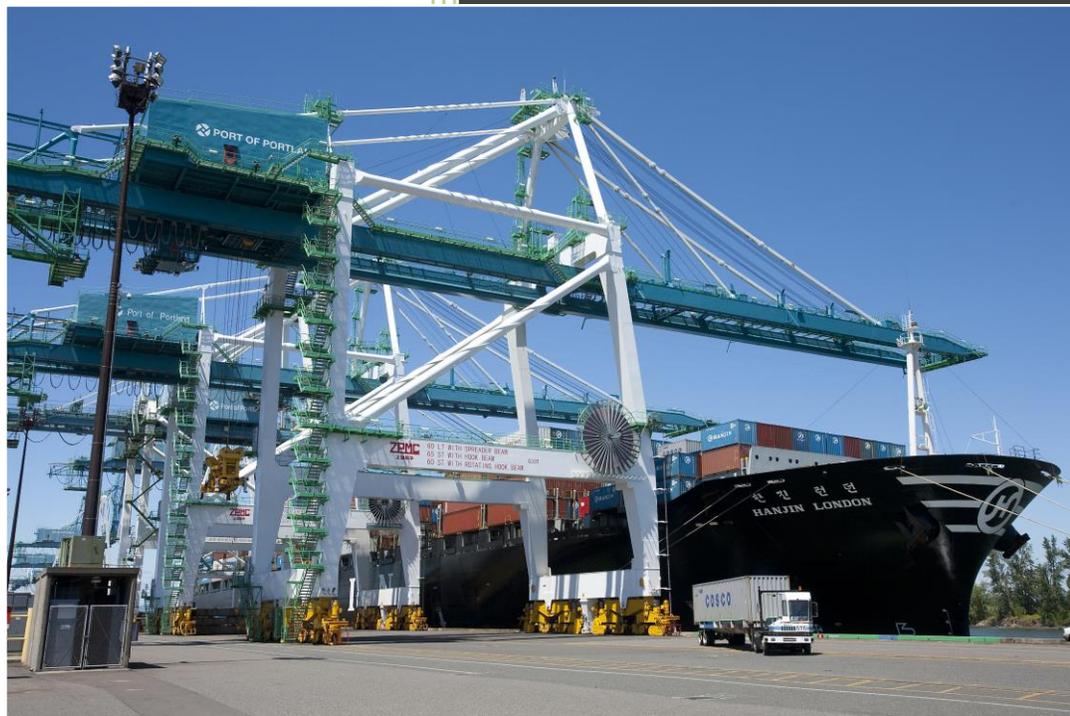


2015

A Legislative Solution to Limit Labor Disruptions at West Coast Ports



ICTSI Oregon, Inc.

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West Coast Ports Are Critical to Our Nation's Economy

The 29 West Coast ports at which terminal operators are represented by the Pacific Maritime Association (PMA) are a critical economic gateway of regional, national and international trade. Together, activity at these ports accounts for 10-15% of the United States annual GDP, 25% of our nation's international trade and \$1 trillion in economic activity. When West Coast ports operate at normal capacity, they handle roughly 65% of all U.S. container imports, compared to just 35% for East Coast ports. As a result, ensuring West Coast ports remain vibrant and fully-functioning is vitally important to local and regional economies, as well as our national economy.

The Current Labor System at West Coast Ports Remains Broken and Must Be Fixed

The International Longshore and Warehouse Union (ILWU) and its approximately 14,000 members have an exclusive contract with the PMA to load and unload cargo vessels at all 29 West Coast ports. At the end of each contract period, the parties commence bargaining towards a successor contract.

As the sole union representing employees responsible for loading and unloading cargo vessels on the West Coast, the ILWU holds tremendous power over our nation's port system and can effectively bring the economy to a standstill. Since the 1930s, the ILWU has used creative gimmicks to influence contract negotiations. During the 2002 negotiations, ILWU work delays precipitated a 10-day lockout at all 29 West Coast ports, costing the U.S. economy an estimated \$15.6 billion. The shutdown threatened such economic harm that President Bush took the extreme step of invoking the Taft-Hartley Act to end it.

