West Coast Longshoreman Strike Synopsis—The Bad, the Ugly, and the Uglier

The Maritime Law Association of the United States
Continuing Legal Education Program
Young Lawyers Hot Topics
October 22, 2015

Jennifer M. Porter
Keesal, Young & Logan
San Francisco, California

In the past decade, U.S. maritime trade has increased from $958 billion in 2004 to $1.75 trillion in 2013.[1] While foreign trade (of which 95% is moved by ships) represented only 13% of the United States' GDP in 1990, it is anticipated to reach 60% by 2030.[2] The infrastructure established to handle the movement of this commerce throughout the U.S. is responsible for creating domestic employment opportunities for an estimated 23.1 million people as well as contributing an additional $3 trillion to the U.S. economy as a result of related-business activities.[3]

The vast majority of the foreign trade coming in and out of the United States is handled by less than fifty commercial ports up and down America's seaboards. The labor force tasked with the effective handling of the cargo shipped through these ports is represented by two formidable unions—the 65,000 member International Longshoremen's Union (ILA),[4] which covers ports along the Atlantic Ocean, Gulf of Mexico and Great Lakes and the 60,000-member International Longshore and Warehouse Union (ILWU),[5] which covers ports along the West Coast and Hawaii.

Approximately every five years, the collective bargaining agreements governing the longshoreman labor used at these various ports expire and the parties are required to renegotiate the master contracts. During these negotiations, port employers in the twenty-nine major ports along the West Coast are represented by the Pacific Maritime Association (PMA), while the port employers in the fourteen major East and Gulf Coast ports are represented by the U.S. Maritime Alliance (USMX).[6]

Disruptions and delays caused by the negotiations of these contracts can dramatically affect the U.S. economy. During the recent West Coast ILWU-PMA contract negotiations the

---

[1] "Foreign Waterborne Trade by Trading Partner by Value and Metric Tons, 2003–2013," U.S. Census Bureau Foreign Trade Division and World Trade Online data compiled by the U.S. Maritime Association.

[2] "A Vision for the 21st Century," The United States Department of Transportation Maritime Administration, November 2007.

[3] American Association of Port Authorities, "U.S. Public Port Facts," http://www.aapa-ports.org/Industry/content.cfm?ItemNumber=1032, visited September 4, 2015.

[4] http://www.ilaunion.org/ visited on September 4, 2015.

[5] How The Union Works: https://www.ilwu.org/about/how-our-union-works/ visited on September 4, 2015.

[6] Chriss W. Street, "Longshoreman's Union to Strike 29 West Coast Ports," February 6, 2015, http://www.breitbart.com/california/2015/02/06/longshoremans-union-to-strike-29-west-coast-ports/.

National Retail Foundation estimated that a lockout or strike of the affected West Coast ports could cost the U.S. economy $2 billion a day.[7]

Under these circumstances, it is imperative that the United States develop a reliable, effective, and timely legal process for handling labor-related disputes between the longshore unions and the shipping companies. This paper will focus on the main sticking points during and the economic consequences of the 2014-2015 West Coast labor contract negotiations as well as various alternative legal procedures being proposed by members of Congress.

ILWU-PMA Contract Negotiations

On July 1, 2014, the six-year master contract between the ILWU and the PMA was set to expire. Even though the parties had begun official negotiations a month before the July 2014 expiration date, by the end of 2014 they were still nowhere near an agreement and alleged longshore slowdowns had created "crisis levels" of congestion at the ports.[8] As a result, the Federal Mediation and Conciliation Service (FMCS)[9] became involved in the negotiations in early January 2015 to try to assist the parties to reach a resolution.[10] When that did not appear to be working, President Obama dispatched Labor Secretary Thomas Perez to join the negotiations and a tentative agreement was reached on February 20, 2015—almost eight months after the prior labor contract had expired.[11]

The new five-year ILWU-PMA labor contract governs the employment relationship between seventy-one shipping and terminal operations companies and nearly 14,000 longshore, clerk and foreman workers at twenty-nine ports along the West Coast.[12] The contact will apply retroactively to July 1, 2014 and will run through June 30, 2019.[13]

Representatives for both sides explained that the main sticking points during the contractual negotiations were increased wage and benefits, a restructured arbitration system, reform to the employer-paid healthcare system and a revised chassis inspection protocol.[14]

---

[7] National Retail Foundation, "Letter to the President," dated November 6, 2014, http://www.unitedfresh.org/content/uploads/2014/07/Multi-Association-West-Coast-Port-Shutdown-Letter-to-the-President-Final....pdf.

