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(December 30, 2003)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

December 30, 2003

DOCKET NO. 03-12

SAN DIEGO UNIFIED PORT DISTRICT

v.

PACIFIC MARITIME ASSOCIATION

MOTION TO DISMISS COMPLAINT
GRANTED WITH PREJUDICE

Background-The Amended Complaint

San Diego Unified Port District ("SDUPD") has filed an amended complaint in which it is alleged that respondent Pacific Maritime Association's ("PMA") September 24, 2003 action to reprioritize the unloading of refrigerated cargo ships "only" at the Port of San Diego has adversely impacted cargo operations by SDUPD, causing damage in the sum of \$87,815.00. SDUPD also claims it continues to suffer as the result of PMA's action because it places SDUPD at a competitive

disadvantage with other Southern California ports where refrigerated cargoes are still a priority for gang allocations.’

SDUPD’s amended complaint, as edited, states as follows:

On September 24, 2003, Pacific Maritime Association (PMA) took action to reprioritize the unloading of cargo ships at the Port of San Diego only. This action was taken through PMA’s Southern California Sub-Steering Committee. The action took away priority unloading of refrigerated cargo which has adversely impacted cargo operations of the SDUPD. By a vote of seven to four, the following changes were made:

1. Priority 1 - Passengers, Master Replacement Orders, and Military
2. ETA determines priority
3. Vessels [sic] choosing not to work on an available ship forfeit ETA until the following ship starting time.

The previous allocation policy included refrigerated cargoes as Priority 1. With this change, refrigerated cargoes are now not given priority and are treated the same as non-refrigerated cargo at the Port of San Diego, but not at any other West Coast ports.

PMA’s action is arbitrary and discriminatory, as it places SDUPD at a competitive disadvantage with other Southern California ports where refrigerated cargoes are still a priority for gang allocations.

On September 26, 2003, SDUPD’s Executive Director, Bruce Hollingsworth, sent a letter to the President and CEO of PMA indicating that the decision was harmful to SDUPD. The letter also urged PMA to reconvene its Sub-Steering Committee as soon as possible to reconsider its actions.

On September 30, 2003, Bruce Hollingsworth wrote another letter to the President and CEO of PMA indicating that the concerns raised in the September 26, 2003, letter have become a reality. A melon shipper that had planned to move 18 refrigerated vessels with fresh melons to San Diego had canceled its prospective operations due to removal of the priority of gangs for refrigerated cargoes at SDUPD. This business would now move to another California port that had reefer cargo priority for gang allocations.

‘On the Pacific Coast each longshoreman is dispatched to an employer as part of a gang to perform a specific loading or unloading job. Opinion of Douglas, J., *Volkswagenwerk v. FMC*, 390 U.S. 261, 197 (1968).

These actions by the PMA have further exacerbated already existing labor problems at SDUPD. There is a lack of skilled labor and misappropriations of the allocation of labor that are causing gang shortages at SDUPD. On September 30, 2003, Jess Van Deventer, Chairman of the Board of Port Commissioners of SDUPD, wrote a letter to the President and CEO of PMA concerning this issue. The letter outlined the lack of skilled crane operators, foremen, clerks and general laborers made available by PMA through ILWU [the International Longshore and Warehouse Union] Local 29. This letter sought assistance from PMA in working with SDUPD and ILWU Local 29 to achieve productivity levels of other southern California ports, and to have a labor force available to handle current and future business opportunities as they develop. To date, PMA has taken little or no action to rectify this labor shortage. The future of the maritime operations at SDUPD is at stake and expansion of operations has been jeopardized by PMA's actions. The lack of adequate labor, and misappropriation of labor are also violations of the Shipping Act of 1984, Sections 10(d)(1)(2)(4), as PMA is unreasonably discriminating against SDUPD; not enforcing reasonable labor regulations; and giving unreasonable preferences to ILWU Local 29. PMA's actions have also adversely affected interstate commerce and transportation, and raised concerns related to anti-trust provisions.