When the latest PMA-ILWU contract expired in July 2014, the ILWU commenced a campaign of reduced productivity that culminated during the 2014 Holiday Season. At its peak during the last contract negotiations, ILWU obstruction cost the U.S. economy an estimated \$200-\$400 million per day; U.S. agriculture exports fell by 50%; West Coast imports fell 33%, and total U.S. imports fell nearly 17%. Economists estimate that the slowdown subtracted a full percentage point from our nation's total economic output in the 4th Quarter of 2014.

With every contract negotiation, the U.S. economy is effectively held hostage. Prior to the tentative contract agreement reached in February, economists feared a long-term shutdown was imminent and a dark cloud of uncertainty held sway over the economy. A 20-day shutdown would have cost the U.S. \$2.5 billion in lost GDP per day and potentially disrupted 400,000 jobs. This harm would have been in addition to the negative impact of the ILWU's ongoing reduced productivity, which plummeted by 50-60% at its worst.

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The ILWU's Ability to Use Slowdowns Should Be Prohibited

While intentional labor slowdowns are not a major problem in most segments of the U.S. economy, they are a major and growing problem in the maritime industry, particularly on the West Coast. Such slowdowns are the primary means by which the ILWU coerces the PMA and port employers to accede to its demands. They are the ILWU's preferred tactic because, unlike a general strike, slowdowns inflict significant economic harm on port operators, businesses and local and regional economies, while workers continue receiving full pay and benefits. A strike, of course, would produce similar financial harm, but ILWU workers would not get paid. In short, slowdowns are effectively a way for the union to strike at little or no cost to itself. Everyone suffers but the ILWU. In fact, ILWU members benefit from increased wages during slowdowns because their work takes many more hours to complete than it otherwise should.



Because slowdowns are not expressly considered unfair labor practices under federal labor law, the ILWU has exploited this loophole by using the slowdown tactic time and time again to further its economic and other demands. Intentional production slowdowns have become regular occurrences on the waterfront, and port employers and affected businesses have little or no protection from them. During the term of the PMA-ILWU labor agreement, the only remedy generally available is an order from an arbitrator directing ILWU members to work at a normal pace. Between contracts, even this limited remedy is unavailable because port employers do not have the option of demanding arbitration. As a result, the period between contracts has become especially contentious with ILWU slowdowns reducing labor productivity by 50% or more. West Coast ports are brought to a near halt, and the health of the economy is severely compromised.

In summary, slowdowns are being used by the ILWU as an economic weapon without meaningful accountability and without regard to the harm they inflict at all levels of the U.S. economy. They should be formally prohibited in the maritime industry.

Congress Should Reasonably Amend the National Labor Relations Act to Keep West Coast Ports Moving

ICTSI Oregon proposes attached legislation to amend the National Labor Relations Act (“the Act”) making it an unfair labor practice for labor organizations representing employees in the maritime industry to engage in slowdowns at any time, either during the term of a collective bargaining agreement or otherwise. To ensure compliance, provisions have been added to the Act giving the National Labor Relations Board the authority to seek injunctive relief in federal district court while unfair labor practice proceedings for illegal slowdowns are occurring. Additionally, parties injured by slowdowns are permitted to file civil actions in federal court to seek economic damages resulting from slowdowns and, in addition, to recover their attorney fees and costs. As a final measure to ensure compliance with the proposed statute, labor organizations found in violation pursuant to a final Board order may have their certification and/or representational rights terminated.

These legislative changes will deter the future use of intentional production slowdowns and provide prompt and effective remedies to businesses that are harmed by related activities.

A complete copy of the text of proposed amendments to the Act is attached hereto as Exhibit A at the end of this document.

