PACIFIC MARITIME ASSOCIATION

# Arbitration Award 04/11/1939



IN THE MATTER OF A CONTROVERSY
BETWEEN
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
DISTRICT NO. 1,
COMPLAINANTS,
AND
WATERFRONT EMPLOYERS ASSOCIATION,
RESPONDENTS

Involving alleged rights of the union in the
Ports of Tacoma, Port Angeles, and Anacortes.

ARBITRATOR'S AWARD

Mr. H.P. Melnikow WAYNE L. MORSE
Mr. Harry Bridges Coastwide Arbitrator
For Complainants

Mr. Gregory Harrison
For Respondents

Eugene, Oregon

April 11, 1939

ARBITRATION AWARD

## 1.ISSUES

The three issues of this case presented by the union in accordance with the rules of procedure governing arbitration under the agreement of October 1, 1938, are:

1. Has the I.L.W.U. the right under Section 5 of the agreement to select the dispatcher in the longshore hiring hall in the Ports of Tacoma, Port Angeles, and Anacortes?

2. Shall a Labor Relations Committee be established for the Port of Tacoma, consisting of three representatives designated by the employers association at that port, and three representatives designated by the I.L.W.U.?

3. Shall the Labor Relations Committee for the Port of Tacoma be required to meet locally in the Port of Tacoma to take up all matters which either party wishes to submit to the Labor Relations Committee?

## II. DECISION

At the outset of this award, the arbitrator wishes to make clear that on the basis of the record presented in this case, he recognizes the fact that the underlying background of the three issues involved in this case is one of jurisdictional conflict in the ports concerned between the I.L.W.U. and the I.L.A. unions. The parties themselves, in presenting the case, were not able to escape the implication of that jurisdictional conflict and the arbitrator certainly cannot ignore it in writing this award.

Neither can he ignore the history of the disputes in these ports as set out in the record, nor the formal and informal agreements and understandings entered into from time to time between the parties, which he believes in many respects have modified and restricted the literal meaning of certain sections of the agreement of October 1, 1938.

The arbitrator agrees with the general position taken by the employers in this case that the union has no right to expect the employers to take sides in the jurisdictional conflict between the two unions which exists in the ports in question. Likewise, the union has no right to expect this arbitrator to apply a literal interpretation or construction of the agreement of October 1, 1938, which would involve an intervention on his part in the jurisdictional conflict between the two unions.

Further, the arbitrator wishes to stress the point that under the agreement of October 1, 1938, and under the terms governing his appointment as arbitrator of disputes arising out of the agreement of October 1, 1938, it is neither his duty nor within his province to enforce the terms of the National Labor Relations Act as it may affect the parties, or to enforce what either one, or both, of the parties, may consider to be the terms of an award of the National Labor Relations Board.

The arbitrator makes the foregoing comments because counsel for the union in his brief, beginning on page 11 and following, argues in effect that the employers are guilty of a violation of the National Labor Relations Act and of an award under that Act, and he uses that argument to strengthen his contention that this arbitrator should interpret the agreement of October 1, 1938, in accordance with counsel's views of its meaning. It is not within the jurisdiction of this arbitrator to pass judgment one way or another upon counsel's allegations in regard to the employers' alleged violations of the National Labor Relations Act, or awards of the National Labor Relations Board under that act. The union has an adequate remedy if the National Labor Relations Act is, in fact, being violated by the employers, but that remedy is not by way of an appeal to this arbitrator, but rather by way of an appeal to the National Labor Relations Board.

First Issue

Has the I.L.W.U. the right to select the dispatcher in the longshore hiring halls in the Ports of Tacoma, Port Angeles, and Anacortes?

It is the decision of the arbitrator that the I.L.W.U. does not necessarily have the right to select the dispatcher in the ports mentioned. The decision is so qualified because the entire record of the case shows that the Ports of Tacoma, Port Angeles, and Anacortes, have come to be treated by the parties to the agreement of October 1, 1938, as "exception ports" so far as a literal application of the language of the agreement of October 1, 1938, is concerned.

If the majority of the registered longshoremen in the Ports of Tacoma, Port Angeles, and Anacortes, desired to have the I.L.W.U. select the dispatchers, the employers would have no right to object, but this arbitrator has no jurisdiction to say to the registered longshoremen in the ports in question, "You must accept an I.L.W.U. dispatcher," nor has he any authority to say to the employers, "You must accept on the job only those longshoremen who are sent to you by an I.L.W.U. dispatcher."