In response to complaints to PMA by SDUPD, PMA held a special meeting on or about October 9. SDUPD was not allowed to participate in the meeting since it is not a member of said association. SDUPD was advised that PMA did not change its position as to prioritization of cargo unloading. PMA allegedly decided to address the concerns of SDUPD by agreeing to pay for workers assigned in Los Angeles to travel to San Diego when there is a need for additional workers. Said "remedy" has been promised before with unsatisfactory results. Moreover, the purported solution fails to address the need for constant skilled and trained labor to handle increased cargo on a consistent basis, and on [an] equal basis with other ports. Finally, PMA still failed to clearly respond to SDUPD's concerns over priority of cargoes.

PMA members making these decisions changed the priorities for refrigerated cargo handling in an arbitrary and capricious manner which is in violation of the Shipping Act of 1984.

Specifically, the Shipping Act of 1984 provides in section 10(d) that:

(1) No common carrier, ocean transportation intermediary, or marine operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or

unreasonably discriminate in the provision of terminal services to, any common carrier [or] ocean tramp.

(4) No marine terminal operator may give any undue [or] unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

The PMA's decision has violated each of the aforementioned provisions of the Shipping Act of 1984. PMA members making these decisions may stand to gain financially by the diversion of refrigerated cargo from SDUPD to other West Coast ports where they may have financial interests. The PMA's decision has also had a negative impact on SDUPD by detouring refrigerated cargo operators from coming to the Port, or considering San Diego given the uncertainty over cargo handling. The loss of the melon shipments has caused the following revenue loss to SDUPD:

Tonnage - Imports (32,220 lbs)
Tonnage - Exports (5,400 lbs)
Wharfage - \$75,240.00
Dockage - \$12,574.00
Total - \$87,814.00

That Complainant has been injured in the following matter [sic]: to its damage in the sum of \$87,814.00. Complainant also continues to suffer daily damages of an unspecified amount due to loss of productivity, loss of prospective business due to unreasonable labor allocation and loss of good will among current tenants and stakeholders. SDWD requests an immediate investigation pursuant to this Complaint and a hearing before an Administrative Law Judge to determine if PMA's actions related to reprioritization of labor solely at the SDUPD, and PMA's history of inadequate labor allocation at the SDUPD, are consistent with the Shipping Act of 1984. SDUPD further requests damages pursuant to paragraph VI, that PMA restore refrigerated cargo as priority 1 status at the Port of San Diego and that PMA be ordered to provide or implement an appropriate action to ensure increased labor at the SDWD commensurate with labor allocations at other ports.

Therefore, Complainant prays that respondent be required to answer the charges herein; that after due hearing, an order be made commanding said Respondent (and each of them): to cease and desist from the aforesaid violations of said act(s); to establish and put in force such practices as the Commission determines by lawful and reasonable action; to pay to said Complainant by way of reparations for the unlawful conduct herein above described the sum of \$87,814.00, with interest and attorney's fees, or such other remedy as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

Respondent PMA's Motion to Dismiss

Respondent PMA has filed a motion to dismiss the complaint for lack of jurisdiction,

As noted, the complaint alleges that PMA, the collective bargaining agent for employers of Pacific coast dockworkers and other employees, has violated sections 10(d)(1), (2), and (4) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(d)(1), (2), and (4), contending that "PMA's actions related to reprioritization of labor solely at the SDUPD, and PMA's history of inadequate labor allocation at the SDUPD" are not consistent with the Act's requirements.

PMA contends that the Shipping Act provides no basis for jurisdiction, either over PMA or over the labor-related claims which SDUPD presents, particularly in light of the following:

- The Commission has held that section 10(d) of the Shipping Act does not apply to collective bargaining associations like PMA. *International Association of NVOCCs v Atlantic Container Line*, 25 SRR 167 (ALJ 1990), 25 SRR 734,742 (FMC 1990) (hereinafter "*IANVOCC*"). The Commission held that "[s]ection 10(d)(1) places an affirmative obligation on common carriers, ocean freight forwarders and marine terminal operators. We perceive no basis for applying such an obligation to the Associations, who are not alleged to be carriers, freight forwarders or terminal operators."
- The Maritime Labor Agreements Act of 1980 ("MLAA", now codified at Section 5(f) of the Shipping Act, 46 App. U.S.C. § 1704(f)) established that the Shipping Act does not apply to maritime labor agreements, including collective-bargaining agreements, agreements specifically implementing provisions of such collective-bargaining agreements, or agreements providing for the formation, financing, or administration of a multiemployer bargaining group like PMA. As the Commission in *IANVOCC* concluded, "the MLAA effectively ended Shipping Act jurisdiction over bargaining associations." 25 SRR at 746.