[8] *Id*.

[9] As will be discussed in further detail below, the FMCS is an independent agency of the U.S. government created by the National Labor Relations Act, tasked with assisting private party labor disputes. *See* https://www.fmcs.gov/aboutus/our-history/, visited on September 4, 2015.

[10] Harold P. Coxson, "What if the West Coast Ports Shut Down by Lockout or Strike? Is It Time to Invoke Taft-Hartley?," February 10, 2015, http://www.ogletreedeakins.com/shared-content/content/blog/2015/february/what-if-the-west-coast-ports-shut-down-by-lockout-or-strike-is-it-time-to-invoke-taft-hartley.

[11] Elizabeth Weise and Chris Woodyard, "Deal Reached in West Coast Dockworkers Dispute," USA TODAY, February 21, 2015, http://www.usatoday.com/story/news/2015/02/20/west-coast-ports-dispute-union-labor-secretary-tom-perez/23744299/.

[12] *See* Pacific Maritime Association Statement on Final Contract Approvals, May 22, 2015, http://www.pmanet.org/wp-content/uploads/2015/05/PMA-Statement-05-22-2015.pdf.

[13] *Id*.

[14] *Id. See also* Bill Mongelluzzo, The Journal of Commerce, "Management Chief Defends ILWU Contract," dated June 19, 2015, http://www.joc.com/port-news/us-ports/management-chief-defends-ilwu-contract_20150619.html.

1. Increased Longshoremen Wages and Benefits[15]

Prior to the new contract, full-time ILWU workers earned approximately $147,000 in annual base pay, not including health benefits worth $35,000 as well as skill-rate increases, vacation, overtime and holiday pay. In addition, the ILWU workers' pensions were estimated to be worth up to $80,000. The new contract increases the average salary by 3 percent and provides pensions as high as $88,800.

2. Newly Structured Arbitration System for Union-Management Disputes[16]

Under the old contract, each region had a single arbitrator to arbitrate union-management disputes. Historically, the ILWU nominated, and the PMA approved, the regional arbitrators for the ports of Los Angeles-Long Beach and Seattle-Tacoma. The PMA, on the other hand, nominated, and the ILWU approved, arbitrators for the ports of Oakland and Portland, Oregon. Because the ports of Los Angeles-Long Beach and Seattle-Tacoma collectively handle approximately 85% of West Coast trade, the ILWU was long considered to have the upper hand in mid-contract labor disputes.

Under the new contract, each region will have three arbitrators—one nominated by the PMA, one nominated by the ILWU and a third professional arbitrator with no connections to labor or management. When disputes arise, the regional arbitrators will alternate the handling of each dispute and if one of the parties objects to the single arbitrator's decision, the complete three-person panel will convene the next day to make a determination.

3. Reformed Employer-Paid Healthcare System[17]

The new contract maintains the former contractual provision requiring employers to pay 100 percent of the health plan premiums for all ILWU workers. This already costs employers approximately $35,000, while longshoremen pay no co-pays or deductibles for in-network benefits. Now the PMA-employers will also pay the "Cadillac tax" that will take effect on January 1, 2018 under the Affordable Health Care Act. It is estimated that this new Cadillac tax will cost employers an additional $150-180 million a year.

The PMA, however, claims that the new contract will allow employers to take steps to reduce costs by permitting them to more easily reject bills for unnecessary and/or fraudulent medical services to longshoremen. Such costs are presently said to account for approximately $250 million in employer payments a year.

