White Paper – Negotiations between ILWU and PMA

Are there true negotiations if one side doesn't have to?
Or does a monopoly exist that is destructive to the US economy?

With extensive coverage recently concerning the congestion at US West Coast ports and terminals, many large retail, manufacturing and agricultural entities have tried to get the attention of Washington, DC as they are experiencing extreme difficulties in getting freight imported into and exported out of the United States. Literally Billions of dollars are at stake for these entities due to delays in getting their goods moved. The losses by those trying to move their goods are in addition to the Millions of dollars in losses being incurred by the shipping companies who have had vessels anchoring for weeks due to the congestion at the port terminals, exacerbated by slow-downs in work by the ILWU in recent months. And recently the two sides publically stated that they were "far apart" on a resolution even after nearly 9 months of discussions and negotiations (to the degree that they occur).

To date the White House has taken the position that the two negotiating sides are capable of handling the matters to a conclusion, even after nearly 9 months of negotiations, no resolution has been reached (the contract expired in July of 2014).

So what's holding up the negotiations? Usually if the sides can't agree, labor strikes, demanding that their conditions be met, or the employers lock out the workers. But when that happens, after a relatively short time frame, Washington has to intervene and invoke the Taft-Hartley law, sending everyone back to work and becoming involved in the negotiations. It happened in 2002 and according to government reports, the cost was then over $1. Billion a day to the US economy.

How Did We Get Here?

It dates back to the 1934 when the West Coast longshoremen, led by Harry Bridges, went on strike for two months. No ships could work for that entire time on the West Coast. Unionists in Seattle, Portland, and San Pedro, California, tore down gates, destroyed cargo, overturned trucks, and assaulted truck drivers and nonunion longshoremen. In most cases, outnumbered police were unable to maintain order. However, on San Francisco's Pier 38 on July 5, 1934, police barricades temporarily cleared the water front. Strikers hurled bricks, stones, and railroad spikes at non-striking workers and police, but were pushed back by police under a dense cloud of tear gas. Contemporary accounts reported that lead bullets were also sporadically fired from both sides, although only a relatively small percentage of the unionists were carrying guns. Scores of police, bystanders, and workers on both sides were injured—and two strikers were killed.

From these circumstances, there were a series hearings leading eventually to laws being passed (including exemption from antitrust statutes) and the ILWU having sole jurisdiction on working vessels called on at any US West Coast port. Those laws and that jurisdiction remain in place eighty years later and in essence gives the ILWU a virtual monopoly over loading or emptying cargo vessels on the US West Coast. That has led to many confrontations between the Union and Employers over those 80 years, the last significant one being in 2002 when the employers locked out the ILWU for ten (10) days causing a huge backlog of vessels being worked and cargo being able to flow through the ports. The US government estimated that the cost to the US economy of these ten days of not working vessels or terminals at US West Coast ports was $1. Billion a day.

Why a Monopoly?

The dictionary defines monopoly as:
dictionary.reference.com/browse/monopoly/Dictionary.com

Exclusive control of a commodity or service in a particular market, or a control that makes possible the manipulation of prices.

Let's look at some facts and see if the ILWU fits this definition, and then ask why it should continue to be allowed.

- US West Coast port labor is the highest paid in the US and the world. According to a 2013 report by the Pacific Maritime Association:
  ILWU workers receive a compensation package that is among the most lucrative among all blue-collar workers in the United States. Full-time workers earn an average of $147,000 annually in wages, along with a non-wage benefits package costing more than $82,000 per active worker per year.
- By comparison the US East Coast and Gulf counterparts, the International Longshoreman's Association receives the following for essentially the same work:
  Average annual wage and benefit package of $124,000 puts ILA in top 2% of U.S. wage earners (source: United States Maritime Alliance report of June 8, 2013).

Some characterize this as a minor difference; regardless of your view on that, it is obvious that these workers are well compensated and in the top 1 to 2% of total compensation of all US workers.

But why the difference, arguably an 84% difference? One can logically argue that the real difference is the "competition" faced by the ILA. There are both union operated terminals on the US East Coast and the Gulf that are not ILA (including the International Brotherhood of Teamsters) and non-union operated terminals. By contrast the ILWU has no competition for the loading and unloading of vessels on the US West Coast.

One could ask then, when the ILWU negotiates, what are their reasons to accept anything other than what they want? Are they truly negotiating in good faith? Or do they initially present a straw man in the form of what most would consider unreasonable demands, and then after protracted negotiations, "compromise" with the PMA, showing "good faith"? That "good faith" has produced a rather substantial difference between what the average ILWU worker earns and their counterpart ILA workers; the most glaring difference between the two is one has competition to deal with, the other doesn't. Go back to the definition of a monopoly, it can't be much clearer than that.