PMA concludes that, because the complaint on its face fails to name a respondent subject to section 10(d) of the Act, and presents claims solely based upon maritime labor matters exempt from

Shipping Act regulation under the MLAA, the complaint is jurisdictionally defective as a matter of law. and must be dismissed.

Reply of SDUPD to Motion to Dismiss

SDUPD replied that its complaint does provide a basis for the Shipping Act’s jurisdiction over PMA, that the complaint does not allege that PMA is merely a “collective bargaining association” but that PMA is an “association of persons, associations, or corporations engaged in the business of carrying cargo by water to or from any port of the Pacific Coast of the United States; and/or an agent or association employing longshoremen, or other shore side employees in operations at docks or marine terminals or container freight stations at any such port; and/or an association or corporation composed of employers of such longshoremen or other shore side employees”; that these allegations do provide a legal and factual basis for application of section 10(d) of the Shipping Act of 1984 to PMA; and that the FMC does have jurisdiction for the claims asserted by SDUPD.

SDUPD contends that PMA’s motion to dismiss is equivalent to a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss for failure to state a complaint under which relief can be granted; that PMA’s motion challenges SDUPD’s right to any recovery under the allegations listed in the complaint; and that, however, the complaint must be construed in the light most favorable to SDUPD, citing cases.

Noting that PMA’s motion to dismiss alleges PMA is a “collective bargaining agent,” SDUPD replies that the term “collective bargaining agent,” however, is not used in SDUPD’s complaint to describe PMA, that PMA’s allegations and assertions cannot be used by this

Commission in order to analyze the allegations in SDUPD's complaint; that in order to construe the complaint in the light most favorable to SDUPD, SDUPD's complaint and the allegations must be analyzed according to following analysis of SDUPD.

SDUPD contends that section 10(d) of the Shipping Act does apply to PMA because, although PMA is not itself a *common* carrier, ocean transport intermediary *or* marine terminal operator, it is an association of persons, associations and corporations who are; that PMA is acting for the interests of common carriers, ocean transport intermediaries and maritime terminal operators in the scope of its work; that PMA's existence is for the benefit of these organizations; that, more importantly, PMA's actions are consistent with those of shippers and employers of longshoremen; that PMA does not act as merely an association of shippers and employers of longshoremen; and that this distinction is critical.

SDUPD contends further that PMA acts as ~~the~~ agent of its members, not only in negotiating employment agreements, but also in establishing rules and priorities *among* its members with regard to their business; that, in some cases, PMA acts, in their own right, as a principal with regard to the course and conduct of its members and the ILWU; that PMA acts with the authority to bind its members to agreements and transactions that it enters into; that PMA committees and sub-committees make rules and set priorities for the maritime industry on the West Coast; that these rules and priorities affect all members of PMA, the ILWU, and ports throughout the West Coast; that to say that PMA is merely a "collective bargaining agent," as alleged by PMA, is misleading and contrary to the true work that PMA carries out; and that PMA's work is clearly more than that of a "collective bargaining agent."

SDUPD argues that the violations of the Shipping Act listed in SDUPD's complaint stem from the change of priority for refrigerated containers; that this change of priority was carried out by PMA's Southern California sub-Steering Committee; that SDUPD's damages arose as a direct, and proximate, result of PMA's decision to implement a change in priority for refrigerated containers; that PMA must be held accountable to SDUPD for damages under the Shipping Act and general principles of law; that SDUPD's injury resulted from an industry wide practice, which could find liability against hundreds of companies, implementing and benefiting from the rules of the PMA; and that the Shipping Act provides for jurisdiction over PMA, when PMA's actions go beyond acting as a "collective bargaining agent," as they have here.

SDUPD states that the FMC, in several prior instances, has held that it has personal jurisdiction over a shipping association, or otherwise asserted personal jurisdiction over a shipping association; that the fact that individual carriers may be held liable for damages does not mean that associations should not be held liable too; and that there is good reason to hold associations liable, especially since some carriers are forced to carry out the rules of the PMA that the association promulgates.

