

# Longshore & Labor Issues

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**Paul M. Heylman, Esq.**

Saul Ewing Arnstein & Lehr LLP

AAPA 2019 Port Administration & Legal Issues Seminar

February 13, 2019

Ft. Lauderdale, FL

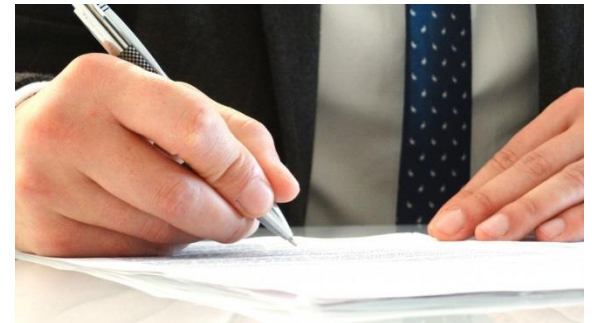
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# Overview

- Longshore union contracts
  - ILA (Atlantic and Gulf)
  - ILWU (Pacific)
- Port trucking
- Public employee unions (Janus and beyond)

# New Longshore Contract- ILA

- New six-year contract effective September 25, 2018
- Local ratifications, but some choppy waters
- Wage and benefit increases



# ILA Automation Rules

- Section L New Technology  
Implementation and Workforce Protection
  - Purpose – to “protect the Master Contract workforce . . . while improving the efficiency and capacity on the terminals.”
  - Address both fully-automated equipment and terminals; semi-automated equipment and terminals

# ILA Automation Rules – Fully Automated

- Fully automated defined as “machinery/equipment devoid of human interaction”
- Use of fully-automated equipment prohibited
- Development of fully-automated terminals prohibited
- Framing the underlying views – prior positions and party statements during ratification

# ILA Automation Rules

## Semi-Automated

- There shall be no implementation of semi-automated equipment or technology/automation until both parties agree to workforce protections and staffing levels.”
- Guidelines for workforce protection negotiation
  - Technology effects on capacity and efficiency
  - Manning determination
  - New work created by technology – possible craft reassignment

# ILA Automation Rules

## Negotiations Semi-Automated

- 90 days for local negotiation, with further procedures under stringent time limits
- All agreements are port specific
- The Daggett productivity pledge



# Meanwhile on the Pacific Coast

- New ILWU agreement – extended from July 1, 2019 until July 1, 2022
- But maybe some bumps in the road
  - This is serious business – Long term consequences of a longshore labor dispute at the Port of Portland
  - ILWU position in the Advisian report



# Terminal Automation Dispute in Southern California

- ILWU Local 13 and AMPT
- Two very different world views
- Is there another M&M Fund in the offing?
- Can this marriage be saved?



# Port Trucking

- The classification wars, year 20: Are independent contractor drivers really statutory employees?
  - What does this mean to port counsel?
    - Multiple issues at stake
      - Unionization efforts
      - Minimum wage laws and collective actions
- Port authorities are getting dragged into the fray

# FAAAA Preemption

- *Bedoya v. American Eagle Express*
  - Third Circuit opinion on January 29, 2019
  - Holds FAAAA does not preempt NJ state law test for determining employment classification
  - While the decision deals only with the NJ test for who is an employee, the rationale may apply to other laws relating to port drivers
- *California Trucking Association v. Su*
  - Ninth Circuit opinion on September 10, 2018
  - Holding similar to *Bedoya*

# *New Prime v. Oliveira*

## Limits on Mandatory Arbitration

- On January 15, 2019 Supreme Court issued 8-0 decision holding that a trucking company could not use the Federal Arbitration Act (FAA) to enforce an arbitration clause blocking a class action by driver(s)
- Types of possible disputes covered



# Impact of *Oliveira*

- While decision only addresses forcing arbitration under § 1 of the FAA for truck drivers, the 8-0 Justice Gorsuch opinion has been characterized as important victory for organized labor
- While decision only applies to certain transportation workers, and does not address possible state court authority for mandatory arbitration, it may well stimulate additional driver class actions

