



PAUL M. HEYLMAN, SHAREHOLDER
SCHMELTZER, APTAKER & SHEPARD, P.C.
THE WATERGATE
2600 VIRGINIA AVENUE, NORTHWEST, SUITE 1000
WASHINGTON, D.C. 20037-1905
WEB SITE <http://www.saspc.com>
E-MAIL: PMH@SASLAW.COM
TEL: (202) 333-8800
FAX: (202) 625-3301

THE ILA: WHERE IT'S BEEN AND WHERE IT'S GOING

Over the past few years East Coast longshore work has been constantly on edge—with the International Longshoremen's Association (ILA) at the center of the action. After what appears to be the final resolution of the major contract issues for the next few years, it is time to assess all the factors that have contributed to the turmoil. Hopefully, this will provide a background for some crystal-ball gazing.

Internal Factors – “I could'a been a contender”

Dissident movements within the ILA date back to Marlon Brando in “On the Waterfront.” However, the last few years have brought a new dimension—and new energy—to the infighting. Ken Riley, the charismatic and energetic leader of Charleston's ILA Local 1422 rose as a dissident leader of considerable prominence and has now become an International Vice President of the ILA. His fame began with the Nordana dispute and the subsequent indictment of the “Charleston Five” in 2001. Riley has continued to attract attention and generate controversy. With John Bowers now in his 80's the union faces an inevitable question of succession. East Coast longshore work has long been thought of as more stable, less costly and less political than West Coast longshore work, with its radical base and near complete ILWU monopoly over the work. The ILA's reputation for more peaceful negotiations may change, since Riley became a vice-president of the International Union several months ago.

a. The Nordana Dispute

In 2000, a Nordana Line vessel attempted to use a non-union stevedore to discharge cargo in Charleston, South Carolina. This immediately prompted the Charleston ILA local (ILA Local 1422) to picket. The garden variety labor dispute quickly escalated into a major confrontation between rock and brick-throwing picketers and 600 South Carolina riot police. While the police and the longshoremen each blame the other, the disturbance culminated in numerous injuries and the arrest of five longshoremen for felony rioting. This quickly became a political *cause célèbre* in Charleston, and in the broader activist labor community across the country. The “Free the Charleston Five” movement picked up considerable support. West Coast Longshore leader James Spinosa, President of the ILWU, was an early and vocal supporter, as was Teamsters International President James Hoffa, Jr. Interestingly, some movement supporters claimed that while they received considerable support from other unions and labor activists, they received little support from their own international—the ILA. While the felony rioting

cases were ultimately pled out, the dispute propelled Ken Riley into national prominence within the ILA. In 2004, ILA longshoremen in Charleston would continue to work Evergreen ships in the face of an ILA-sanctioned strike against Evergreen, and later that same year, Riley and his supporters sued to stop the ILA Master Contract from going into effect. That suit has now been resolved, but the underlying resentments may be less quick to settle down.

b. Relations Between the Teamsters, the ILA and the ILWU

At the 2001 annual convention of the Teamsters, ILA President John Bowers, ILWU President James Spinosa and Teamster President James Hoffa announced a campaign to unionize all U.S. ports “wall-to-wall.” In essence, the campaign is designed to ensure that all companies working in U.S. ports employ union workers, and that non-union companies are blocked from doing business in any U.S. port. While the unions are not likely to achieve complete success in this campaign anytime in the near future, there have been some interesting developments. In marked contrast to prior testy relations between the Teamsters and the two longshore unions, each of the three unions pledged to honor and respect each other’s “jurisdiction.” At the Teamsters convention, ILA President Bowers also told the delegates the ILA was joining the Teamsters in fighting expansion of the North American Free Trade Agreement—which would allow Mexican trucks and Mexican truckers to operate freely in the U.S. in direct competition with Teamsters. Bowers told the Teamsters delegates: “The ILA will not handle these unsafe trucks at any piers we work.” The three unions have repeatedly reiterated their “solidarity” over the past few years, particularly in the port driver disputes.

This is of particular interest because animosity between the Teamsters and the longshore unions has historically prevented coordinated action by the unions, particularly as each tries to grab the largest share of the work. The dispute even made it to the U.S. Supreme Court two decades ago in the “50 mile” rule case addressing the ILA attempt to keep Teamsters from doing work the ILA considered its own. While a certain amount of infighting is inevitable at the local level, the coordinated strategies of the two unions will inevitably aid union organizing efforts and frustrate management efforts to benefit from competition between two unions.

Recent Organizing Efforts by the ILA

Perhaps because of the turmoil—or in spite of it, the ILA has been making much more serious efforts at organizing new employees. In 2003 the ILA succeeded in unionizing Evergreen port captains in New Jersey. When the line refused to bargain with the ILA, the ILA called for an East Coast strike against Evergreen. The strike lasted for a month. It was largely successful. Evergreen was effectively shut out of the East Coast (except for Charleston), and was forced to declare *force majeure* on cargo deliveries from at least five vessels that were scheduled to unload in New York-New Jersey. The line ultimately agreed to a union contract for the port engineers. The ILA won a similar contract at COSCO, and is now pursuing other lines.

However, the ILA was not finished with Evergreen. It sought and obtained a secret ballot election for unionization of over 100 off-dock employees in New Jersey. Despite losing the election, the ILA asked the National Labor Relations Board to require Evergreen to recognize the union and negotiate a contract. The NLRB accepted the union’s position that the line had acted unfairly in the election by threatening and coercing the employees. The NLRB then went to federal court to request an injunction

compelling Evergreen to recognize and bargain with the union, before any trial, to determine whether the line actually did act unfairly. Evergreen fought back, and the case has been litigated in the U.S. District Court in New Jersey for nearly a year. From the papers filed in the lawsuit, it appears that one of the issues pushed by the ILA was concern over possible outsourcing of jobs. This was fertile ground, since the outsourcing of vessel planning and related jobs on the West Coast had received considerable publicity during the 2002 ILWU strike that shut down all West Coast ports for 10 days. In the West, the ILWU was ultimately successful in forcing a large terminal operator to fire a number of its non-union vessel planning personnel, and replace them with union personnel. Presumably, the ILA used this success by its West Coast counterpart as an effective tool.

