Getting the story
A primer for the mainstream media
on the West Coast ports dispute.

BY THEODORE PRINCE

It is rare for the freight transportation industry to get extensive coverage in the general media — unless there is a disaster or accident. The recent events on the West Coast ports are therefore noteworthy. Front-page coverage and leads on the evening news were common. Unfortunately, although the news stories were plentiful, they were not told well. In looking for the 10-second sound bite (or the clear article lead), reporters often missed — or misunderstood — key issues. (i.e. CNN kept referring to a contract between the union and “shippers” — although there is no such contract.)

Since this issue is far from over, it seems a good idea to clarify some of the major issues.

Who is involved? This West Coast dock labor dispute involves a multiple-employee and multiple-employer contract. These were very common a generation ago, but they are seen less frequently today, as employers and unions have negotiated tailored agreements reflecting the nuances of specific industries and local conditions (The upcoming national negotiation between the Teamsters and Trucking Management Inc. is another multiple-employer, multiple-employee contract).

The employees, all members of the International Longshore and Warehouse Union, are in the union’s Longshore Division, which is made up of approximately 30 locals, and divided among longshore workers, clerks and foremen. There are 29 ports on the West Coast, but the larger locals are in Los Angeles-Long Beach, San Francisco-Oakland, Seattle-Tacoma and Portland.

The Pacific Maritime Association, whose members include steamship lines, terminal operators and stevedores, represents the employers. PMA by-laws specify that any entity carrying waterborne cargo to or from the Pacific Coast — or employing longshore labor — is eligible for PMA membership.

Unlike most contracts, ILWU workers are not employees of PMA member companies, but rather, they are assigned by the union every day, based on labor requirements submitted by the PMA members and dispatched from the hiring halls. This is an inefficient process that often delays the start of work — but it guarantees that labor’s loyalty is to the union— and not to the employer.

Is the dispute the same in all locations? Although the contract covers the entire coast, the San Pedro ports of Los Angeles and Long Beach have become the focal point of the dispute. Although U.S. imports through the West Coast have remained fairly steady, at 55 percent over the past 20 years, San Pedro now makes up almost 80 percent of imports entering over the West Coast. This is not likely to change.

What about the Alameda Corridor and on-dock rail? Port terminals built to accommodate post-Panamax vessels (and their on-dock intermodal volume) have
guaranteed leases of 25 years. Economists would label this situation a barrier to exit and characteristic of a less than free market. San Pedro essentially has been granted a monopoly license.

Infrastructure projects such as the Alameda Corridor, have only added to the union’s leverage. The project was financed and built without any operating plan outlining the guidelines for managing on-dock intermodal. Hence, 20 longshore workers may do the same amount of work as four Chicago Teamsters. The federal government now has a wiser position: it is demanding that airlines seeking assistance come prepared with operating plans and labor concessions, to receive consideration for financial assistance.

**Did management contribute to this situation?** Absolutely. Horror stories of overpaid labor are often true. But union members are simply receiving payment allowed under the contract and by local past practices. In order to ensure the availability of skilled labor at critical times, terminals have been bidding against each other for “steadies.” In addition, the PMA has not always been a united front. It has not been uncommon for board and committee members to leak confidential information, in an attempt to win favor with the union.

But the PMA board now comprises industry leaders — many of whom have overall profit-and-loss responsibility for North America. There is some recognition that if change is not achieved in this contract, they may not be around to negotiate the next one.

**Why was a lockout necessary?** Although the contract expired July 1, both sides had agreed to short-term extensions while negotiations continued. However, at the end of September, the ILWU stopped accepting these stopgap extensions, and productivity (when measured against past levels) greatly decreased. In the past, the ILWU used “rolling actions” to get individual lines, or terminals, to capitulate. This time — for the first time — PMA unity held. A weekend hiatus was followed by resumed work at even slower rates — accompanied by other tactics (such as misreporting container locations and status). Without a contract, the PMA decided to stop ordering expensive labor that wasn’t working.

**Why is technology such an important issue?** Port volume growth to date has been accommodated by building larger facilities. But the amount of land available for future expansion will be consumed in the next five to 10 years — and traffic is expected to double in the next 20 years.

The only way to handle more volume is to be more productive. Technology can help do this, but it is expensive and it requires a sufficient business case to justify the expenditure. Ultimately, the hard savings that pay for these improvements imply less labor per unit. In a steady-state volume this means jobs are cut. In a growing volume case, this can mean no cuts — but no additional jobs — as more work is handled by the same amount of labor.

West Coast ports handle about 2,000 to 5,000 TEUs per acre, per year. Elsewhere, technology has successfully raised productivity. Overseas, many ports manage 15,000 to 30,000 TEUs per acre, per year, while rail intermodal terminals in this country can handle 8,000 to 18,000 TEUs per acre per year.

Deploying technology would primarily affect the clerks. Terminals showing major productivity improvements generally follow a path whereby those who do the work see overall goals and report their own work. Sophisticated systems automatically direct operations. All operators routinely have sufficient information to efficiently manage themselves, while exceptions are easy to identify — and address. In today’s environment, up to 75 percent of work assigned to marine clerks is unnecessary, as it involves re-keying existing computer information. Such busywork could easily be eliminated.

**Won’t that hurt the marine clerks?** Not really. The PMA has offered to guarantee all existing marine clerks jobs. Once they retire, the job would be eliminated. Current clerks would no longer be able to pass down their jobs as legacies to other family members.

