

AMERICAN ASSOCIATION OF PORT AUTHORITIES
PORT ADMINISTRATION AND LEGAL ISSUES SEMINAR

April 15, 2009

Plenary Session: Labor Issues
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1. Basic Rules of Labor Law
 - a. The National Labor Relations Act
 - i. Does not cover public sector employers
 - ii. Covers most private sector employers, including terminal operators, stevedores, construction contractors, trucking companies
 - iii. Who is an/the employer
 - (a) Practice in ocean shipping versus the rest of the Universe (or at least the U.S.)
 - (b) Joint employer
 - iv. Who is an employee –
 - (a) Independent contractors are not employees
 - (b) Supervisors are not employees
 - v. Employee Free Choice Act (EFCA) and where it might be going
 - b. How the National Labor Relations Board (NLRB) works
 - i. Unfair labor practices

- ii. NLRB Injunctions – 10(l) and 10(j)
 - c. Multi-employer (“union”) pension plans
 - i. MPPAA liability – it’s back
 - ii. Who can be assessed
 - d. Enforcement of labor contracts
 - e. Preemption of state laws
 - f. Project labor agreements – the new Executive Order (E.O. 13502, Feb. 6, 2009)
 - g. Prehires, hiring halls and “union jurisdiction” issues
- 2. Some of the Unions
 - a. ILA, ILWU & Teamsters
 - b. Construction unions
 - c. SEIU
 - d. Supervisory unions – MEBA and MMP
 - e. Tugs and pilots
 - f. Divers
 - g. Guards
- 3. What Unions Can – and Can’t – Do
 - a. No-strike clauses – what do they cover and when are they enforceable?
 - b. Mass picketing/blocking ingress and egress
 - i. State law remedies
 - ii. Injunctions and the Norris-LaGuardia Act
 - c. Picketing versus information handbilling

- d. Secondary boycotts
 - i. Basic rules
 - (a) Definitions
 - 1. Primary employer
 - 2. Secondary employer
 - 3. Picketing and other conduct
 - 4. Situ of dispute
 - 5. Who versus How
 - (b) *Moore Drydock* and beyond
 - ii. 10(l) injunctions
 - iii. 303 damage claims
 - iv. International boycotts
- 4. The fact pattern – options and outcomes

REFERENCE MATERIAL

Secondary Boycott Prohibitions of NLRA Section 8(b)(4)

It shall be an unfair labor practice for a labor organization or its agents—

...

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is--

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the

employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

Lawsuits for violations of Section 8(b)(4)

Sec. 187. Unlawful activities or conduct; right to sue; jurisdiction; limitations; damages

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.

(b) Whoever shall be injured in his business or property by reason or \1\ any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

Supplemental Reading

Basic labor law at www.nlr.gov – a tremendous amount of material from decisional law to manuals on substantive labor law.

Davis-Bacon (prevailing wage): <http://www.dol.gov/compliance/laws/comp-dbra.htm>

ILA work jurisdiction and the 50 mile rule (historical) *N.L.R.B. v. International*

Longshoremen's Ass'n, AFL-CIO, 100 S. Ct. 2305 (1980)