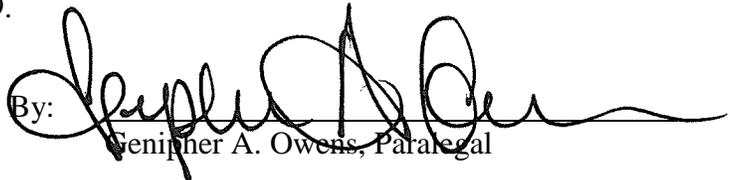
Richard Fiol
Richard.Fiol@nlrb.gov

Jim Tessier
LaborRelations@comcast.net
JimTessier@comcast.net

Todd Amidon
tamidon@pmanet.org

Karey Martinez
Kareymartinezlocal19@gmail.com

Dated this 15th day of October, 2019.

By: 
Jennifer A. Owens, Paralegal

ILWU LOCAL 19 AND MARTINEZ/TESSIER
CASE NOS. 19-CB-186889 AND 19-CB-224117

PROPOSED SETTLEMENT AGREEMENT

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

ILWU Local 19 (SSA Terminals)

ILWU Local 19 (Pacific Maritime Association)

Cases 19-CB-186889

and 19-CB-224117

Subject to the approval of the Administrative Law Judge for the National Labor Relations Board, the Charged Party **HEREBY AGREES TO SETTLE THE ABOVE MATTERS AS FOLLOWS:**

POSTING OF NOTICE — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in the regular bulletin board areas for A-men, B-men, and casuals. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting. Further, if the Charged Party maintains bulletin boards at the facility of the Employers where the alleged unfair labor practices occurred, the Charged Party shall also post Notices on each such bulletin board during the posting period. The Regional Director will send copies of the signed Notices to the Employers whose employees are involved in this case, and request that the Notices be posted in prominent places in the Employers' facility for 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE – By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence.

PARTIES TO THE AGREEMENT — If the Charging Party or Regional Director fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge may approve the settlement agreement in this matter. If that occurs, this Agreement shall be subject to the Regional Director and/or Charging Party's right to request review of the Administrative law Judge's decision upon the filing of Exceptions to the Board and decline to issue or reissue a Complaint in this matter. If the Board does not sustain the Administrative Law Judge's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer 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 restrain or coerce you in the exercise of the above rights.

WE WILL NOT refuse to provide those who use our dispatch hall with information needed for them to determine if they are being treated fairly.

WE WILL provide Karey Martinez with copies of JPLRC minutes from January through August 2016 and February 1, 2018, with redactions only as to personal, health and medical information.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under § 7 of the Act.

**International Longshore and Warehouse Union,
Local 19**

(Labor Organization)

Dated: _____

By: _____
(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Telephone: (206)220-6300
Hours of Operation: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.