---

[15] Carl Horowitz, "New Study Tallies Longshoremen Costs; Calls for Bargaining Alternative," the National Legal and Policy Center, May 18, 2015, http://nlpc.org/stories/2015/05/18/new-study-tallies-longshoremen-costs-calls-bargaining-alternative. *See also* Bill Mongelluzzo, "ILWU Deal Could Hinge on Union's Demand to Fire Local Arbitrator," The Journal of Commerce, February 5, 2015, http://www.joc.com/maritime-news/labor/pma-ilwu-contract-could-hinge-union-wanting-right-fire-local-arbitrator_20150205.html.

[16] Mongelluzzo, "Management Chief Defends ILWU Contract."

[17] *Id. See also* Mongelluzzo, "ILWU Deal Could Hinge on Union's Demand to Fire Local Arbitrator."

4. Revised Chassis Inspection Protocol[18]

The new contract still permits ILWU mechanics to inspect and if necessary, repair non-motor-carrier-owned chassis but apparently lessens the amount of time it will take to conduct such inspections. The prior contract permitted a ten-point inspection of chassis, which allowed ILWU mechanics to crawl under the chassis and required drivers to get out of the cab during inspections. The new provision calls for a visual, walk-around inspection of the chassis, during which the truck driver may remain in the cab. If on inspection, the ILWU worker decides there is a problem (such as tire pressure, new tires needed, or a repair to the actual chassis), the chassis cannot leave the terminal and has to be repaired by ILWU labor on the terminal.

While these new provisions will likely lessen inspection delays, terminals will still be required to store the chassis that are in need of repair and make space for the chassis repair work to take place on their terminal, since moving the chassis offsite would expand the jurisdiction of the ILWU to other facilities. Moreover, as most chassis are owned or leased by third parties not subject to the new ILWU-PMA contract, this provision improperly requires repairs to be made to the chassis without the prior knowledge, consent or supervision of the chassis owner/lessor. Accordingly, the Institute of International Container Lessors (IICL) recently asked the Federal Maritime Commission to find this provision illegal and strike it from the contract.

Economic Consequences Caused by the Prolonged Negotiations

Throughout the nearly ten months of contract negotiations, both terminal operators and labor engaged in various "self-help" tactics to bolster leverage at the bargaining table. By October 2014, the PMA accused the ILWU of purposely reducing crane productivity and engaging in overall "slowdown" in work productivity throughout West Coast ports.[19] On November 3, 2014, the ILWU notified employers in Los Angeles-Long Beach that it would only dispatch thirty-five crane operators a day, as opposed to the usual 110 crane operators a day.[20] Shipping companies responded by halting longshore night shifts beginning in January 2015 and suspending premium-pay working hours over Presidents Day weekend to avoid "paying full shifts of [union] workers such high rates for severely diminished productivity while the backlog of cargo at West Coast ports grows."[21] PMA President James McKenna further threatened that the ports could lockout dockworkers in all terminals along the West Coast within ten days—an action that would have likely prompted more direct involvement by and pressure from the federal government. [22]

---

[18] Mongelluzzo, "Management Chief Defends ILWU Contract." *See also* Chris Dupin, "Chassis Lessors Claim ILWU Inspection Agreement Illegal," American Shipper, June 9, 2015, http://www.americanshipper.com/Main/News/Chassis_lessors_claim_ILWU_inspection_agreement_il_60499.aspx?taxonomy=ilwu.

[19] Mongelluzzo, "ILWU Deal Could Hinge on Union's Demand to Fire Local Arbitrator."

[20] *Id.*

[21] *See* Pacific Maritime Association Statement on "ILWU Slowdowns Lead to Temporary Suspension of Vessel Operations on Four Weekend, Holiday Dates," February 11, 2015, http://www.pmanet.org/wp-content/uploads/2015/02/PMA-Press-Release-02-11-2015.pdf.

[22] Coxson, "What if the West Coast Ports Shut Down by Lockout or Strike? Is It Time to Invoke Taft-Hartley?"

