A bold voice for transportation workers

WORKERS' RIGHTS AND NATIONAL SECURITY: FAIRNESS FOR MILITARY SEALIFT COMMAND EMPLOYEES

For numerous unrepresented civilian mariners employed by the Military Sealift Command (MSC) that are seeking representation, including over 60 Operations Officers, the agency is using the pretense of national security concerns to undermine their right to join a union and collectively bargain. Specifically, the MSC is seeking to expand the application of an executive order and related federal employee labor law (5 U.S.C. 7112 (b)(6)) pertaining to security to prevent their workers from being able to choose union representation while simultaneously putting existing mariners' collective bargaining rights at risk. We categorically reject these baseless and dangerous attempts to undermine workers' rights and urge the MSC to preserve basic collective bargaining rights.

The basis for the MSC's position is a 1979 Executive Order – EO 12171 – that excludes workers engaged in national security related occupations from union representation rights otherwise provided for under federal law. The directive claims that collective bargaining is supposedly "inconsistent" with national security. Recently, the agency invoked the EO in response to Operations Officers and MSC communication workers seeking the representation of the Masters Mates and Pilots union (MM&P). In denying the workers' petition, the agency claimed the employees' work focused "primarily" on "the operation, repair, and/or maintenance" of machines that encrypt security sensitive data. Under EO 12171, the MSC claims, employees engaged in this type of work are exempt from the protections of federal labor law.

We reject the premise that the EO covers any of these workers. For starters, the Operations Officers are performing jobs similar to work performed by U.S. Coast Guard (USCG) licensed and unlicensed civil service merchant mariners already represented by maritime labor unions. In addition, the communication workers' primary job is to ensure satellite communications enable the safe navigation of ships, not to "operate, repair or maintain" encrypted equipment. Any work related to encryption is limited to the replacement of machine batteries, which does not make them security sensitive employees. In fact, any maintenance and repair work on these machines is contracted out to the manufacturer who actually has access to the security sensitive functions to which the EO covers. By seeking to cover employees in the EO whose only relationship to intelligence functions is to replace batteries on secure equipment they cannot access, suggests the agency is deliberately expanding the scope of the order to prohibit collective bargaining.

At a more fundamental level, we reject the notion at the core of this argument – namely, that the goals of national security are incompatible with collective bargaining and union representation. In fact, TTD represents thousands of employees who have access to job-related security sensitive information and still benefit from union representation, including those that responded with bravery to the 9/11 attacks. For this reason, the National Labor Relations Board believes "with

regard to national security and defense, employee "[s]elf-organization for collective bargaining is not incompatible with efficient and faithful performance of duty." We agree and ask that the MSC apply EO 12171 and related federal statutes narrowly so as to not prevent workers from organizing unions.

The second aspect of the application of this EO is potentially more disturbing and expansive in scope. With advancements in the technology, the MSC is creating computer-encrypted messages that can only be deciphered using a specific smart card – the Common Access Card (CAC) – and reader. The MSC is requiring both civil service and private sector USCG licensed and unlicensed mariners to possess this new CAC card as condition of employment.

Consequently, there is fear that the MSC will use this card as a pretext to expand its already broad interpretation of EO 12171. This would not only prevent the public sector employees of the MSC from union representation but also impact the private, contract mariners with existing collective bargaining agreements. The effect on the entire merchant marine workforce would be unprecedented and chilling. At no point in its history has the MSC been excluded from the Federal Labor Relations Act or its civilian and contracted mariners been precluded from union representation. By using this as a pretext to expand the EO, the MSC would undo years of standing labor law and put existing union contracts at risk.

MSC's mission, as well as the merchant mariners that have supported it for decades, is to aid in the delivery of cargo, not to perform "intelligence, counterintelligence, investigative, or national security work" excluded by statute or executive order. We ask that agency drop its opposition to existing union campaigns and that 5 U.S.C. 7112 (b)(6) and EO 12171 be clarified to ensure they do not apply to individuals engaged in transportation or sealift functions, including private sector and public sector civil service mariners.

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