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The East Coast and Gulf International Longshoremen's Association Port Strike: An Update, and What You Can Expect

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Barring resolution on disputed container royalty contract terms or intervention by President Obama, a strike by the International Longshoremen's Association (ILA), which will impact all ports from Maine to Texas (Eastern and Gulf Ports), is scheduled to begin at 12:01 a.m., Dec. 30, 2012. If the strike occurs, an already weakened U.S. economy could suffer extensive economic damage, and manufacturers, retailers and others who use ports to import and export goods would experience shipping delays and sharply rising shipping costs.

On Dec. 26, the United States Maritime Alliance (USMX), the organization representing ocean carriers, and the ILA agreed to continue talks to reach a contract deal, which could prevent this end-of-year port strike. The move was called for by the Federal Mediation and Conciliation Service. While some are cautiously optimistic, the details of that Dec. 26 meeting have not been publicly released.

These new talks follow a breakdown in talks on Dec. 18 over the issue of container royalties. At that point, the ILA issued preparations for a Dec. 30 strike. Earlier in the month, the ILA had rejected a short extension of the Master Contract proposed by the USMX. Notwithstanding that the parties are back at the table, the situation still seems precarious. Importers, exporters and other industry segments dependent on ports anxiously await developments.

If all else fails, the Obama administration could impose a Taft-Hartley injunction, which would allow for a "cooling off" period and another 80 days of operations. Despite the administration's pro-labor record, it is difficult to predict whether President Obama will intervene. The looming “fiscal cliff” may spur the administration to invoke the injunction in order to avoid a strike of these proportions, which could wreak havoc on manufacturers, retailers, farmers and others who depend on the ports to move their supplies and products in and out of the U.S. and further impair recovery efforts in the New York/New Jersey area following Hurricane Sandy.

What This Means To You

If the strike begins as anticipated on Dec. 30, companies should prepare for these consequences and consider these options:

Expect long delays through West Coast, Mexican and Canadian ports.

On the West Coast, ocean carriers have announced congestion surcharges that will be applied on a per-container basis. These surcharges range in the vicinity of $800 per 20-foot container, $1,000 per standard 40-footer, $1,125 per 40-foot-high cube, and $1,266 per 45-foot container.

Diversion options through non-U.S. ports (Canadian ports for example) are also evoking similar congestion surcharges. Viable diversion options need to be explored with your logistics team.

If you are shipping pursuant to a service contract, carefully check its terms to insure that surcharges of this type are permissible.

Non-vessel Operating Common Carriers (NVOCCs) that publish rates and charges are required to provide 30 days’ notice on any new surcharges or increases.

NVOCCs that ship pursuant to Negotiated Rate Arrangements (NRAs) are NOT required to provide 30 days’ notice on any new surcharges or increases, but must renew existing NRAs with the new charges. These new charges cannot be imposed on cargo already in the control of the NVOCC, but can be imposed prospectively if the shipper agrees. If the shipper does not agree, then the NVOCC can opt out of future shipments under the prior NRA terms.

Ask this question: Is it now commercially feasible for your cargo to move by air?

Contact Info

If you have any questions concerning these matters, please contact your Husch Blackwell attorney or Carlos Rodriguez at 202.378.2365.