At the height of the crisis, the Marine Exchange of Southern California confirmed that there were thirty-three cargo ships anchored outside of Los Angeles-Long Beach terminals awaiting cargo operations and the Port of Los Angeles Executive Director Gene Seroka opined that it could take up to three months to clear the backlog.[23] Two months after the tentative agreement had been reached, the average turnaround time for incoming vessels was still over one week.[24] The West Coast port slowdowns were felt in just about every industry across the U.S. For example:[25]

- During the negotiations, 20% of U.S.'s 2015 fresh fruit and vegetable crop exports to Asia were delayed three to four weeks;
- It is estimated that retailers will likely incur $7 billion in costs and losses over the course of 2015 as a result of residual effects from the slowdowns;
- The U.S. meat industry claims to have lost an approximate $85 million every week during the delays; and,
- The U.S. economy posted a 15% drop off in exports during January 2015 compared to the prior January.

Perhaps the industry most adversely affected by the slowdowns, however, are the West Coast ports themselves. Of 138 shipping companies polled by the Journal of Commerce in January 2015, 65% were implementing plans to have less cargo activity go through the West Coast in 2015.[26] Indeed, container volumes coming into West Coast ports fell by nearly 18% over the first two months of this year compared to the same time as last year, while container volumes coming into East and Gulf ports grew by 10% during that same time period.[27]

The seemingly inevitable shift of trade to teh Gulf and East Coast ports, or more likely, a global shift of avoiding the unreliability and expense of U.S. ports altogether whenever possible, is further fueled by the newly widened Panama Canal, improved ports in Vancouver and Mexico and China's support of a new port and (albeit unlikely) canal in Nicaragua. The fear of the United States potentially losing its toehold as a major powerhouse in the global shipping economy has caused several politicians to call for a major overall of the current legal system governing labor disputes at maritime ports.

---

[23] Andrew Khouri, "Port Dispute: What You Need to Know," LA Times, February 25, 2015, http://www.latimes.com/business/la-fi-port-dispute-qa-20150212-story.html.

[24] Elementum News Desk, "The Real Cost of the West Coast Port Strike, Part 1," April 10, 2015, http://news.elementum.com/the-real-cost-of-the-west-coast-port-strike-pt.-1.

[25] *Id*.

[26] *Id*.

[27] Andrew Khouri, "Imports Plunged at West Coast Ports Amid Labor Dispute," L.A. Times, March 18, 2015, http://www.latimes.com/business/la-fi-west-coast-port-decline-20150317-story.html.

The Current System: The National Labor Relations Act

In 1935, Congress passed the National Labor Relations Act (NLRA)[28] expressly granting most employees the legal right to form and join unions and obligating employers to bargain collectively with those unions without government intervention.[29] Some occupations including agricultural laborers, domestic servants, independent contractors, supervisors, railroad workers, airline employees, and public employees were expressly precluded from the NLRA's purview.[30] By expressly limiting the jurisdiction of the NLRA, Congress acknowledged that certain industry labor disputes created too substantial of a risk of harm to the nation that potential government intervention must remain a possibility. To assist with labor disputes that do fall under NLRA's jurisdiction, a five-member independent agency known as the National Labor Relations Board (NLRB) was created.[31]

In 1947, Congress amended the NLRA to include the Taft-Hartley Act.[32] The Taft-Hartley Act gives the President of the United States the power to enjoin a "threatened or actual strike or lockout affecting an entire industry or substantial part thereof . . . [that] will, if permitted to occur or continue, imperil the national health or safety."[33] If invoked, the President can appoint a board of inquiry to investigate and report the facts of the dispute, but the report cannot include any recommendations or opinions.[34] After receiving the report, the President may instruct the U.S. Attorney General to petition the appropriate federal district court to issue an injunction against the strike or lockout.[35] If the government convinces the court that the threatened or occurring strike/lockout affects an "entire industry or substantial part thereof" and that there is a threat to "national health or safety," court may issue an injunction enjoining the strike or lockout or issue any other order as it sees fit. [36]

