

**International Longshoremen's Association, Local  
1291, AFL-CIO and Holt Cargo Systems, Inc.**  
Case 4-CC-1950-2

December 16, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On May 7, 1992, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief, a motion to reopen and supporting memorandum, and a letter supplementing its motion to reopen. The General Counsel filed an answering brief and an opposition to the motion to reopen.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.<sup>1</sup>

<sup>1</sup> The work disputed in this proceeding is the same work that was awarded to the Machinists' Union in *Machinists Local 724 (Holt Cargo Systems)*, 307 NLRB 1394 (1992); (cf. *Machinists Local 724 (Holt Cargo Systems)*, 309 NLRB No. 42 (Oct. 29, 1992).) That decision and award issued after the judge's decision in this proceeding.

The Respondent has moved to reopen the record to include a postarbitration brief and letter to the arbitrator who heard the grievance at issue in this case, both of which were submitted to the arbitrator after the judge's decision. The Respondent's motion lacks merit as the evidence it seeks to admit is neither newly discovered nor previously unavailable within the meaning of Sec. 102.48(d)(1) of the Board's Rules and Regulations.

Member Raudabaugh would also deny the motion to reopen the record. However, he would do so on a different basis. In this regard, he notes that the motion seeks to adduce evidence concerning the filing of a postarbitration brief and letter. Inasmuch as this filing occurred after the close of the hearing before the administrative law judge (and indeed after the judge's decision), Member Raudabaugh would not deny the motion to reopen as untimely. Rather, he would deny the motion on the ground that the proffered evidence would not "require a different result." See Sec. 102.48(d)(1) of the Rules. In this case, the Board finds, and Member Raudabaugh agrees, that the Respondent violated Sec. 8(b)(4)(B) by filing a grievance which sought an arbitral order directing the steamship companies to take any action necessary to force Holt Cargo to reassign the disputed work to employees represented by the Respondent. The Respondent's proffered evidence would allegedly show that the grievance now seeks only "time-in-lieu" damages from the steamship companies. In Member Raudabaugh's view, even if this is so, the grievance would remain unlawful under Sec. 8(b)(4)(B). Where a union seeks monetary damages from a neutral in compensation for an ongoing work assignment controlled and effectuated by a primary, the union's conduct is unlawful under Sec. 8(b)(4)(B). Thus, Member Raudabaugh adopts the view suggested by Chairman Stephens in *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 fn. 11 (1988). Further, since the grievance is unlawful even if modified, the remedial order properly requires that it be withdrawn.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Longshoremen's Association, Local 1291, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

*Scott C. Thompson, Esq.*, for the General Counsel.

*Stanley B. Gruber, Esq. (Freedman & Lorry, P.C.)*, of Philadelphia, Pennsylvania, for the Respondent.

*James A. Matthews III, Esq. and William A. Whiteside, Esq. (Fox, Rothschild, O'Brien & Frankel)*, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The complaint, dated December 18, 1991, alleges that Respondent International Longshoremen's Association, Local 1291, AFL-CIO (the Union) filed and pursued a grievance against certain employers with the intent that they would pressure Charging Party Holt Cargo Systems, Inc. (Holt) to assign the maintenance and repair of shipping containers<sup>1</sup> and chassis to employees that the Union represented rather than to employees represented by another union, in violation of Section 8(b)(4)(ii)(B) of the National Labor Relations Act. The Union denies that it violated the Act in any manner.<sup>2</sup>

Jurisdiction is conceded. Holt is a Delaware corporation providing stevedoring and warehousing services to steamship lines calling on its facilities in the Port of Philadelphia area and maintenance and repair services for their shipping containers and chassis. During the 12 months preceding the issuance of the complaint, Holt derived gross revenues in excess of \$1 million and purchased and received at its facility in Philadelphia goods valued in excess of \$50,000 from outside Pennsylvania. I conclude that Holt is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Since 1967, Holt ran its operation at a pier in Gloucester City, New Jersey. ABC Containerline NV, ACT Pace Line,<sup>3</sup> Columbus Line, and Maersk Container Service Co. (Companies), steamship lines engaged in the carriage of cargo at sea, called at that facility for stevedoring and warehousing services.<sup>4</sup> The Companies did not directly employ any employees to repair or maintain their shipping containers or chassis. That work was done by Holt's employees, who were rep-

<sup>1</sup> "Containers are large metal boxes designed to fit without adjustment into the holds of special ships and onto the chassis of special trucks and railroad cars." *NLRB v. Longshoremen ILA*, 473 U.S. 61, 64 fn. 1 (1985) (*ILA II*).

