MEDIA MENTIONS

Benesch's Jonathan Todd Discusses Ongoing Port Strike on Bloomberg Law Podcast

OCTOBER 3, 2024

Benesch Transportation & Logistics Practice Group Vice-Chair Jonathan Todd sat down this week with Bloomberg Law Podcast host June Grasso to discuss the ongoing dockworker strike at ports along the East Coast and Gulf. Listen here (Jonathan's interview begins just past the 22-minute mark) and view the transcript below:

***Update 10/4/2024:** A tentative agreement between U.S. dock workers and port operators has suspended until January 15 the significant three-day strike that had paralyzed shipping along the U.S. East Coast and Gulf Coast. The deal, which includes a proposed 62% wage increase over six years, according to Reuters, marks the resolution of the largest port work stoppage in nearly 50 years.

June Grasso: Union dock workers at ports from Maine to Texas are walking picket lines in a strike that could reignite inflation and cause shortages of goods if it goes on more than a few weeks. The strike, affecting 36 ports, is the first by the International Longshoremen's Association (ILA) since 1977. It's not only about wages, but about the workers' demands that automation not be added to the docks. Blaine Erlich heads the New Orleans chapter of the ILA.

"The truth is, robots do not pay taxes, and they do not spend money in their community," Erlich said.

June Grasso: Joining me is Jonathan Todd, Vice Chair of the Transportation & Logistics Practice group at Benesh Law. Tell us about the reasons behind the strike.

Jonathan Todd: Port disputes happen, and we hear of these every few years across the country. Usually, it is a pay issue. What's unique about this dispute is the ILA is challenging not only the pay that they're receiving under their contracts, but also the use of automation at the ports. And it's an interesting character, because this introduces the idea that protecting traditional labor itself is valuable. And this is reminiscent of the actors' strikes of a few years ago. I think it's fascinating because we'll probably see more of this. But that's the challenge that I think is going to be difficult, that this isn't the traditional issue of, do we pay more, and if so, how much? This is an issue of exactly what do we want from labor at our ports.

June Grasso: The President, Harold Daggett, said we want absolute, airtight language that there will be no automation or semi-automation. Is that trying to keep the docks from modern innovations that would move things faster?

Jonathan Todd: It's interesting, right? Because the world is changing, and there has been automation for a great period of time. But today, the capabilities that ports could have to automate what was traditionally done by labor, and by more labor than could otherwise have, which of course

has cost, is greater today than it was. And we'll only see that grow. And so, it really is almost an existential question of the degree to which we value labor in this country and traditional jobs.

June Grasso: As far as the pay raise, they offered them something like 50% raises over the life of the contract, but the Union wants 77%.

Jonathan Todd: That's right. I think it is more of a question of what the Union would be comfortable with in terms of the financial side of it. But, the real challenge that I see is the question of the degree to which we can employ human and traditional jobs. That's, I think, more fascinating than the question of whether we land at 50% or 77%, which are some of the numbers on the table. But it all has a net effect of driving the cost of the service and ultimately the cost to land product in the US or export product from the US. This really is essentially a precipice of what we intend to see in terms of human labor at our ports on the East Coast and the Gulf.

June Grasso: They did settle a dockworker strike on the West Coast.

Jonathan Todd: One thing I will say is, the West Coast tensions of late were interesting in the sense that the unions took a different strategy. So, the IWLA introduced a rolling strike on a port-to-port basis, which was resolved relatively quickly, without a great deal of interruption. The reason that this approach is very serious for the American consumer is because we're talking about a strike en masse across 36 major ports on the East Coast and the Gulf and, of course, that accounts for around 50% of import and export traffic. So, the strategy that's being deployed here is very different than has been deployed in recent memory on the West Coast.

June Grasso: Yeah, I was going to say that it seems like a more traditional strike than the West Coast and than the UAW employed when they went on strike. Let's talk about, in theory, the authority of the President to stop the strike.

Jonathan Todd: So, the President does have the power under the Taft-Hartley Act to essentially enjoin the strike and require a cooling-off period when labor would resume, and the parties would come to the table and discuss the path forward to resolve the dispute. This president has, on multiple occasions, said that he does not intend to exercise that power, which leads to the really big question for domestic supply chains, which is, how long will this last? When clients ask me that and have asked me that in recent years, my answer is typically to expect maybe one or two weeks. And the reason I say that is the last very major strike that had implications such as this was in 2002 on the West Coast. And President George W. Bush did exercise Taft-Hartley, and the strike was resolved in 11 days. In the absence of that kind of action, however, it's essentially anyone's guess as to how long this strike may last.

