A bold voice for transportation workers

July 11, 2016

Mr. Russell Adise
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

RE: 21st Century U.S. Port Competitiveness Initiative
Notice of Proposed Rulemaking
Docket No: 160511417–6417–01
RIN 0690–XC004

Dear Mr. Adise,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), we are pleased to comment on the U.S. Department of Commerce's 21st Century U.S. Port Competitiveness Initiative and hope to better inform the agency's report on best practices at seaports. By way of background, TTD consists of 32 affiliated unions in the transportation sector, including longshore, maritime and rail unions employed at or otherwise directly affected by U.S. ports. We therefore have a vested interest in this rulemaking.

We appreciate the Department's continued focus on the port sector, and believe that federal engagement and funding is critical to ensuring our ports can continue to act as a gateway of international trade and an incubator of job growth and economic development. Given the growing infrastructure needs and logistical problems facing our ports, sustained and coordinated planning and funding will be necessary for the future operational success and capacity growth of seaports. This is especially timely now that the Panama Canal expansion is complete and commercial operation of shipping through the canal began in June of this year.

As part of this process, it is imperative that the Department recognize the dangers of and ultimately reject the coordinated requests from some members of the shipping, business and conservative political communities to change labor law, inappropriately measure port worker productivity, or otherwise seek to impede the collective bargaining rights of the nation's port workers. Using the pretext of the contract dispute between the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA), the business community and its allies have engaged in a sustained effort to undermine port worker collective bargaining rights. This campaign includes the introduction of a series of interrelated pieces of legislation that seek to measure worker productivity and use the data as a means to either compel the president of the United States to enjoin a workplace dispute, or otherwise support, more radical anti-worker labor law reforms under congressional consideration.

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer

This concerted effort spilled over into congressional deliberation of the Fixing America's Surface Transportation (FAST) Act. The Senate version of the bill originally included a series of prescriptive measures of worker productivity that would be measured at monthly intervals and submitted to Congress in monthly reports a year prior to and throughout the duration of any maritime or longshore union contract negotiation. After considerable deliberation, Congress wisely removed both the explicit ties to union contract negotiations as well as the whimsical measures of worker performance. The final law includes a simple and appropriate requirement that the Bureau of Transportation Statistics (BTS) provide an annual report to Congress on throughput at the nation's top 25 ports with input provided by a committee of stakeholders – the Port Performance Working Group – that includes labor union participation. This compromise expresses the clear intent of Congress to not require or compel the executive branch to interfere with, or otherwise change, the existing collective bargaining relationship between port unions and their management partners. We believe this balance regarding metrics should also be reflected in the DOC's report, and we would also encourage the Department to collaborate with BTS to ensure executive branch consensus on these issues.

It is also important to note how deeply – and intentionally – misleading port metrics are as a statistical tool. The core problems responsible for port congestion stem from rising tonnage and larger ships, as the economy recovers and demand for both imports and exports increases. Combine this with the lack of available port space to effectively organize shipments, mounting port dredging needs, overwhelmed intermodal capacity, and the absence of available chassis and trucks, and you will find the true culprits of slower supply chain activity. These are systemic problems that predate and postdate any labor-management contract negotiations. To suggest that worker productivity exists in a vacuum outside of these macro problems completely ignores the long-standing issues that beset our ports. This poorly veiled campaign is about isolating specific workplace activities and job functions in our ports, measuring their frequency, and subsequently holding such metrics as the variable responsible for port delays. This would seek to falsely make the employees, rather than the true drivers of port congestion, the culprit for congestion and help spur action against them and their unions. We believe worker productivity measures are inaccurate, inappropriate and misleading, and they should not be included in the report.

Additionally, we believe the Department should reject any port-specific changes to labor law that are designed to limit or weaken the collective bargaining rights of this workforce. We have already seen attempts to transform the president's emergency authority under the Taft-Hartley Act, reserved only for disputes that threaten the nation's safety and health, into a routine political tool to trigger more frequent and arbitrary injunctions. These reforms include devolving the authority over Taft-Hartley injunctions to port state governors, making an undefined workplace "slowdown" a union-side unfair labor practice (ULP), and transferring the president's authority over Boards of Inquiry to arbitrary triggers. The end goal is obvious: shift the power to management and eventually rollback decades-long bargaining rights in our ports.