<sup>2</sup> The other relevant docket entries are that Holt filed its unfair labor practice charge on November 8, 1991, and the hearing was held in Philadelphia, Pennsylvania, on February 11, 1992.

<sup>3</sup> The record indicates that ACT Pace line is now known as Blue Star Pace Line.

<sup>4</sup> The record does not show when the Companies began to call at Gloucester City, but ABC and ACT were doing business there in 1984. *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989).

resented by Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO (Machinists). Indeed, that work had been performed by the Machinists for years, even prior to a Board decision in 1989, specifically awarding that work to the Machinists and not to the Union. *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989).

In April 1989 Holt began stevedoring operations across the Delaware River from Gloucester City, at the Packer Avenue Marine Terminal (Terminal) in Philadelphia, Pennsylvania. Holt assigned virtually all the work of maintenance and repair of its customers' shipping containers and chassis, to its employees represented by the Machinists, with which Holt had and now has a collective-bargaining agreement. Those employees, and not employees represented by the Union, have performed that work since that time. Holt's intention was to discontinue its container cargo stevedoring operations at the Gloucester City facility and consolidate all its operations at the Terminal.

At the time that Holt started operating at the Terminal, the Companies continued to call on Holt at Gloucester City, but it appeared to the Union that once the consolidation had been completed, the Companies would then switch to the Terminal. In anticipation of that event, on May 24, 1991, the Union instituted a grievance against the Companies,<sup>5</sup> which read:

It is our understanding that [the Companies], or some of them, are moving their container operation from Gloucester City, N.J. to [the Terminal]. Under the Master Agreement to which these carriers are parties, the jurisdiction of [the Union] covers the maintenance and

<sup>5</sup>The Companies were bound by a number of agreements, to which local unions affiliated with the International Longshoremen's Union, AFL-CIO (ILA) and the ILA were parties. One of the agreements, the agreement on master contract issues, provided for a three-step grievance procedure to resolve all disputes: first to a local industry grievance committee, then to an industry hearing committee, and then to an Industry appellate committee. If the issue remained deadlocked, the dispute was then submitted to an impartial arbitrator selected through the auspices of the Federal Mediation and Conciliation Service.

<sup>6</sup>Par. 8 of the master agreement provides that the employers "re-affirm that the ILA employee has jurisdiction over longshore, checker, maintenance and other ILA craft work conferred on such workers by the Containerization Agreement." Par. 10(A) of the master agreement specifically deals with the maintenance of containers, as follows:

It is agreed that the jurisdiction of the ILA shall cover the maintenance of containers (which terms include chassis) at waterfront container facilities, and/or off-premises used for servicing and repair of containers and chassis, covered by this agreement, by ILA Maintenance in accordance with the Containerization Agreement.

Finally, the containerization agreement provides, in relevant part: Management and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreements to perform such work which includes, but which is not limited to:

. . . . .  
 . . . the maintenance and repair of containers.

repair of containers and chassis.<sup>6</sup> Accordingly, it is the position of [the Union] that the "M & R" work on the containers of [the Companies] located at [the Terminal] must be performed by appropriate ILA personnel—in this case [the Union].

Clearly, the intent of the Master Agreement is to prevent further erosion of ILA's jurisdiction—particularly with respect to maintenance and repair of containers.

When the grievance committee deadlocked at the first stage, the Union asked for a ruling from the hearing committee "directing [the Companies] to take all appropriate action to confer jurisdiction over the work of maintaining and repairing containers and chassis at the Terminal on [the Union]." When that committee deadlocked, the Union appealed to the appellate committee, noting that "this dispute involves jurisdiction over the work of maintenance and repair of containers and chassis of [the Companies]." When no decision could be reached at the third stage, the Union submitted the matter for arbitration; and a hearing opened on January 23, 1992, and was adjourned to a date in March.

In the meantime, on September 10, 1991, Holt closed its Gloucester City container cargo stevedoring operation and consolidated all such operations at the Terminal. (Holt continues to maintain noncontainerized break-bulk stevedoring and warehousing operations at Gloucester City.) After September 10, 1991, the Companies, which formerly called on Holt at Gloucester City, called on Holt at the Terminal, except that in late September or early October, Maersk Container ceased dealing with Holt entirely. Since September 10, Holt has continued to assign the maintenance and repair of shipping containers at the Terminal, including such work on containers and chassis owned by the Companies, to the Machinists.

Section 8(b)(4)(ii)(B) of the Act states that it is an unfair labor practice for a labor organization or its agents to

. . . threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

. . . . .  
 . . . 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 9 [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.