SDUPD notes that PMA relies heavily on *IANVOCC*, but that, while this ruling by Administrative Law Judge (now Chief Administrative Law Judge) Norman D. Kline addressed similar issues as those presented in this matter, a blind following of Judge Kline's ruling, and the Commission's affirmation, is not appropriate in this instance; that this claim by SDUPD presents an issue concerning one maritime association, who is an association of businesses who carry cargo by water and employ longshoremen, as opposed to the five respondents in the *ZANVOCC* matter who were multi-employer bargaining associations; that the FMC has discretionary power supplementary

to its subject matter jurisdiction to impose liability on anyone who is ultimately responsible for violations of the Shipping Act of 1984; that, although it is true that an administrative agency can exercise only those powers conferred on it by Congress, SDUPD is not seeking jurisdiction beyond what Congress has delineated; and that liberal, purpose-driven readings are justified and desirable where a particular provision is broadly written, thus signifying an intention by Congress that it should not be narrowly construed, citing *Volkswagenwerk v. FMC*, 390 U.S. 261, 273-75 (1968). SDUPD concludes that MA is seeking a narrowly construed reading of the Shipping Act that was not intended by Congress; that the Shipping Act specifically provides for legalizing that which would otherwise be illegal under the anti-trust laws; that the condition under which such authority is granted is that an agency entrusted with the duty to protect the public interest must scrutinize the agreement to make sure that the conduct, thus legalized, does not invade the prohibitions of the anti-trust laws, any more than is necessary to serve the purpose of the regulatory statute, citing *Isbrandtsen Co. v. United States*, 93 U.S. App DC 299; that the actions of PMA, alleged by SDUPD, demonstrate that PMA has invaded the prohibitions of the anti-trust laws more than necessary; that PMA members making decisions to change priorities for refrigerated containers, only in San Diego, but nowhere else in the West Coast, demonstrate that PMA has breached its duty concerning the intent of anti-trust laws; that PMA's actions in this case have gone well beyond those of a "collective bargaining agent"; that the *IANVOCC* respondents were acting as a bargaining association for its members; that PMA's actions go beyond those of the respondents in *IANVOCC*; and that, for this reason, the Shipping Act does have jurisdiction over PMA for its actions.

Discussion and Conclusions

The questions presented here are arguments of counsel. No affidavits of fact witnesses have been presented. The question presented by the motion to dismiss is whether this complaint presents an issue for adjudication by this agency under the Shipping Acts. More specifically, SDWD alleges that PMA has violated section 10(d)(1), (2), and (4) of the 1984 Act, 46 U.S.C. app. § 1709(d)(1), (2), and (4).² Does the complaint lie here? Has SDUPD sued the correct party?

SDWD is correct that PMA's motion to dismiss is equivalent to a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss for failure to state a claim upon which relief can be granted. Such motions in effect admit all the factual allegations in the complaint and challenge SDUPD's right to any recovery on the basis of those facts. The complaint must be construed in the light most favorable to SDUPD. *See Fuhrer v. Fuhrer*, 292 F.2d 140 (7th Cir. 1961):

The issue is not whether a plaintiff [SDUPD] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on

²Section 10(d)(1), (2), and (4) states:

(d) COMMON CARRIERS, OCEAN TRANSPORTATION INTERMEDIARIES, AND MARINE TERMINAL OPERATORS.-

(1) No common carrier, ocean transportation intermediary, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, any common carrier or ocean tramp.

* * *

(4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

the face of the pleadings that a recovery is very remote and unlikely but that is not the test.

Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). To grant such a motion, it should appear “beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Thus, the issue is whether, in the light most favorable to SDUPD and with every doubt resolved in its favor, its complaint states any claim for relief against PMA that is properly cognizable under the Shipping Acts and may be heard and adjudicated by the Federal Maritime Commission, *See Fuhrer v. Fuhrer, supra*.