**What about the clerks in the line’s offices?** Two classifications of clerks exist: marine
clerks (previously discussed) and steamship line office clerks (not located in marine terminals) who are members of the Office Clerical Unit (OCU). They are separate from marine clerks. As a rule, OCU have different contracts and are paid at a lower rate than the marine clerks. No provision exists today for marine clerks to take OCU jobs.

**What about the other workers?** PMA proposals are designed to motivate union members to aspire to be crane and yard workers. In fact, they are seeking to reintroduce skill pay differentials, so that more critical jobs earn increased pay. This provision was eliminated at the union’s request several contracts ago so that all workers would receive the same base rate.

**Are the clerks that powerful?** Even though marine clerks represent only 15 percent of union members, the answer would appear so. ILWU President Jim Spinoza comes from clerical Local 63 in Los Angeles. As negotiating leader, he can effectively stop any agreement from reaching a vote. Furthermore, while the contract must be approved by majority vote, the rejection by a single local causes any proposed contract to fail.

**Is the union a monolithic force?** Yes and no. The coast-wide agreement has proven to be a powerful tool in preventing lines from confronting the union on vulnerable points. But that is no guarantee for the future. Union members outside of California ports may no longer tolerate rich contracts — that lack local work. General longshore labor may no longer allow clerks to prosper at their expense.

The organized labor reaction to the ILWU’s plight, beyond the ritual unity rhetoric, will be interesting. It is difficult to gauge whether Machinists and Teamsters will support a union that seeks to take their work in jurisdictional battle, or, if Auto Workers will tolerate plant shutdowns and furloughs from inventory interruptions.

**Is technology the only sticking point?** No. Other critical issues are blocking compromise here. One is the manner in which labor is assigned to the terminals. Current practice calls for labor to be assigned manually from a series of separate hiring halls. Once dispatched, labor frequently arrives up to an hour late — and not fully qualified for their assigned task.

Local arbitration resolves disputes that can shut down operations. Local arbitration is “equally” divided geographically, but the union chooses the arbitrator in San Pedro and Seattle-Tacoma. This makes critical the position taken by the Pacific Coast Longshore Arbitrator. The incumbent, 94-year-old Sam Kagel, has held that job since 1948. Kagel has the respect of both sides of the dispute, but they have not agreed upon an acceptable replacement for him.

**What is the West Coast Waterfront Coalition?** The WCWC is a group of concerned business interests who recognize the economic importance of West Coast ports and Far East trade. Their most visible members are mass retail importers. Shipping lines feel pressure to ensure uninterrupted operations — especially during peak season. But the union accuses them of soliciting government intervention — undermining a worker’s right to strike for better conditions.

Mass retailers have an additional enemy this year — the calendar. The port interruption comes as many items (especially clothing) were arriving for coordinated media campaigns. The newspaper inserts are now printed — and still the goods have not arrived. Because Thanksgiving (the traditional kickoff of the holiday shopping season) is six days later this year than last, there are six fewer shopping days — leaving less room for delivery delay.

**What did Taft-Hartley do?** President Bush obtained a temporary restraining order that was made permanent, ordering both sides back to work for 80 days, under a cooling-off period. While the order requires work at a “normal and reasonable rate of speed,” there is no precedent for the current congestion — and strict compliance with safety rules must still prevail.

**With ports working, is the problem finished?** Not by a long shot. On Dec. 26, the cooling-off period expires and either side is free to take action. Taft-Hartley injunctions...
have been invoked 36 times since its passage in 1947 and strikes resumed in 25 of those cases (11 of the 36 involved waterfront labor — and strikes resumed in eight of those cases).

**Can the government end this strike?** Unlike the Railway Labor Act, Congress cannot impose a settlement established by a presidential emergency board. But there could be some interesting activity in December. After 60 days, the PMA must submit a “last, best and final” offer that will bypass the negotiating committee and be voted upon, by secret ballot, by the entire union membership. (This occurs under the jurisdiction of the National Labor Relations Board.)

Since Taft-Hartley does not specifically address voting rules, a disputed outcome could arise if a simple majority approves the contract — even though one or more local rejects it (It is unclear whether the act takes precedence over union rules which contradict it). If the PMA proposal is adopted then the contract is settled. Otherwise, the injunction must be dissolved and the president must submit to Congress a report of the proceedings, along with “such recommendations as he may see fit to make for consideration and appropriate action.” While the president may recommend legislation — and Congress may be empowered to act, such unprecedented action is hard to envision given current political realities.

**What if we are at war?** If our nation is in a shooting war, it is possible that Congress will legislate a solution. But it is also likely that the ILWU would agree to work on military cargo, to avoid losing in the court of public opinion.

**Why is force majeure an issue?** Force majeure is a bill of lading exception clause that relieves the carrier from the contracted terms of transport, traditionally for “acts of god” and other unforeseen events. Because vessel rotations have been seriously impacted, lines may discharge cargo at unintended ports — and require the customer to move it to destination at their own expense. Because of the inevitable conflicting claims, there most likely will be litigation to determine whether the lines are entitled to invoke this clause. In addition, truckers and customers will be seeking relief from demurrage and per diem charges incurred during the lockout and subsequent congestion.

**How is the Jones Act involved?** The Jones Act forbids foreign-flagged vessels handling transport between U.S. ports. Because of operational disruption, many lines are seeking a waiver to move containers between various West Coast ports — but they are prohibited from doing so without a U.S. Customs’ waiver. U.S.-flag carriers can be expected to oppose such a waiver so that they may handle this very profitable (monopoly) business.

The issues here are not only complicated, but they critically affect our nation’s economy. Let’s hope that future coverage in the mainstream media relate the story accurately, and that our industry can resolve issues still in dispute.

*Theodore Prince can be reached by e-mail at* ted@oax.com

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