Economic Impact of Slowdowns by Contract Year

Impacts	2002	2008	2014
<i>Duration of Contract Negotiations</i>	6 months	14 months (including approximately 1 month with no agreement in place)	12 months (including 10 months with no agreement in place)
<i>The Cost of ILWU Obstruction (shutdowns, delays, stoppages, etc.)</i>	<p>\$15.6 billion for a 10-day lockout (excludes other reduced productivity that led to the lockout)</p> <p>More than \$1.5 billion per day</p>	<p>The union engaged in stoppages and delays, and a threat similar to 2002 loomed over the economy as negotiators missed the contract deadline by a month</p>	<p>\$200-\$400 million per day</p> <p>Reduced total economic output by an estimated full 1% in Q4 2014</p> <p>West Coast imports declined 33% in January 2015</p> <p>Total U.S. imports fell 16.6% in January 2015—the largest drop since 2009</p> <p>U.S. trade deficit spiked 17.7% to \$46.6 billion in December 2014</p> <p>For months, the ILWU held the economy hostage with threat of forcing a shutdown that would have led to the following (based on a 20-day shutdown):</p> <ul style="list-style-type: none"> • \$2.5 billion/day in lost GDP • 400,000 jobs disrupted • \$366 in lost purchasing power for average consumer
<i>Reduced ILWU Productivity</i>	<p>Lockout initiated by PMA as a result of persistent ILWU slowdowns and stoppages</p>	<p>In advance of renewed contract negotiations, ILWU engaged in coast-wide work stoppages, bringing West Coast ports to a standstill</p> <p>Periodic stoppages and delays continued throughout negotiations</p> <p>Productivity plummeted as much as 20-30% at major West Coast ports during negotiations</p>	<p>Overall productivity down 50-60% during busy Holiday Season</p> <p>ILWU reduced dispatch of skilled crane operators by 67%, leaving tens of thousands of containers stranded at ports for days</p> <p>At the Ports of Long Beach and Los Angeles, as many as 50 cargo vessels idled for days waiting to berth and be unloaded</p> <p>Between 2008 and 2014, the ILWU found guilty by arbitrators of more than 200 slowdowns and work stoppages</p> <p>Due to ILWU slowdowns, the PMA forced to shut down all 29 West Coast ports on two different occasions</p>
<i>Adverse Impact on Businesses, Jobs</i>	<p>Manufacturing companies suspended operations for days</p> <p>Holiday shopping impacted as retailers lacked merchandise</p> <p>One California company temporarily shut down production, leaving 5000 workers idle</p> <p>Major railroad reported between \$40 million and \$50 million in lost revenue and direct costs due to lockout</p>	<p>Productivity declined and periodic stoppages caused adverse economic impacts</p>	<p>West Coast imports down 25% and exports down 23% in January and February 2015 combined</p> <p>60% of shippers rerouted cargos for 2015 away from West Coast ports</p> <p>An estimated \$7 billion in costs to U.S. retailers in 2015</p> <p>One retailer lost \$23 million in unfilled orders in Q4 2014</p> <p>A major car manufacturer cut production by 20,000 units in one week</p> <p>Pacific NW agriculture exporters reported hundreds of millions in lost business</p> <p>Agriculture exports fell 50%, with meat and poultry industry losing \$40 million a week</p> <p>More than 500 agriculture transportation industry leaders wrote California lawmakers to help forge an agreement and avoid further negative economic impact</p>

Supporting Documentation & Research

2002 Contract Year

[US West Coast Labor Negotiations: Frequently Asked Questions](#) (JOC)

- West Coast ports were shut down for a 10-day period. Employers were responding to what they believed to be illegal slowdowns implemented by the ILWU.

[West Coast Port Hit by Labor Slowdown](#) (JOC)

- Terminal operators accused ILWU of initiating a work slowdown in Southern California (Long Beach).