Under established principles it is deemed admitted that PMA took action to reprioritize the unloading of cargo ships and took away priority unloading of refrigerated cargoes at the Port of San Diego only; that a melon shipper who planned to move 18 refrigerated vessels with fresh melons to San Diego canceled its plans due to the removal of the priority of gangs for refrigerated cargoes at SDUPD causing a revenue loss of \$87,814 to SDUPD; and that there is a lack of skilled labor and misappropriation of the allocation of labor that are causing gang shortages at SDUPD. Whether these are violations of section 10(d)(1), (2), and (4) of the 1984 Act are **conclusionary** allegations to be examined in light of decisional law. *City of Milwaukee v. Saxbe*, 546 F.2d 693,704 (1976).

SDUPD urges that section 10(d) of the 1984 Act applies to PMA because it is an association of persons, associations and corporations who are common carriers, ocean transportation intermediaries and maritime terminal operators; that PMA is acting for the interests of common carriers, ocean transportation intermediaries and maritime **terminal** operators in the scope of its work; that PMA’s existence is for the benefit of these organizations; and that PMA’s actions are

consistent with those of shippers and employers of longshoremen. The core of SDUPD's claim thus rests on whether section 1 O(d) applies to such an association. In *IANVOCC*, Judge Kline addressed similar issues to those presented here. SDUPD urges that "a blind following of Judge Kline's ruling and the Commission's affirmation, is not appropriate" because this claim by SDIIPD presents an issue concerning *one* maritime association "who is an association of businesses, who carry cargo by water and employ longshoremen as opposed to the five respondents in *ZANVOCC* who were multi-employer bargaining associations." SDIIPD thus would distinguish this case from *IANVOCC* on the basis of the composition of the associations.

Section 1 O(d) of the Shipping Act applies only to common carriers, ocean transportation intermediaries, and marine terminal operators. PMA does not fall into any of these three categories.

PMA has been found to be the collective bargaining agent for a multiemployer bargaining unit made up of various employers of Pacific coast dockworkers, steamship lines, steamship agents, stevedoring companies, and marine terminal companies operating at Pacific coastports of the United States. *Pacific Maritime Association-Cooperative Working Agreements; Possible Violations of Sections 15, 16 and 17, Shipping Act, 1916*, 14 S.R.R. 1447, 18 S.R.R. 523; *rev'd sub nom., Federal Maritime Comm'n v. Pacific Maritime Ass'n*, 543 F.2d 395 (D.C. Cir. 1976); *rev'd* 435 U.S. 40 (1978) ("*FMC v. PMA*").

In *IANVOCC* both Judge Kline and the Commission explained why collective bargaining associations are not subject to section 10(d) of the Act. In its decision in that proceeding (part of the decade-long litigation over the so-called "50-Mile rules on Containers") the Commission, based on the plain language of section 10, dismissed complaints for reparations against the New York Shipping Association, West Gulf Maritime Association, and other organizations that serve purposes

analogous to PMA on other coasts. That case terminated any effort to obtain jurisdiction over associations on theories that they were responsible for, or acting as agents of, regulated carriers or terminal operators. In his oft-quoted initial decision, Judge Kline explained:

The respondent multi-employer bargaining associations are not common carriers acting as common carriers, forwarders, or marine terminal operators and do not file tariffs even under the most favorable interpretation of the facts alleged by complainants. Therefore, it would appear merely from the face of the statutes involved that such associations cannot as a matter of law be found to have committed the violations specified in Section 10(b), (c) and (d) of the 1984 Act and the corresponding provisions of the 1916 Act so that they could be ordered to pay reparations. However, . . . complainants mount a number of arguments in an attempt to overcome this basic flaw in their position. However, I find none of their arguments to be persuasive.

. . . [T]he arguments appear to fall into various categories. Thus, complainants argue that the associations are responsible for the [Rules on Containers] and ought to be liable for damage caused by the Rules, sometimes arguing that the associations are the agents of their members and sometimes that they acted in their own right as principals with the authority to bind the carrier members. The arguments, however, I find to be unavailing because it is not tort or agency law that determines jurisdiction under the shipping acts. It is rather the language employed in the statute and Congressional intent. If it is inequitable to have someone in the backaround responsible for something that ultimately violates the shipping acts who is not legally liable because of Congressional failure to name such person or entity in the operative provisions of the laws involved, that is a matter for the Congress to address. As the Court stated in [*Austasia Intermodal Lines v. FMC*, 580 F2d 642 (DC Cir 1978),] "[i]t is not, however, the prerogative of a court or an administrative agency to expand the scope of legislation beyond what was originally intended by Congress." Or as the Supreme Court stated in *Federal Reserve Board v. Dimension Financial*, cited above 474 US at 374, "The statute may be imperfect, but the Board has no power to correct flaws that it perceives in the statute it is empowered to administer." (Emphasis added.)