It has also been suggested that longshore unions be moved from the NLRA to the Railway Labor Act (RLA). This blatant form of venue shopping is meant to allow employers to pick and choose their temporary collective bargaining preference in order to achieve substantial leverage to the detriment of workers. Putting aside the obvious power grab and the dangerous precedent, moving longshore workers and their unions to the RLA would create uncertainty in the broad spectrum of labor relations: there would be real questions of how current representation issues would be resolved, the status and interpretation of settled contracts, and the impact on bargaining practices that cover workers in multi-state master contracts.

These reforms create tremendous public policy problems and set an extremely dangerous precedent for the management of labor relations. For starters, Taft-Hartley was written, as was the NLRA, with the express intention of creating a federal framework for labor disputes. For this reason, the president of the United States is the only party able to enjoin a strike in multiple states and form a board of inquiry. Accordingly, the Federal Mediation and Conciliation Services (FMCS), an independent agency of the federal government that provides mediation services, works in close contact with the White House to monitor disputes to determine when and how best to intervene in disputes. This enables the president to act with full knowledge and act at the appropriate time, an opportunity that would not be available to other proposed parties.

Additionally, we view both changes to the NLRA and worker reclassification under different labor schemes as setting an extremely dangerous precedent for labor policy. By creating separate categories for port workers, distinct from other employee subject to the NLRA, is not only unfair but will also serve as a future model to undermine other workers' rights. Furthermore, moving longshoremen to the RLA would set a similar precedent for letting industries, rather than sound and historical policy rationale, dictate the treatment and status of employees.

Given that port labor is not the cause of long-standing port congestion issues, it is important that the Department focus instead on the most important challenge facing ports: how our infrastructure can respond to growing shipping tonnage and increased ship size. Over the last 20 years, total tonnage has doubled, and even during this – at times – uneven recovery container traffic has increased from 37 million TEU in 2009 to 46.5 million TEU in 2014, as both imports and exports have increased. Meanwhile, a new generation of vessels, built for the expanded Panama Canal, are considerably larger and can carry over twice the cargo of previous ships. Despite serious upgrades by ports, our infrastructure – both shoreside and landside – will not be capable of meeting the rising tide of demand, and further expenditure – including federal aid – will be necessary.

On the shoreside, federal funding for dredging has slowed and even decreased, as the Harbor Maintenance Trust Fund (HMTF) spends out considerably less money than it takes in. With the Panama Canal expansion facilitating – and inducing the growth of – larger ships, we believe more money must be spent for port dredging maintenance and deepening needs. This is particularly true for East and Gulf Coast ports, many of which are not fully capable of meeting neo-Panamax ships because of shallower harbors and navigation channels. Given these challenges, and the clear increase in demand for shipping, it is illogical to leave a large portion of the HMTF unspent. For example, in 2012, the Trust Fund only disbursed $758 million for projects despite collecting almost $1.5 billion in revenues. We believe it is long-passed due that the entire Harbor Maintenance Trust Fund be fully spent on its intended purposes.

More broadly, we believe there should be a greater emphasis on port investment, including direct federal support for freight. The FAST Act provides a good template from which to begin. The bill provides, for the first time, both discretionary and formula grant programs for freight, totaling $1.13 billion over 5 years. Building on this approach, we believe a new, dedicated freight trust fund with its own sustainable funding source should be given consideration to more adequately meet our multimodal freight needs.

We do, however, request considerable caution regarding the use of port automated technology in relation to port investment. It is deeply misleading to put automation forward as a solution to the systemic problems our ports face. The difficulties posed by increased demand and the advent of larger ships cannot be solved by automation. There are many forces conspiring to slow down ports – from the disorganization of containers to the chokepoints in moving goods to market – that all the automation in the world would not even begin to solve our problems. Instead of wasting time micro-managing port operations, we need to think more globally and tackle the larger problems and forces that are choking off the efficiency of the supply chain. The introduction of automated port technology is better left to deliberations between management and employees, as has long been the case.

We appreciate the Department's commitment to ensuring that our nation's ports continue to drive economic development and job growth. As you move forward with the implementation of the 21st Century U.S. Port Competitiveness Initiative, we caution the Department against adopting misplaced policies that unfairly blame workers for port congestion and that seek to undermine longstanding labor law and the collective bargaining process. We believe the agency's energy should be focused on the true, systemic problems related to port congestion and how coordinated federal policy and funding to can help alleviate them.

We thank you for the opportunity to comment on this initiative, and we look forward to working with the Department as it is developed.

Sincerely,

Edward Wytkind
President