If an injunction is granted, an eighty-day cooling off period begins, whereby parties are charged to "make every effort to adjust and settle their differences, with the assistance of the [Federal Mediation and Conciliation Services (FMCS)]."[37] During this time period, the board of inquiry reconvenes and within sixty days of the court's granting of the injunction must issue a report to the President regarding "the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement."[38] This report is made available to the public and the NLRB, which must "take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of

---

[28] The NLRA was previously referred to as the Wagner Act.
[29] *See generally* 29 U.S.C. §151.
[30] 29 U.S.C. § 152(3).
[31] 29 U.S.C. § 153(a-b).
[32] 29 U.S.C. §§ 171-187.
[33] 29 U.S.C. § 176.
[34] *Id.*
[35] 29 U.S.C. § 178(a).
[36] *Id.*
[37] 29 U.S.C. § 179(a).
[38] 29 U.S.C. §179(b).

settlement made by their employer."[39] If the parties still have not come to an agreement at this stage, the President can submit a report to Congress making recommendations for legislative action.[40]

Since its passage in 1947, the Taft-Hartley Act's emergency injunction procedures have been invoked only thirty-six times.[41] Most recently, President Bush used the Taft-Hartley Act in 2002 to end another major West Coast port closure. During the most recent West Coast ports slowdown, several trade associations and House Representatives, including Oregon Rep. Kurt Schrader and Washington Rep. Jaime Herrera-Beutler, pled with President Obama to invoke the Taft-Harley Act to end the prolonged negotiations and slowdowns.[42] President Obama abstained. Indeed, few democratic presidents have chosen to resort to the remedies of the Taft-Hartley Act, preferring to rely on commercial pressures to force the parties into resolving their disputes.[43]

Thus, several politicians have proposed legal reform of the current system that would ensure a more effective and reliable legal system to govern disputes in the transportation industry.

Proposed Legislation to Minimize the Negative Impact of Marine Terminal Labor Disputes

While many commercial and political figures have simply urged the parties to begin contract negotiations well before the expiration of the prior collective bargaining agreement, others believe that a complete overhaul of the remedies provided in the NLRA and the Taft-Hartley Act is necessary.

On June 4, 2015, Senator Cory Gardner (R-Colo.), Senator Lamar Alexander (R-Tenn.) and Senator Roger Wicker (R-Miss.) introduced the Protecting Orderly and Responsible Transit of Shipments ("PORTS") Act (S. 1519), which would amend the Taft-Hartley Act to allow state governors to intervene in port labor disputes rather than being required to rely on the White House to intervene.[44] The bill, which is presently before the Senate Committee on Health, Education, Labor and Pensions, is supported by over one hundred business and trade associations, including the National Retail Federation, Agricultural Transportation Coalition,

---

[39] *Id.*

[40] 29 U.S.C. § 180.

[41] Jeanne Cummings, Carlos Tejada and Queena Sook Kim, "Use of Taft-Hartley Act Often Gives Poor Results," The Wall Street Journal, October 4, 2002, http://www.wsj.com/articles/SB1033684691420473913.

[42] *See* Molly Harbarger, "Kurt Schrader, West Coast Legislator Push for Barack Obama to Invoke Taft-Hartley Act if Labor Dispute Continues," The Oregonian, February 12, 2015, http://www.oregonlive.com/business/index.ssf/2015/02/kurt_schrader_west_coast_legis.html.

[43] President Carter was the most recent Democratic President to invoke the Taft-Hartley Act in 1978 in an attempt to stop striking mineworkers during the energy crisis. He was unsuccessful at convincing the court to grant an injunction. *See* Harbarger, "Kurt Schrader, West Coast Legislator Push for Barack Obama to Invoke Taft-Hartley Act if Labor Dispute Continues."

[44] PORTS Act, S. 1519, 114th Cong. (2015-2016).