25 S.R.R. at 176-177.

As noted, the Commission affirmed Judge Kline's decision without reservation. While the Shipping Act was amended in the intervening years no change was made to the pertinent statutory

language discussed by Judge Kline which solidifies its precedential value and precludes the relief sought by SDUPD. SDUPD's emphasis on the different number and composition of the members in the associations in *IANVOCC* and the single collective bargaining agent here is a difference without any legal distinction. Moreover, it is apparent that the issues complained about in SDUPD's complaint are maritime labor issues, which go to the core of PMA's role in administering and implementing the West Coast collective bargaining agreement, and that the MLAA was enacted by Congress specifically to divest the Commission of any jurisdiction over such labor issues. It must be remembered that, under the succession of collective bargaining agreements that have been negotiated to cover the Pacific Coast ports over the past several decades, each marine terminal does not itself hire a permanent staff of individual workers; that, rather, the West Coast ports follow what is known as a "multiemployer hiring-hall model," that is, as a general rule, the hiring and dispatch of workers is done on a collective "rotational" basis, with gangs of workers dispatched to the *terminals* on a daily basis; that individual workers can-and do- work for different employers from one day to the next; and that the Supreme Court explained it this way in *FMC v. PMA*:

Since 1935, PMA employers have been required to hire exclusively from hiring halls jointly financed by PMA and the Union. This hiring-hall system was created in an effort to reconcile the fluctuating demand for labor in the Pacific coast longshore industry with the need for stable employment. Union members register for jobs at the halls and from there are dispatched to work assignments. Despite the rotational hiring method used within the industry, registered Union workers receive a single paycheck from PMA. This requires PMA to maintain a central payroll and recordkeeping system for these longshoremen.

435 US. 46 fn. 9.

It follows that for such a multiemployer rotational hiring system to function on a day-to-day basis, there must, by necessity, be some centralized coordination among employers to implement and administer the system. PMA explains that, for example, to assure that gangs are dispatched efficiently across the entirety of the waterfront, lists of vessels scheduled to arrive each day must be compiled, and workable allocation sequences for the assignment of longshore gangs to work those ships must be developed. PMA performs this coordination role for the employers, in addition to other administrative functions relating to port labor. (PMA motion at 6.)

It is PMA's role in the coordinated allocation of longshore labor, that SDUPD challenges with its complaint. In its prayer for relief, SDUPD asks that the Commission examine the "reprioritization of labor" at SDUPD. It is evident that this is intertwined with the implementation of the collective bargaining agreement and its collective, rotational hiring and dispatch system and has not been demonstrated to be within the jurisdiction of the FMC.

SDUPD alleges a general lack of skilled labor available at SDUPD, and that the "lack of adequate labor, and misappropriation of labor are also violations of the Shipping Act of 1984, Sections 10(d)(1)(2) and (4), as PMA is unreasonably discriminating against SDUPD; not enforcing reasonable labor regulations; and giving unreasonable preferences to ILWU Local 29." While couched in terms making them appear as Shipping Act violations, these additional issues raised by SDUPD are instead labor relations matters, intimately related to the collective bargaining process and PMA's role in negotiating, implementing and administering collective bargaining agreements. The MLAA, which appears in section 5(f) of the Shipping Act, states:

This Act does not apply to maritime labor agreements. This subsection does not exempt from this Act any rates, charges, regulations, or practices of a common carrier

that are required to be set forth in a tariff or are essential terms of a service contract, whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

46 U.S.C. app. §1704(f) (2000).

This class of exempt agreements is defined broadly. Section 3(15) of the Act states that “maritime labor agreement”:

means a collective-bargaining agreement between an employer subject to this Act, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