But let's explore the monopoly issue further. Let's not focus on "price" or cost of services, let's examine the question of productivity by the ILWU and ILA labor for essentially the same work but at vastly different compensation, and also compare those to world standards in the developed world.

The simple fact is that both are the best compensated in the world and when comparing productivity of either with the rest of the developed world, they lag behind. And interestingly, the highest paid in the world, the ILWU workforce, is amongst the lowest in productivity.
A Journal of Commerce report in February 2013 provided this insight to port productivity by regions of the world:

Total Berth Moves Per Hour

North Asia	**71**
Middle East	**62**
Southeast Asia	**55**
North America/ India Subcontinent	**47**

Tied for 4th place with the India Sub-Continent at nearly 33% lower productivity than North Asia. There are several more such comparisons produced by Drewry Shipping Consultants and Alpha Liner amongst others, all show virtually the same results.

The last example of this that deals directly with the monopoly of the ILWU are the words of ILWU President, Robert (Bob) McEllrath. In March of 2011 his address to the TPM Conference in Long Beach, CA before 1800+ industry leaders from around the world included remarks on productivity. Paraphrasing, Mr. McEllrath stated that an ILWU terminal in Oakland, CA had moved "over 40 cans in an hour" for a single day. This very much relates to the moves per hour at top level US East Coast ports and only slightly behind the productivity at Northern Asia terminals. But this was for only a very short period and at only one terminal. The facts are that the average moves per hour per crane in ILWU terminals is under 30 and have been that way since the early 1990's. At the same time ILA terminals have moved up in productivity from the same general range as the ILWU in 1990 to over 36 moves per hour, with many producing 40 an hour regularly.
So why can the ILWU produce 40 and hour on an extremely selective basis and average less than 30 on a daily basis, month in and month out, while the ILA produces nearly 30% higher numbers? And large world class terminals have nearly 90% higher productivity? Because they have no compelling reason too; no competition to contend with.

Cost to the US Economy

As noted above, the ten day lockout in 2002 is said to have cost the US economy $1. Billion a day. Cargo interest today such as large retailers who import goods and agriculture shippers who export goods both contend that the current congestion, especially in the LA/Long Beach area, is costing them Millions of dollars a day. Add to that the Millions in costs being incurred by ocean carriers who have been forced into anchoring vessels awaiting berth space, and then facing falling productivity at the terminals as well as congestion causing delays of up to two + weeks to deliver goods to waiting customers and consumers. And then the residual effect on people like truckers who are waiting in lengthy lines to pick up or deliver containers at the ports.

Ask yourself this, if there were viable alternatives such as another union manning the terminals, would these conditions exist? They don't on the US East coast, not normally known for its soft approach by the ILA.

Who Deserves a Monopoly?

In the United States, virtually no one absent the US government and sports leagues have a monopoly. Even anti-trust immunity in non-monopolistic situations have for the most part been eliminated in areas such as trucking, railroads, air lines and ocean shipping. Yet here we are some 80 years after conditions then warranted some action on the part of the government, and no one is questioning the need for the continuation of that monopoly. What conditions exist today that warrant the monopoly? Why is one part of the country treated so differently, again considering today's conditions and not something that occurred 80 years ago?

One can't deny the imbalance of the outcome from an economic or productivity standpoint. And in the face of global competition in virtually every phase of our business lives, can we afford to ignore the facts and allow continued and ongoing labor practices that allow virtually one sided negotiations. Allows one side to take a "take it or leave it" position and if you don't, then take actions that virtually brings an industry to its knees and a makes the nation suffer tens of Millions of dollars of losses and even Billons at times?

No business or labor force deserve a monopoly, no entity deserves that leverage. And the results noted above speak volumes on the question does it exist or not.

Conclusion

It's time for a serious review of these conditions and circumstances with the removal of the monopoly that the ILWU has over an industry and this nation. There no longer exist the conditions of 80 years ago which allowed this monopoly to come into being; but there is evidence of conditions and circumstances which harm the nation of 300 Million for the benefit of 37,000. The compensation aside, there has to be productivity that relates to what can be done even with existing equipment and yard configuration and not the whim of a group who simply apply the leverage they have due to not having competition; competition in the form of other unions such as the Teamsters as exists on the US East and Gulf coasts today or others who desire to become part of the West Coast port and terminal work force. It is apparent that under today's conditions, that isn't going to happen. The ILWU has proven they <u>can produce,</u>

they choose not to. Allowing the monopoly to remain will continue to do harm to the economy and to the nation.

Maritime Advocates LLC
February 2015