Consumer Electronics Association, National Association of Manufacturer and the U.S. Chamber of Commerce.[45]

Unlike the present version of Taft-Hartley the proposed bill would amend the act to specifically include slowdowns (which is not defined) as well as strikes and lockouts or the threat thereof. [46] The new bill would permit the use of the Taft-Hartley Act "[w]henever in the opinion of any Governor of a State or territory of the United States, a slowdown, threatened or an actual strike or lock-out, occurring at one or more ports in the United States, is affecting an entire industry or a substantial part thereof. . ."[47] If the U.S. President declines to act, the state attorney general may petition the appropriate district court for an injunction.[48]

While the PORTS Act is not expected to pass and would likely immediately be subject to challenges by labor interests, critics also reason that it would be equally ineffective as the present system, due to the left-leaning governance on the West Coast and public support for labor unions. [49] Indeed, the current governors in all three West Coast states are Democrats who presumably would resist its use against the ILWU.[50]

On June 18, 2015, Idaho Senator James Risch introduced the Preventing Labor Union Slowdowns Act of 2015 (PLUS Act), S. 1630, to the U.S. Senate.[51] The stated purpose of the proposed act is to "amend the National Labor Relations Act and the Labor Management Relations Act [of] 1947 to deter labor slowdowns at ports of the United States and for other purposes."[52] The bill would affirmatively permit court action in the event of a "labor slowdown" which is defined by the bill to include "any intentional effort by employees to reduce productivity or efficiency in the performance of any duty of such employees; and does not include any such effort required by the good faith belief of such employees that an abnormally dangerous condition exists at the place of employment of such employees."[53] Intentional slowdowns would be considered an unfair labor practice and offending labor organizations would also be subjected to damages claims by injured parties, which could including "reasonable attorneys' fees."[54]

Interestingly, in the recent West Coast ports slowdown, the ILWU claimed that its drastic decrease in the deployment of crane operators was a result of "safety concerns" based on alleged inadequate training.[55] Thus, under the proposed PLUS Act, labor unions would likely justify

---

[45] The Maritime Executive, "Governors to Intervene in Port Labor Disputes," June 8, 2015, http://maritime-executive.com/article/governors-to-intervene-in-port-labor-disputes.

[46] *See* PORTS Act, S. 1519, 114th Cong. (2015-2016).

[47] *Id*.

[48] *Id*.

[49] Joseph Bonney, "U.S. Senate Bill Would Allow President, Governors to Act against Port Slowdowns," Journal of Commerce, June 5, 2015, http://www.joc.com/maritime-news/labor/us-senate-bill-would-allow-president-governors-act-against-port-slowdowns_20150605.html.

[50] *Id*.

[51] PLUS Act, S. 1630, 114 Cong. (2015-2016).

[52] *Id*.

[53] *Id*.

[54] *Id*.

[55] Mongelluzzo, "ILWU Deal Could Hinge on Union's Demand to Fire Local Arbitrator."

any slowdown as being necessary due to some "abnormally dangerous condition." This bill is also presently before the Senate Committee on Health, Education, Labor and Pensions and while less politically charged than the proposed PORTS Act, it is also likely to experience significant opposition to its passage.

Finally, on March 3, 2015, Senator John Thune (R-S. Dakota) suggested that some Congress members are discussing the idea of putting unionized port employees under the purview of the Railway Labor Act (RLA).[56] Congress passed the RLA in 1926 to "avoid any interruption to commerce or to the operation of any carrier engaged therein."[57] While the RLA originally had jurisdiction over just railroad employees, in 1936, it was expanded to cover unionized airlines employees.[58] Under the RLA, union labor contracts do not expire but are amendable and stay in effect until the new contract has been ratified. Thus, during the recent West Coast ports slowdown, under the RLA the prior collective bargaining agreement would have remained in effect and governed the parties' conduct during the nearly ten months of negotiations.