The 2004 Contract

The fight by the dissidents against the ILA International was not forgotten when ratification of the ILA-USMX six-year contract came up in June 2004. After the shockwaves generated by the 2002 West Coast strike, the parties on the East Coast looked for the stability of an early contract settlement. Despite the fact that the contract did not expire until the end of September 2004, USMX and the ILA reached agreement on a master contract in June. Initially, most observers thought that the contract would be accepted with no meaningful opposition. Although the ILA-USMX contract was ratified, the vote was closer than many observers had expected—only 56% of the voters favored the contract and the 44% “no” vote reflected the growing split within the ILA. The strongest “no” sentiment was in Newport News/Norfolk (179 votes for [12.7%] / 1225 against [87.3%]), Charleston (106 votes for [18.3%] / 473 against [81.7%]), and Baltimore (141 votes for [19.6%] / 575 against [80.4%]). The strongest “yes” sentiment was in Boston (144 votes for [77%] / 43 against [23%]), New York/New Jersey (1866 votes for [76.4%] / 575 against [23.6%]) and the Florida and Gulf ports. The anti-contract sentiment was strongest among lower seniority employees and focused on the two-tier wage system (although the new contract reduced the difference between top and bottom tier substantially). Local 1422’s vote was heavily against the contract: 33 votes for [10%], 298 against [90%].

The most important dispute concerned the two-tier wage structure. Newer employees (hired since 1996) are paid less than longer service employees. The dissidents wanted a “bridge” to the top rate for newer employees after the newer employees work for a certain period. The dissidents also argued that continuing the two-tier system will exacerbate the perceived favoritism in job referrals (asserting that employers prefer less senior, and thus lower cost, personnel). Other objections to the contract were: (1) that health benefit levels were tied to how many hours an employee worked in a year; those working less than 700 hours a year, somewhat less than half-time schedule, receive no health benefits at all; (2) “reduced” benefits for early retirement; and (3) differences between the East Coast (ILA) and the West Coast (ILWU) contracts, in which ILWU longshoremen average \$105,000/year compared to the ILA average of \$80,000/year.

The dispute over the ratification vote was not just limited to the pay and benefits split between lower and higher seniority members. There were widespread accusations of ballot misconduct and intimidation, culminating in a federal lawsuit filed in New York by the dissidents against the ILA International, seeking a new election and requesting an injunction to keep the new contract from going into effect. The plaintiffs in the lawsuit were activists in the Longshore Workers Coalition, including Leonard Riley (member of Local 1422 in Charleston, SC, and brother of 1422’s President and recently elected ILA International Vice President, Ken Riley) and other plaintiffs from locals covering Atlantic

and Gulf ports from Houston to New York. The lawsuit alleged the ILA arbitrarily threw out ballots, specifically votes of several locals, such as Local 1408 (Jacksonville, FL), Local 1526 (Fort Lauderdale, FL) and Local 2047 (Lake Charles, LA), all of which were not counted because of reports of voting irregularities.

The lawsuit also sought to block disciplinary actions against ILA members who reported voting irregularities, such as: (1) a lack of adequate advance notice of the election; (2) a lack of secret ballots at certain locals; (3) “improper influence” by ILA officers; (4) limitations on the time period for voting at some locals; (5) nullification of votes at some (but not all) locals that violated the voting time period. In the lawsuit the dissidents argued that large groups of voters were intimidated and disenfranchised—particularly Spanish and Portuguese-speaking longshoremen.

The lawsuit also claimed the “voting irregularities” were at locals that had considerable opposition sentiment that would alter the outcome of the election. The response to the lawsuit by ILA President John Bowers was that even if the contested votes had been counted, the outcome of the referendum would not change. Bolstering the ILA was the entrance of the USMX (the carriers’ bargaining representative in the contract negotiations), which intervened in the lawsuit as an additional defendant. The argument by USMX was two-fold: (1) that if there were any wrongdoing, it was a purely internal union matter and unknown to USMX; and (2) that management signed the contract in good faith and in reliance on the ratification vote, and the contract cannot be cancelled or voided, regardless of any alleged voting irregularities. This proved to be the winning argument. The court denied the injunction and the contract went into effect October 1, 2004. Subsequently the suit was dropped.

The Latest Set of Problems – RICO

While it is possible that the internal turmoil is subsiding, the ILA appears to be under assault from the outside. In late June, the *New York Times* published an article about alleged reports the federal government was about to sue the ILA under the Racketeering Influenced and Corrupt Organizations Act (RICO). The article reported that the government intended to seek some rather draconian sanctions, which could essentially remove much of the current leadership of the ILA. The ILA immediately blasted back with a press release condemning the leaks as “shameful,” and criticizing the government’s concentration on what the ILA characterized as “stale allegations of wrongdoing” and “outdated stereotype[s].” In addition, three high-ranking ILA officials are scheduled to go to trial later this year on RICO and other criminal charges in New York.

The ILA’s press release suggests something that everyone interested in East Coast ocean shipping should consider. Regardless of the outcome of the legal proceedings, the government’s actions could have (as the press release put it) “severe economic impact and devastating consequences on the operations of the ILA and the entire shipping industry.”