# *Janus* & Public Employee Unions

- The Supreme Court decision
  - June 27, 2018 Supreme Court issued 5-4 decision overturning *Abood*
  - *Abood* held that public employee unions could not require employee contributions for political or ideological activities, but could require employee contributions for negotiating and administering a collective bargaining agreement
  - *Janus* holds that unions can only collect union dues/agency fees from public employees if the employee has “clearly and affirmatively consent[ed]” to the fee

# *Janus* – Practical Impact

- Unions have not lost members in public safety (fire and police)
- Union in other areas have lost members, sometime many members
- Union and government approaches to post–*Janus* issues and dealing with the decision’s fallout

# After *Janus*: The Next Phase

- Exclusive representation is the legal doctrine that the union is the exclusive voice of the employees. This provides the union with certain rights but also imposes certain responsibilities
- *Janus* mentions, but does not decide on, the permissible scope of exclusive representation
- Subject areas for consideration
  - Collective bargaining
  - Grievance and arbitration
  - Pensions
- State law responses





# Questions?

### **Baltimore**

Lockwood Place  
500 East Pratt Street, Suite 900  
Baltimore, MD 21202-3171  
T: 410.332.8600 • F: 410.332.8862

### **Boston**

131 Dartmouth Street  
Suite 501  
Boston, MA 02116  
T: 617.723.3300 • F: 617. 723.4151

### **Chesterbrook**

1200 Liberty Ridge Drive  
Suite 200  
Wayne, PA 19087-5569  
T: 610.251.5050 • F: 610.651.5930

### **Chicago**

161 North Clark  
Suite 4200  
Chicago, IL 60601  
T: 312.876.7100 • F: 312.876.0288

### **Fort Lauderdale**

200 E. Las Olas Blvd.  
Suite 1000  
Fort Lauderdale, FL 33301  
T: 954.713.7600 • F: 954.713.7700

### **Harrisburg**

Penn National Insurance Plaza  
2 North Second Street, 7th Floor  
Harrisburg, PA 17101-1619  
T: 717.257.7500 • F: 717.238.4622

### **Miami**

Southeast Financial Center  
200 S. Biscayne Blvd., Suite 3600  
Miami, FL 33131  
T: 305.428.4500 • F: 305.374.4744

### **Minneapolis**

33 South Sixth Street  
Suite 4750  
Minneapolis, MN 55402  
T: 612.217.7130 • F: 612.677.3844

### **New York**

1270 Avenue of the Americas, Suite  
2005  
New York, NY 10020  
T: 212.980.7200 • F: 212.980.7209

### **Newark**

One Riverfront Plaza  
Newark, NJ 07102  
T: 973.286.6700 • F: 973.286.6800

### **Philadelphia**

Centre Square West  
1500 Market Street, 38th Floor  
Philadelphia, PA 19102-2186  
T: 215.972.7777 • F: 215.972.7725

### **Pittsburgh**

One PPG Place  
30th Floor  
Pittsburgh, PA 15222  
T: 412.209.2500 • F: 412.209.2570

### **Princeton**

650 College Road East, Suite 4000  
Princeton, NJ 08540-6603  
T: 609.452.3100 • F: 609.452.3122

### **Washington**

1919 Pennsylvania Avenue, N.W.  
Suite 550  
Washington, DC 20006-3434  
T: 202.333.8800 • F: 202.337.6065

### **West Palm Beach**

515 N. Flagler Drive  
Suite 1400  
West Palm Beach, FL 33401  
T: 561.833.9800 • F: 561.655.5551

### **Wilmington**

1201 North Market Street  
Suite 2300 • P.O. Box 1266  
Wilmington, DE 19899  
T: 302.421.6800 • F: 302.421.6813

**SAUL EWING**  
**ARNSTEIN**  
**& LEHR**<sup>LLP</sup>