[West Coast Ports Could Re-Open This Week](#) (JOC)

- Employers locked out ILWU Sept. 27 after slowdowns crippled cargo-handling operations.

[Economic Impact and Competitiveness of the West Coast Ports and Factors that Could Threaten Growth](#) (PMA)

- The total cost of the actual shutdown was estimated at \$15.6 billion.
- NUMMI plant (Toyota-GM facility in Fremont, CA) closed temporarily, which in turn led to the closing of an auto parts manufacturer plant that supports this operation. Honda Motor Company and Mitsubishi Motors also reported plant closings. For example, the Honda plant in Lincoln, Ala., that produces 650 Odyssey vans and V-6 engines per day stopped operations for three days, while a Mitsubishi plant closed for several days.
- A major railroad reported a daily cost of the shutdown between \$4 million and \$5 million in terms of lost operating revenue and direct cost.

[Longshoreman's Union to Strike 29 West Coast Ports](#) (Breitbart)

- The resulting shutdown cost close to \$1 billion a day.

[Behind the West Coast Port Lockout](#) (NBC)

- Manufacturing, retailing and agriculture industries were the most affected by the shutdown.

[Hope in West Coast Port Talks](#) (CNN Money)

- Lockout at the ports disrupted the flow of goods to US retailers preparing for key holiday shopping periods, as well as the flow of parts to US factories. New United Motor Manufacturing Inc., a California auto plant owned by a joint venture of Toyota Motor Corp. and General Motors Corp., was forced to shut down early Thursday after running out of needed parts. The plant produces Toyota Tacoma pickups and Toyota Corolla and Pontiac Vibe compact cars.

2008 Contract Year

[Longshore Union Strikes West Coast Ports](#) (PMA)

- ILWU struck West Coast ports from Southern California to the Pacific Northwest, bringing cargo operations to a standstill, as the Union's leadership defied orders from the independent Coast Arbitrator to "notify its Locals and members of its contractual obligation and direct all members to report to work as they normally do during the day shift on May 1, 2008." The illegal work stoppage comes two months prior to the expiration of the current labor agreement.

[PMA Statement on ILWU Actions at the West Coast Ports](#) (PMA)

- ILWU local walked off the job at the Port of Tacoma for several hours and at the ports of Los Angeles and Long Beach workers continued to take coordinated breaks that affect productivity. These events occurred and escalated during negotiations on a new West Coast waterfront labor agreement.

[Longshore Union Expands Job Actions in Southern California; Productivity Falls 20-30 Percent at Ports of Los Angeles and Long Beach](#) (PMA)

- Productivity at the Los Angeles and Long Beach ports was down 20 to 30 percent during the day shift Tuesday. This is a continuing problem as slowdowns are occurring while the ILWU and PMA attempt to negotiate a new labor contract.

[ILWU Slowdowns Lead to Temporary Suspension of Vessel Operations on Four Weekend, Holiday Dates](#) (PMA)

- During the 2008 – 2014 contract period, the four area arbitrators found the ILWU guilty of more than 200 slowdowns or work stoppages.

[Congress Must put a Stop to Labor Slowdowns at Ports](#) (The Orange County Register)

- Slowdowns occurred, but an agreement was reached before significant damage occurred.

2014/2015 Contract Year

[East Coast Ports Benefit from West Coast Discord](#) (CNBC)

- According to the Global Port Tracker, which is put out by the National Retail Federation and Hackett Associates, West Coast retail container ports handled 55 percent of import cargo in January, while East Coast ports handled 45 percent; that breakdown during the same period last year was 64 percent versus 36 percent, respectively.

[Congress Must Put a Stop to ILWU Slowdowns at West Coast Ports](#) (Orange County Register)

- These 29 ports handle about 25 percent of U.S. international trade, worth about \$1 trillion annually. Despite the agreement and labor being back on the job loading and unloading ships, it is estimated it

will take until at least May to restore the normal flow of goods at most of these ports. At the larger ports of Long Beach and Los Angeles, it will take even longer to get back to normal – probably June – due to there being at least 50 ships anchored outside the two ports, waiting for a berth to unload their cargo.