46 U.S.C. app. §1702(15) (2000).

There is no question that the MLAA applies to PMA. The MLAA was enacted with PMA specifically in mind. The legislative history of the MLAA makes clear that it was enacted to reverse the effects of the Supreme Court’s decision in *FMC v. PMA*, 435 U.S. 40 (1978), which held that the Shipping Act’s agreement tiling and approval requirements applied to PMA’s collective bargaining agreements. In response to that decision, Congress carved out a broad exception to the Shipping Act for labor matters, with the support of the industry, labor, the Commission, and the Administration. The Report accompanying the Senate version of the MLAA legislation explained the urgent need for, and broad scope of, the exemption:

Historically the Federal Maritime Commission has held that Maritime collective bargaining agreements are not subject to the provisions of section 15 of the Shipping

Act of 1916, which requires that certain maritime agreements be filed with and approved by the Commission prior to entering into effect. Under recent court decisions, however, certain maritime collective bargaining agreements and related agreements among multiemployer bargaining associations which implement such collective bargaining agreements must now be filed with the Commission for approval.

As a consequence of these court decisions, collective bargaining in the maritime industry has been seriously disrupted because the parties do not know whether they have in fact made an agreement until the Commission approves it. The maritime industry has thus been singled out as the only industry in the United States which is deprived of the benefits of the express national policy of free and unfettered bargaining without governmental intervention.

S. Rpt. No. 96-854, 96th Cong., 2d Sess., H.R. 6613, Maritime Labor Agreements Act of 1980, July 16, 1980. A nearly unanimous parade of witnesses in Congressional hearings on the bill testified to the potential for serious labor disruption if the Commission were to exercise regulatory authority over these types of maritime labor matters.

In light of this clear congressional intent, the Commission has taken an expansive view of language of the MPAA exemption and what are “implementing” agreements under the MPAA. In *ZANVOCC*, the Commission cited the language of the House Report accompanying the MPAA to find that the exemption extends to “agreements or portions of agreements between or among common carriers, other persons subject to the Act, multi-employer bargaining groups, or labor organizations representing maritime or stevedoring employers; so long as those agreements are to prepare for collective bargaining, are incidental to collective bargaining, or implement a collective bargaining agreement,” 25 S.R.R. at 746, citing H.R. Rep. No. 876 at 7. The Commission went on to conclude that “by defining the ‘maritime labor agreements’ that it intended to exempt from the Shipping Acts to include agreements ‘providing for the formation, financing and administration of

a multiemployer bargaining group,' buttressed by the additional exemptions for agreements that concern either preparation for collective bargaining or implementation of a collective bargaining agreement, the MLAA effectively ended Shipping Act jurisdiction over bargaining associations," *Id.* The Commission concluded that, "in sum, the MLAA requires that the Associations be dismissed from these cases for lack of jurisdiction," *Id.* at 747.

The Commission's decision in *IANVOCC* is controlling here. There can be no question that the labor practices cited in the complaint fall within the MPAA's broad exemption for implementation of collective bargaining agreements and administration of multiemployer bargaining groups. The allocation of maritime labor on a daily basis in the rotational system, and the availability or shortage of labor in general, are labor-related issues that are inexorably linked with the collective bargaining agreement and its day-to-day implementation and administration.

SDUPD lastly contends that the action of PMA demonstrates that it has invaded the prohibitions of the anti-trust laws more than necessary and has breached its duty concerning the intent of anti-trust laws. However, these conclusionary allegations are not sufficient to state a claim under the Shipping Acts.

. . There are no facts alleged in support of the conclusions, and we are required to accept only well pleaded facts as true, *L'Orange v. Medical Protective Co.*, 394 F.2d 57 (6th Cir.), not the legal conclusions that may be alleged or that may be drawn from the pleaded facts. *Sexton v. Barry*, 233 F.2d 220 (6th Cir.) cert. denied, 352 U.S. 870, 77 S.Ct. 94. 1 L.Ed.2d 76; *Ryan v. Scoggin*, 245 F.2d 54 (10th Cir.).

Blackburn v. Fisk University, 443 F.2d 121 (1971).

In the circumstances, the motion of PMA will be granted and the complaint will be dismissed with prejudice.

IT IS ORDERED, that the motion of PMA is granted and that the complaint is dismissed with prejudice.


Frederick M. Dolan, Jr.
Administrative Law Judge