The section's proscription against coercion is to be viewed pragmatically and is intended to reach any form of economic pressure of a restraining or compelling nature. *Longshoremen ILWU Local 32 v. Pacific Maritime Assn.*, 773 F.2d 1012, 1018 (9th Cir. 1985), cert. denied 476 U.S. 1158 (1986). By this standard, the General Counsel contends that the object of the grievance is to compel the Companies, who are neutral

to the dispute between the Union and Holt, to cease doing business with Holt or to force Holt to reassign the disputed work. I agree.

At each step of the arbitration proceeding, the Union requested relief in the form of obtaining jurisdiction over the work of repairing and maintenance of the containers and chassis. There were only two ways that that could be accomplished: first, by forcing Holt to reassign its work to employees represented by the Union; or second, by directing the Companies to cease doing business with Holt. In either case, the Union was using the leverage of its grievance to pressure the Companies, neutral in the dispute involving the alleged deprivation of work to employees represented by the Union, to do something to get work for those employees. In the second manner, the Union's conduct fits exactly into the Section's "cease doing business with" phrase. Regarding the first, the Supreme Court has concluded that the foreseeable conclusion of applying pressure on a neutral employer to use its influence to force the primary employer to reassign disputed work was that the neutral would be required to capitulate to the union's demand or terminate its business relationship with the primary. That falls within the prohibition of Section 8(b)(4)(B). *NLRB v. Operating Engineers Local 825*, 400 U.S. 297 (1971).

*Elevator Constructors (Long Elevator)*, 289 NLRB 1095 (1988), enfd. 902 F.2d 1297 (8th Cir. 1990), holds that the filing of a grievance may be coercive within the meaning of Section 8(b)(4)(ii)(B).<sup>7</sup> There, the union filed a grievance which, if sustained, would have converted a clause of the agreement into a de facto hot cargo clause, in violation of Section 8(e). It would have required the neutral employer to permit all of its employees to refuse to work at a construction site because of the union's picket line, notwithstanding the existence of a reserved gate through which employees other than those of the primary employer could enter. The Board distinguished *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), which held that the Board could not enjoin as an unfair labor practice the lawsuit there at issue, stating that "the Court expressly noted that it was not dealing with a 'suit that has an objective that is illegal under federal law.' 461 U.S. at 737 fn. 5." To the same effect, if the Union's grievance were sustained, the Companies would be forbidden to deal with Holt, unless Holt employed workers represented by the Union. That is an illegal objective, in violation of Section 8(e) and coercive under the Act. *Nelson v. Electrical Workers IBEW Local 46*, 899 F.2d 1557 (9th Cir. 1990).<sup>8</sup>

The Union contends, however, that its grievance had no secondary object. Rather, everything that the Union did was directed towards the Companies, with whom it had a primary dispute, i.e., failing to abide by their agreement that the Union's jurisdiction covered "the maintenance of containers (which term includes chassis) at waterfront container facilities." If that is what the Union thought it was enforcing, its grievance was far afield from its stated object. Its first letter specifically referred to its understanding that the Companies

were going to move from Gloucester City to the Terminal, where the maintenance and repair work "must be performed by" the Union. The clear meaning of this letter was that the Union's members were entitled to perform this work at the Terminal. The only employer there was Holt. Furthermore, the only employer that could employ employees at the Terminal was Holt, because, effective as of January 2, 1991, it operated the Terminal as a "closed pier," which meant that Holt, not the Companies, was the "exclusive public marine terminal operator." Therefore, only Holt could perform the repair and maintenance work that the Union insists for the first time that it wanted the Companies to perform; and only Holt could hire employees to do the repair and maintenance work.

The Union's demand that Holt reassign the work continued into the second step of the grievance procedure. Then, the Union contended that the Companies be directed "to take all appropriate action to confer jurisdiction . . . at the Terminal on" the Union. The only manner in which jurisdiction could be conferred was if Holt did it, again demonstrating the Union's illegal secondary object. Only at the third step may it be said that the Union's claim was not necessarily secondary; but, because the Union still referred to the dispute as involving the jurisdiction over the disputed work, and not whether the Companies had an obligation on their own to engage in the disputed work and not to contract out the work, I find that the intent of the grievance was secondary at all times, and not primary.