June Grasso: And the president could, if he wanted, get a court order for a cooling-off period.

Jonathan Todd: Right. So, there would be a federal action, and there would be an injunction ending the strike, and then the parties would have 80 days as a cooling-off period to negotiate a resolution.

June Grasso: So, there are a lot of different factors here. Does it seem like the Union has an advantage in a way because the supply chain is under pressure in the aftermath of the hurricane, and it's peak shipping season for holiday goods, and it's a presidential election coming up soon, so there might be political factors as well.

Jonathan Todd: Everything you said is exactly right. This is a perfect storm of events. We have the presidential race, which, you know, probably to some degree influences the executive branch logic on how to handle this issue. We also have peak season coming, particularly for retailers. This is exactly the time that retailers are looking to build up inventories so that the stores have everything they need to sell through the holiday season. Much of that has occurred. Some of that has actually been front-loaded for a number of factors. One of those is that the Biden administration rolled out additional duties on China goods on September 27. And so, all these things are coming together that led to additional inflows in the West Coast, but it's very, very challenging. The idea that we no longer have capacity as a country to move essentially 50% of the goods that we would otherwise move into and out of the country is economically challenging. And it's important for people to bear in mind also that this isn't just an import problem. This isn't just ensuring that Americans have all of the goods that they would like to buy now and through the holiday season. It's also an export problem. There are high export volumes at these ports. And so, you have a number of industries that are impacted, particularly agriculture and the auto industry, where it's now an increased challenge to sell domestically produced or domestically manufactured goods around the world due to the strike.

June Grasso: How automated are foreign ports?

Jonathan Todd: So, the degree of automation can be very surprising. The idea that you need an individual, for example, in equipment at the ports to visually inspect what they're doing and ensure the containers are offloaded and loaded correctly, with the technology we have today, that's not exactly necessary. There are foreign ports, for example, that have individuals that essentially work remotely, meaning that they're not at the port on the ground, managing equipment to offload containers and load containers onto vessels. So, the idea is that you could dramatically reduce headcounts and dramatically increase efficiencies with technology. It's happening right now. And you know, one way to think about it is that it's in many ways analogous to remote work generally. There are things that technology can do where we no longer need individuals or, what you hear more frequently, is that the technology can assist an individual in being more productive, maybe moving more containers, maybe not physically being in a dangerous position as they're doing their work at the port. And those things, you can understand in abstraction and elsewhere may be attractive, which is why here, we as a nation are now confronted with the question of exactly what do we want port labor to do, and to what degree do we feel that that is valuable, because you can do a lot of the work with less of the labor than you otherwise would.

June Grasso: What are the estimates for how long before a strike affects the supply chain?

Jonathan Todd: So, there is disruption right now. I have clients who are receiving force majeure notices from the steamship lines, essentially saying that the anticipated delivery times for their containers and even the cost of receiving the containers cannot be observed because of course, many vessels can no longer call upon the ports that they otherwise would. Those clients who are moving cargoes into and out of the United States and are confronting this right now have a number of tools in the toolbox and this is really a time when the logistics industry can do what it does best. Some of those tools we saw during COVID and during other disruptions, like the Baltimore Bridge collapse, for example. I'm aware of some industries that are using air cargo more than they otherwise would. You know, you could move a number of goods, especially lighter goods, smaller goods, by air cargo. It's much more expensive, but it is reliable in an environment like this. I'm also aware of some domestic US industries that are looking at options beyond just diverting vessels to

the West Coast, because this is costly and time-consuming, as well. I know some folks are exploring perhaps landing cargoes in Canada or Mexico and then moving those containers cross-border by motor carrier or by rail. There's really not a good answer right now in the sense that all of that is difficult and time-consuming and costly, and expectations for when you will receive inventories or have, let's say, inputs for your own domestic manufacturing, those expectations very well may not be met. But I view it as a short-term and long-term problem, right? So, there are inbound and outbound movements, right now that are absolutely interrupted. Some client supply chains got in front of this by moving cargoes to the West Coast instead, but there's absolutely disruption today.

June Grasso: Thanks for being on the show. That's Jonathan Todd of Benesh Law and that's it for this edition of the Bloomberg Law Podcast. Remember, you can always get the latest legal news by subscribing and listening to the show on Apple Podcast, Spotify and at bloomberg.com/podcast/law. I'm June Grasso, and this is Bloomberg.