These conclusions of the arbitrator rest principally upon two facts. First, Section 4 of the agreement of October 1, 1938, indicates clearly that the main provisions of the agreement insofar as hiring longshoremen through joint hiring halls is concerned, shall apply to the Ports of Seattle, Portland, San Francisco and Los Angeles. The implication is clear that in the other ports differences in hiring and dispatching procedures are permissible. This observation is strengthened by the fact that Section 8 of the agreement of October 1, 1938, specifically excepts the Tacoma port from Section 4 and, further, permits of the excepting from Section 4 of the other ports omitted from the section if the Labor Relations Committee of such ports establish other methods of hiring or dispatching.

Further, the supplementary memorandum introduced as union's exhibit No. 1, by the terms of which the union agreed not to assert its right to preference of employment in the Ports of Tacoma, Anacortes, Port Angeles, and Olympia, shows that the parties to the agreement recognize these ports as "exception ports" in some vital particulars as far as an application of the agreement of October 1, 1938, is concerned. It is impossible to separate preference of employment rules and rights from such matters as dispatching and hiring hall personnel, and, therefore, Section 5 of the agreement must be read in light of the modifying influences of the various exceptions concerning these ports agreed to by the parties.

In the second place, the arbitrator cannot ignore the fact, as pointed out by counsel for the employers, that the hiring hall at Tacoma has always been a union hall maintained by the longshoremen of Tacoma and not a joint hall. The Labor Relations Committee has apparently "never attempted to select the personnel or otherwise interfere with the management of the hall which is owned and maintained by the I.L.A."

The agreement of October 1, 1938, was signed by both parties with a full understanding of that fact, and in light of the exceptions contained in the agreement and supplementary memoranda introduced into the record of this case, the arbitrator is forced to the conclusion that it was not the intention of the parties on October 1, 1938, to interpret Section 5 of the agreement as meaning that the dispatcher in the Ports of Tacoma, Port Angeles, and Anacortes, shall be selected by the International Longshoremen's and Warehousemen's Union.

Under the agreement of October 1, 1938, the right of the union to select the dispatcher seems to be limited to ports maintaining joint hiring halls. However, it is to be noted that under Section 8, any Labor Relations Committee which may exist in any of these "exception ports" has the right to establish other methods of hiring or dispatching.

Second Issue

Shall a Labor Relations Committee be established for the Port of Tacoma, consisting of three representatives designated by the employers association at that port and three representatives designated by the I.L.W.U.?

It is the opinion of the arbitrator that all the surrounding facts and circumstances relating to the Port of Tacoma, as shown by the record of this case, must be taken into account when answering the issue. A literal construction of the first paragraph of Section 9 of the agreement of October 1, 1938, as contended for by counsel for the union, did not carry out the real intent of the parties at the time the agreement was signed on October 1, 1938.

Again, the arbitrator wishes to emphasize the point that the agreement must be applied to the so-called "exception ports" in light of the exceptional labor situation existing in those ports which was clearly recognized by the parties when they signed the agreement. As counsel for the employers pointed out, there was a Labor Relations Committee existing in the Port of Tacoma at the time the parties signed the agreement.

Hence, when Sections 4 and 8 are read in conjunction with Section 9 of the agreement and are considered in light of the record of this case, the arbitrator is compelled to reach the conclusion that under the agreement of October 1, 1938, it was not intended by the parties that there should be established in the Port of Tacoma a Labor Relations Committee consisting of three representatives designated by the employers association at that port and three representatives designated by the I.L.W.U.

Third Issue

Shall the Labor Relations Committee for the Port of Tacoma be required to meet locally in the Port of Tacoma to take up all matters that either party may wish to submit to the Labor Relations Committee?

It may be that when a specific and particular grievance concerning alleged discrimination against I.L.W.U. longshoremen in Tacoma is presented to the employers by the union, the circumstances of the given case might be such as to support the demand of the union that representatives of the employers meet with representatives of the union in Tacoma. However, in the absence of a specific case involving such circumstances, this arbitrator cannot rule that as a general proposition representatives of the employers must meet with representatives of the union in Tacoma itself for the purpose of hearing complaints and grievances.

Under the supplementary memorandum agreement, the I.L.W.U. reserved the right to "intervene in case of any discrimination against any member of the I.L.W.U. in order to protect his rights under the aforesaid contract. The provisions of this paragraph shall in no way abridge the powers of the Labor Relations Committee in said ports."

When this reservation provision is read in conjunction with the entire agreement, it becomes clear to the arbitrator that the employers' offer to meet with the district officers of the union at any time for the purpose of hearing "Tacoma grievances" is entirely reasonable and in keeping with the spirit, meaning, and intent of the agreement of October 1, 1938. However, it does not follow that such a meeting must be held in Tacoma.

Respectfully submitted,

(Signed) WAYNE L. MORSE

Coastwide Arbitrator