Under the RLA, the National Mediation Board (NMB) was established to "avoid any interruption of commerce" while providing for "the prompt and orderly settlement of all disputes."[59] Unlike the corresponding NLRB set up under the NLRA, the NMB has the authority to intervene in contract negotiation disputes and at any time during the bargaining process, either party may invoke the NMB's mediation services.[60] Indeed, under the RLA, federal mediation is required before unions or employers can resort to "self-help" tactics such as lockouts or strikes.[61] Once the mediation process begins, the NMB mediator has sole discretion to decide when the parties can discontinue the mediation due to an impasse.[62] If initial mediation does not lead to a settlement, then all parties must adhere to a thirty-day "cooling off" period, during which the prior terms of employment remain in effect.[63]

At any point during the dispute, the NMB can also petition the President of the United States to create a Presidential Emergency Board (BEP) to make recommendations, if the NMB views the dispute to be a threat to the nation's transportation networks.[64] If the parties reject the recommendations published by the BEP, Congress has the option to take action and impose a settlement.[65]

---

[56] Mark Szakonyi, "US Senate Leader Floats Putting Port Workers under Railway Labor Act," the Journal of Commerce, March 3, 2015, http://www.joc.com/port-news/longshoreman-labor/us-senate-leader-floats-putting-longshoremen-under-railway-labor-act_20150303.html.

[57] 45 U.S.C. § 151a.

[58] 49 Stat. 1189 (1936).

[59] 45 U.S.C. § 151a (1)(5).

[60] 45 U.S.C. § 155.

[61] ABA, "Negotiation of Collective Bargaining Agreements," in The Railway Labor Act, pp. 241-242.

[62] ABA, "Selecting a Bargaining Representative," in The Railway Labor Act, pp. 128-129.

[63] 45 U.S.C. §155, First.

[64] 45 U.S.C. §160.

[65] Alexandra Hegji, "Federal Labor Relations Statutes: An Overview," Congressional Research Service, November 26, 2012, https://www.fas.org/sgp/crs/misc/R42526.pdf.

The provisions of the RLA and the work of the NMB have proved to be successful time and again.[66] Since the NMB was founded in 1934, the mediators have had a 97% success rate of all disputes handled and only five work stoppages since 2000.[67] The FMCS, on the other hand, has only had an 84-87% success rate over the last decade.[68] As an example of the RLA's success, President Obama recently resolved a national railway dispute after appointing a BEP to issue recommendations. After the NMB was unable to resolve the parties' differences, the President issued an Executive Order on October 6, 2011 appointing a PEB to review the dispute which was between five major railroads and 90,000 employees and had begun in November 2009.[69] On November 5, 2011, the PEB's proposed resolution was approved by both sides and the dispute was resolved without any disruption to transportation. [70]

Unlike the maritime industry during the recent West Coast ports slowdown, the railroad industry was able to avoid major media coverage and any disruption to the nation's transportation networks. With new global competition from other maritime nations and the U.S. economy's growing reliance on both imports and exports, an effective and reliable legal system overseeing marine terminal employment relations is more important now than ever before.

---

[66] *See* Diana Fuchtgott-Roth, "Held Hostage—U.S. Ports, Labor Unrest and the Threat to National Commerce," E21 Issue Brief, No. 4, April 2015, http://www.manhattan-institute.org/html/e21_04.htm#.VfCT-8uFP5o.

[67] Eileen Hennessey, Counsel Office of Legal Affairs, "An Overview of the National Mediation Board," October 1, 2007, http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2008/ac2008/115.authcheckdam.pdf

[68] In 2013, the FMCS only had a 76.6% success rate for disputes involving contracts covering more than 1,000 workers. *See* Joseph Bonney, "Q&A: Federal Mediation and the PMA-ILWU Contract," Journal of Commerce, January 6, 2015, http://www.joc.com/port-news/longshoreman-labor/international-longshore-and-warehouse-union/qa-federal-mediation-and-pma-ilwu-contract_20150106.html.

[69] The White House Executive Order No. 13586 "Establishing an Emergency Board to Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations," dated October 6, 2011, Fed. Register, Vol. 76, No. 197.

[70] Report to the President by Emergency Board No. 243, dated November 5, 2011, http://www.ibew.org/Portals/31/documents/railroad/PEB%20243%20Final%20Report.pdf