LAW360 Employment Authority

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IAM Urges Full 9th Circ. To Rethink Work Dispute Ruling

By **Braden Campbell**

Law360 (July 15, 2025, 7:28 PM EDT) -- The International Association of Machinists urged the full Ninth Circuit to rethink a panel decision vacating a National Labor Relations Board ruling that admonished a longshoreman's union for pressing a work dispute it lost, saying the decision undermines the board's power to resolve competing claims to jobs.

The panel's finding that the International Longshore and Warehouse Union could subvert the National Labor Relations Act by asking an arbitrator to weigh its competing claim to work at the Port of Seattle under the so-called work preservation doctrine **"will effectively eviscerate"** NLRA Section 10(k), the Machinists said Monday. That section empowers the board to decide unions' jurisdictional disputes.

"Although the board can continue to issue 10(k) decisions, they will no longer be enforceable because the union that loses the determination (or employer which disputes the board's determination) will be able to ignore the determination by asserting a work preservation argument no matter how remote in virtually every case," the union said.

The Machinists' petition asks the full Ninth Circuit to resolve what it says is a rift between the Ninth Circuit and other courts, including the U.S. Supreme Court, over whether the work preservation doctrine shields unions accused of illegally pressuring employers to give them work the NLRB has awarded to another union. Under this doctrine, a union does not violate the NLRA's ban on roping neutral employers into its disputes if it acts to protect work its members traditionally perform and the targeted employer can assign that work.

The ILWU and IAM have had several skirmishes over West Coast port work over the years. After both of the unions asserted the right to certain work at the Port of Seattle's newly opened Terminal 5 in 2018, operator SSA Terminals asked the board to decide the dispute. The board awarded the work to the Machinists but the ILWU refused to accept the loss, filing a grievance asking an arbitrator to award its members the wages they had lost out on. The Machinists then filed a charge with the NLRB arguing that the ILWU was violating NLRA 8(b)(4)(D), which forbids unions from trying to force employers to give work from one union to another.

The board **ruled against the ILWU**, rejecting its argument that it was immune under the work preservation doctrine. The ILWU appealed to the Ninth Circuit, which **reversed the board** last month under the court's 2020 ruling in ILWU v. NLRB. In that ruling, which the IAM called Kinder Morgan, the court held that **the work preservation doctrine shielded the ILWU** when it grieved its right to disputed work with Kinder Morgan that the NLRB had awarded to an International Brotherhood of Electrical Workers local.

The Terminal 5 panel questioned whether Kinder Morgan was correct, however. The board had argued that the work-preservation defense only applies when a union is accused of illegal "secondary" activity, in which it pressures a neutral employer to influence an employer the union has ties to. The Terminal 5 panel said it might have accepted the board's argument were it "writing on a blank slate," but that it was bound by Kinder Morgan. In a concurrence, Judge Eric Miller — who also wrote the opinion — faulted Kinder Morgan and urged the full court to rethink its precedent.

The Machinists urged the court to take up Judge Miller's call Monday, saying the Kinder Morgan and Terminal 5 rulings erode NLRB jurisdictional orders and conflict with Supreme Court and other

circuits' precedent.

The union noted Congress empowered the NLRB to decide unions' competing claims to work in a 1947 amendment "to resolve with finality jurisdictional disputes that had plagued labor relations." Applying the work-preservation doctrine to jurisdictional disputes threatens to nullify this power because "virtually every jurisdictional dispute involves the same paradigm: two unions fighting over the same work performed by one employer," the union said.

The union pointed to Judge Miller's citation to the D.C. Circuit's 1989 ruling in ILWU v. NLRB, which held that the work-preservation doctrine did not permit a union to picket to press a claim to disputed work following an NLRB loss.

"Judge Miller summed up the D.C. Circuit's position as: 'Permitting a union to raise the work preservation defense to a section 8(b)(4)(D) charge would unravel the mechanism that Congress created to enable the board to resolve jurisdictional disputes,'" the union said.

The Machinists' attorney, David Rosenfeld of Weinberg Roger & Rosenfeld, said he's optimistic the full court will take up the case given the panel's skepticism of Kinder Morgan.

"This work preservation doctrine doesn't apply the way the court did it," Rosenfeld said. "I think the panel clearly recognized it."

An NLRB representative declined to comment. A representative of the Pacific Maritime Association, the multiemployer group comprising port companies on the West Coast, and attorneys for the ILWU did not immediately respond to requests for comment.

The NLRB is represented in-house by Ruth Burdick, David Habenstreit, Peter Sung Ohr, Kira Dellinger Vol and Micah Jost.

ILWU and ILWU Local 19 are represented by Robert S. Remar of the Law Office of Robert Remar and by Robert Lavitt, Julian Gonzalez and Travis Lavenski of Barnard Iglitzin & Lavitt LLP.

IAM District Lodge 160 Local Lodge 289 are represented by David Rosenfeld of Weinberg Roger & Rosenfeld.

The Pacific Maritime Association is represented by Geoffrey J. Rosenthal, Jonathan C. Fritts, Michael E. Kenneally and Gregory Nelson of Morgan Lewis & Bockius LLP.

The case is International Longshore and Warehouse Union et al. v. National Labor Relations Board, case numbers 23-632, 23-658, 23-780 and 23-793, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Leah Bennett.

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