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**Peter Tirschwell** | Apr 12, 2022 10:23AM EDT



A dispute over jobs jurisdiction at the Port of Seattle (above) could be a flashpoint in upcoming contract talks between the ILWU and West Coast employers. Photo credit: Shutterstock.com.

The International Longshore and Warehouse Union (ILWU) says West Coast employers have reneged on a 2008 deal that paved the way for automated cargo handling to be introduced at marine terminals, a source of friction as the talks get under way on May 12.

The union argues that in return for the terminals' ability to automate, which since 2008 has resulted in four terminals installing automated cargo handling, employers agreed to defend in any legal proceedings the ILWU's jurisdiction over maintenance and repair jobs against competing claims to that work by other unions. But according to the union, employers failed to do that in a dispute over several such jobs at a Seattle terminal, leading ILWU workers to be replaced by workers of another union, the International Association of Machinists.

The dispute at the SSA-operated Terminal 5 facility at the Port of Seattle was ostensibly settled through litigation at the National Labor Relations Board (NLRB), where rulings favored the machinist union and included a judge on March 5 ordering dockworkers to cease and desist from engaging in actions to re-claim the disputed jobs.

But two sources have told JOC.com that simmering discontent by dockworkers over that outcome could flare up during what are expected to be months-long negotiations with the Pacific Maritime Association (PMA), the coastwide employer group, to replace the existing contract that expires on July 1.

“The situation at T5 with SSA is about them not fulfilling their side of the contractual agreement when it comes to the assignment of work to ILWU,” Cam Williams, ILWU Coast Committeeman, told JOC.com. “By SSA not holding up their end of the agreement and the PMA not reinforcing it, it is our view [as well as an independent arbitrator’s] that the section of the contract related to automation is being violated, which raises a question of its current viability.”

## Disruption fears fuel cargo shift

Fears about potential disruption associated with the negotiations — disruption has accompanied every West Coast longshore labor negotiation going back to the 1990s — has led shippers in recent months to divert thousands of containers to ports in Canada and on the US East and Gulf coasts with less perceived labor risk, driving West Coast market share to a record low of less than 60% in January and February.

Biden administration officials, worried about negative political fallout from higher inflation due to supply chain issues, are closely monitoring the scenario and have repeatedly offered to mediate to avoid further disruption.

Although the issue at the T5 terminal focuses on competing jurisdictional claims at a single terminal in Seattle, it has coastwide significance given the union’s view that employers’ obligation to defend ILWU maintenance and repair (M&R) work in jurisdictional disputes was at the heart of the 2008 deal that allowed employers to automate cargo handling at West Coast terminals.

Given the union’s growing ideological opposition to automation, which was on display in huge protests the union staged in 2019 to oppose plans by APM Terminals to automate cargo handling at its Pier 400 terminal in Los Angeles, any opening to question the 2008 agreement — even if narrowly focused on a specific dispute like the one in Seattle — could be seized upon by the union in the negotiations. Employers say other issues were at play; they say they paid for the right to automate in the form of enhanced compensation to union members that will amount to over \$800 million between 2008 and the expiration of the existing contract on July 1.

Maintenance and repair jobs are at the heart of the Seattle dispute and were a key focus for the union in the 2008 talks. In that contract, employers agreed the ILWU would represent M&R jobs at any new terminal, but terminals along the coast that already employed workers from the International Association of Machinists (IAM) would be able to continue to employ those workers.

A caveat was that if an IAM-manned terminal closed it would lose its status as protected for IAM workers. Thus, when the T5 terminal in Seattle, which was operated by APL and using the IAM for M&R work, closed in 2013 and was mostly unused for several years, new terminal operator SSA employed ILWU workers when it re-opened the terminal in 2019 as per the requirement of the 2008 contract.

However, in early 2019, the IAM threatened to picket at T5, citing its own existing collective bargaining agreement with SSA that gives it the right to “all M&R work” at SSA facilities in the Puget Sound area. That led to the dispute going before the NLRB to resolve the competing unions’ claims to the work.

It was at that point, the ILWU says, when the 2008 “quid pro quo” for automation in return for guarantees it would represent M&R workers at new or re-opened terminals such as T5 fell apart.

The reason was that in the NLRB proceeding, according to the ILWU, SSA, and the Pacific Maritime Association did not “defend” the ILWU jurisdiction for M&R work against competing claims by other unions as it was obligated to do in the 2008 contract.

## SSA preference for IAM workers

According to the March 5 NLRB ruling awarding the disputed jurisdiction to the IAM, the NLRB inferred SSA’s preference for IAM workers given that SSA said it “would have used [IAM represented mechanics] we already had working for us” at other terminals in Seattle. As a result of that ruling, SSA in the fall of 2020 began assigning M&R work at T5 work to IAM members.

According to the coast arbitrator who heard the ILWU’s protest of the work being assigned to IAM members, the 2008 contract clause obligating employers to defend the ILWU’s claims to M&R jurisdiction in legal disputes “is a material and indispensable part of the parties’ quid pro quo and bargain for the employers contractual ability to undertake automation on the terms described in the [2008 contract].” The violation of that, according to the arbitrator, “nullifies the bargain concerning automation.”

It emerged from the NLRB opinion that there were questions over ILWU workers' practical ability to perform M&R work at T5, helping to explain SSA's preference for IAM workers with whom it had a long-standing working relationship and who had the experience to maintain terminal equipment, including gantry cranes. "ILWU-represented mechanics never performed M&R work for the employer at the Port of Seattle," the opinion said, noting "ILWU's failure to establish a union-wide level of skills and training; and IAM mechanics had more experience handling Terminal 5's cranes."

According to the NLRB opinion, the PMA argued that, in light of the focus of the 2008 contract on jurisdiction, "it been increasing ILWU's jurisdiction at West Coast ports in exchange for the right to automate and mechanize equipment," noting that PMA members increased ILWU mechanic shifts from zero in 2007 to 25,501 in 2019.

Nevertheless, the ILWU signaled that the issue is hardly one they see as closed.

Contact Peter Tirschwell at [peter.tirschwell@ihsmarkit.com](mailto:peter.tirschwell@ihsmarkit.com) and follow him on Twitter: [@petertirschwell](https://twitter.com/petertirschwell).

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