

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE 160,
LOCAL LODGE 289,

and

Cases: 19-CD-502;
19-CD-506

SSA MARINE, INC.,

and

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION.

**CHARGING PARTY’S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Charging Party SSA Marine, Inc. (“SSA”) excepts to the Decision and Order of Administrative Law Judge Kocol in this matter as follows:

1. To the ALJ’s unsupported finding that “[F]ollowing issuance of the Board’s Decision and Determination of Dispute on July 22, 2011, Respondent has informed the Regional Director that it would comply with the [10(k)] decision.” (D 4:41-44)¹
2. To the ALJ’s erroneous conclusion of law that “facts in this case, however, do not easily fall within the evil Congress sought to forbid.” (D 8: 1-2)
3. To the ALJ’s unsupported finding that “SSA was not an innocent bystander caught up in a dispute not of its own making between two unions; rather, it created the dispute.” (D 8, 7-9)
4. To the ALJ’s erroneous conclusion of law that “[y]et in this proceeding the General Counsel seeks to shield SSA from the effects of its breach of contract and even have Respondent reimburse SSA for the costs involved in defending against Respondent’s clearly meritorious grievance.” (D 8, 9-11)

¹ “(D)” references the ALJ’s Decision by page and line numbers.

5. To the ALJ's unsupported legal conclusion that "the manner in which the Board has fulfilled its obligations under Section 10(k) may be contributing to the creation of jurisdictional disputes such as the one in this case." (D 8, 17-19)
6. To the ALJ's erroneous conclusion of law that "although the Board applies a multifactor test in determining who should get the work, the result is always the same - the Board awards the work to the labor organization to whom the employer itself has most recently assigned the work." (D 8, 19-22)
7. To the ALJ's conclusion that "[o]ne may read the first few sentences of the 10(k) award to ascertain to whom the employer has assigned the work most recently and then read no further for the Board will certainly assign the work to that organization." (D 8, 22-24)
8. To the ALJ's unsupported finding that "Of course, once the Board awards the work the employees who normally would have performed the work are likely out of a job." (D 8, 8-9)
9. To the ALJ's erroneous conclusion of law that "it is well settled that after the Board issues its 10(k) award a union may not continue to obtain the disputed work by requiring an employer to pay monetary damages until it does so *Plasters Local 200 (Standard Drywall, Inc.)* 357 NLRB No.160, slip op. at 3 (2011); *Sheet Metalworkers Local 27 (E.P. Donnelly, Inc.)*,357 NLRB No. 131 (2011), and cases cited therein." (D 8, 33-37)
10. To the ALJ's unsupported finding that "what about the circumstances here, where Respondent has clearly and unequivocally renounced the disputed work and seeks only damages for SSA's breach of contract?" (D 8, 41-42)
11. To the ALJ's conclusion that "the General Counsel has failed to show that Respondent's pursuit of monetary damages was for the purpose of forcing SSA to assign the work back to employees represented by Respondent; Respondent has clearly given up on that effort." (D 8, 49-52)
12. To the ALJ's erroneous conclusion of law that "[t]he General Counsel also points to wording in some cases that a union may not 'undermine' a Board's 10(k) award. But there is no statutory or direct case authority that bars all undermining" (D 9, 52-54)
13. To the ALJ's conclusion of law that "Nor is it clear that what Respondent has done here results in unlawful undermining ..." (D 9, 4)
14. To the ALJ's conclusion that "the wording in the Board's 10(k) award forbids Respondent from seeking the work in a manner prohibited by Section 8(b)(4)(D)." (D 9, 5-6)

15. To the ALJ's conclusions that "[n]ot only do I conclude that the General Counsel has failed to show that Respondent's conduct had a prohibited object, I also conclude that he has failed to show that the conduct has restrained or coerced SSA." (D 9, 8-10)

16. To the ALJ's conclusions that "PMA could confidently assume the Board would affirm SSA's taking of the work from the employees who performed it for decades and, in breach of its collective-bargaining obligations, give the work to the ILWU and then bar Respondent from seeking any effective remedy for that breach." (D 9, 11-15)

17. To the ALJ's conclusion that "PMA's conduct has served to assume any coercive effect from Respondent's conduct onto itself and away from SSA." (D 9, 15-16)

18. To the ALJ's conclusion of law that "[c]ore policies of the Act support the integrity of the collective-bargaining process, collective-bargaining contracts, and stable, mature collective-bargaining relationships such as existed between SSA and Respondent before SSA's breach of contract." (D 9, 37-39)

19. To the ALJ's conclusion that "[c]ore policies of the Act discourage breaches of those contracts, encourage use of the grievance-arbitration process and respect for properly issued arbitration awards. (D 9, 39-41)

20. To the ALJ's conclusion that "[c]ore policies under the Act encourage effective remedies for those breaches of contract so that the effects on employees are mitigated to some degree." (D 9, 41-43)

21. To the ALJ's conclusion that "[c]ore policies of the Act encourage effective remedies for those breaches of contract do that the effects on employees are mitigated to some degree." (D 9, 41-43)

22. To the ALJ's conclusion of law that "[a] confluence of factors under Section 8(b)(4)(D) and Section 10(k) have seemed to have undermined those policies in cases such as this." (D 9, 43-44)

23. To the ALJ's Order dismissing the complaint in this matter. (D 10, 6)

Respectfully submitted,

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SSA MARINE through its related company SSA PACIFIC

and

Cases: 19-CD-502/506

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT LODGE 160,
LOCAL LODGE 289, AFL-CIO

Proof of Service

I hereby certify that on June 12, 2012, I caused the original of the foregoing Petitioners' **CHARGING PARTY'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** to be filed with the National Labor Relations Board via e-filing to:

NLRB
Administrative Law Judge William Kocol
Division of Judges
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Lester Helzer
Executive Secretary
National Labor Relations Board
1099 14th Street Northwest, Room 11602
Washington, D.C. 20570-0001
(also via regular mail)

On this same date, I caused a true and correct copy of the same to be served via email to:

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on June 12, 2012, at San Diego, California.

A handwritten signature in black ink, appearing to read "Woody Doolittle", written over a horizontal line.

Woody Doolittle
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