Finally, the Union contends that it made known to the arbitrator at the hearing that she could award monetary damages in the event that she deemed that the Union was not entitled to its requested relief ("to exclusively give the work to ILA") or "if all else fails," an attempt, perhaps, to bring its conduct within the holding of *Georgia Pacific* by asking for "in-lieu-of pay." See footnote 7, above.<sup>9</sup> However, the Union's initial request for relief was never withdrawn and appears to reflect what the Union was actually seeking. It insisted that its request was legal, but, if its request violated the law, "then pay us damages." I find that request illegal, having secondary objects, and further find that it is still very much alive in the arbitration. It is the Union's obligation to withdraw its illegal demand. It is not the obligation of the arbitrator to comply with the Act on behalf of the Union. As long as the illegal object remains—that of causing the Companies to cease doing business with Holt—there is a violation of the Act. The Act provides that a violation exists when "an object," as here, is one of the illegal ones. It makes no difference that its request for alternate relief may, standing alone, not constitute a violation.

The Union nonetheless insists that, even if its actions had a secondary effect, it was entitled to maintain its grievance because it was attempting to preserve work that it had traditionally performed. *Woodwork Mfrs. v. NLRB*, 386 U.S. 612 (1967); *NLRB v. Pipefitters*, 429 U.S. 507, 517 (1977); *ILA II*, 447 U.S. 490, 504–505 (1980); *NLRB v. Longshoremen ILA*, 473 U.S. 61, 75–79 (1975) (*ILA I*). Even conceding that the Union and its parent had traditionally performed the work of maintaining and repairing containers and chassis—and that

<sup>7</sup>See, however, *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 (1988), which holds that, within the meaning of Sec. 8(b)(4)(ii)(D), the mere filing of arguably meritorious work assignment grievances seeking in-lieu-of pay prior to the issuance of the Board's 10(k) determination does not constitute "coercion."

<sup>8</sup>See *Teamsters Local 776 (Rite Aid Corp.)*, 305 NLRB 832 (1991).

<sup>9</sup>The Union was also charged with violating Sec. 8(b)(4)(D) of the Act. A 10(k) hearing has been held and the matter is now awaiting disposition by the Board.

it not entirely clear<sup>10</sup>—here there was nothing at all to preserve. Holt had been in business since 1967 and the Union had never represented the employees performing the work that it now seeks. As noted, the Union was a party to a Board proceeding in which this very work, albeit at the Gloucester City terminal, was awarded not to the Union, but to the Machinists. The Union's claim to this work at the Terminal is hardly better. With the exception of one brief period 20 years ago, in 1971 and 1972, the Union has never performed this work at the Terminal.<sup>11</sup> Its claim that it was entitled to preserve its work is unavailing, because it performed no work that was capable of preserving. Its claim in its grievance that it was seeking to prevent "further erosion of [its] jurisdiction—particularly with respect to maintenance and repair of containers," is patently without merit, because there was no jurisdiction at Gloucester City which could possibly be eroded. Rather, it appears that the Union was attempting to gain work that it had not previously performed. *Lumber Workers Local 2592 (Louisiana Pacific)*, 268 NLRB 126, 127 (1983). I reject, therefore, the Union's work-preservation defense and find a violation. The activities of the Union set forth above, occurring in connection with the Union's operations described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

Having found that the Union has engaged in a certain unfair labor practice, I recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall order the Union to withdraw its grievance against the Companies, which is the basis of my finding that the Union violated the Act.

On the foregoing findings of fact and conclusions of law, and on the entire record<sup>12</sup> in this proceeding, including my observation of the witnesses as they testified before me and on a videotape, and my consideration of the briefs filed by the General Counsel, the Union, and Holt, I hereby issue the following recommended<sup>13</sup>

#### ORDER

The Respondent, International Longshoremen's Association, Local 1291, AFL-CIO, its officers, agents, and representatives, shall

<sup>10</sup> But see *ILA I*, 447 U.S. at 495 fn. 7, and *ILA II*, 473 U.S. at 69.

<sup>11</sup> Additional support is provided by *Longshoremen ILA Local 1291 (Lavino Shipping)*, 189 NLRB 126 (1971).

<sup>12</sup> The General Counsel's unopposed motion to correct G.C. Exh. 2(b) is granted.

<sup>13</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from threatening, coercing, or restraining any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is 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.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw its grievance, dated May 24, 1991, against ABC Containerline NV, ACT Pace Line, Columbus Line, and Maersk Container Service Co.

(b) Post at its Philadelphia, Pennsylvania office, copies of the attached notice marked "Appendix."<sup>14</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director for Region 4 sufficient copies of the notice for posting by Holt Cargo Systems, Inc., if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this order what steps the Respondent has taken to comply.

<sup>14</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is 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.

WE WILL withdraw our grievance, May 24, 1991, against ABC Containerline NV, ACT Pace Line, Columbus Line, and Maersk Container Service Co.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,  
LOCAL 1291, AFL-CIO