[Caucus will Determine Whether ILWU Signs Tentative Contract or Not](#) (JOC)

- PMA quote: “The ILWU has its calendar and its slowdowns — all of which have created worsening economic conditions for people who make a living off cargo moving through the West Coast ports. In recent weeks, the ILWU has not demonstrated any urgency in reaching a fair and balanced agreement any time soon.”

[PMA Renews Call for Federal Mediation in West Coast Longshore Negotiations](#) (PMA)

- Pacific Northwest- ILWU slowdowns have reduced productivity by as much as 60 percent; Oakland: reduced productivity at 50 percent.

[Employers Warn West Coast Ports ‘Approaching Complete Gridlock’](#) (American Shipper)

- Since late October 2014, ILWU has crippled what were fully productive terminals in the Pacific Northwest and Oakland, methodically reducing terminal productivity at the five largest ports on the West Coast.

[Longshore Union Work Slowdowns Bring Terminal Operations to the Brink of Gridlock](#) (PMA)

- By withholding an average of 75 yard-crane drivers each day, the ILWU has stalled the movement of tens of thousands of containers, PMA estimates. Since November 3, the Union has reduced these yard-crane operator positions in Southern California by 67 percent.

[Data Points to ILWU Slowdowns, PMA Says](#) (JOC)

- Since October, average International Longshore and Warehouse Union crane productivity in Oakland, Seattle and Tacoma plunged from 10 percent to as much as 39 percent from historical averages.

[Longshore Union Initiates Orchestrated Work Slowdowns, Crippling Pacific Northwest Ports](#) (PMA)

- In Seattle/Tacoma, vessel productivity plummeted by 40 to 60 percent ([PMA video](#))

[West Coast Ports to Temporarily Suspend Weekend Vessel Operations in Light of Continued Union Slowdowns](#) (PMA)

- On account of union slowdowns, West Coast ports make the decision to suspend weekend vessel operations.

[Biggest Drop Since '09 Hits U.S. Ports as West Coast Suffers](#) (Bloomberg Business)

- \$200-\$400 million per day in cost to \$17.7 trillion economy; West Coast imports declined 33%; total U.S. imports fell 16.6% in January 2015—the largest drop since 2009; U.S. trade deficit spiked 17.7% to \$46.6 billion in December 2014; Perry Ellis lost \$23 million in unfilled orders in Q4 2014; Honda cut production by 20,000 units in 1 week; Pacific NW agriculture exporters reported hundreds of millions in lost business.
- The West Coast port slowdown “likely subtracted one full percentage point” from economic output for the fourth quarter, Joseph LaVorgna, chief U.S. economist at Deutsche Bank Securities Inc.

[PMA Requests Federal Mediation in West Coast Longshore Negotiations](#) (PMA)

- 60 percent of shippers have already rerouted cargos for 2015 away from the U.S. West Coast to avoid the problems created by the union’s actions.

[Report Shows Economic Importance of the Ports](#) (National Retail Federation)

- The National Retail Federation and the National Association of Manufacturers released a report detailing the economic consequences of a West Coast port shutdown.
 - A five-day shut down of the 29 West Coast ports would reduce GDP to \$1.9 billion a day, disrupt 73,000 jobs and cost the average American household \$81 in purchasing power.
 - A 20-day shutdown would reduce GDP by \$2.5 billion a day, disrupt 400,000 jobs and cost the average American consumer about \$366 in purchasing power.

[West Coast Ports: Retail’s \\$7 Billion Problem](#) (CNBC)

- A Kurt Salmon analysis states that congestion at West Coast ports could cost retailers as much as \$7 billion this year.
- Michael Kors CEO John Idol: "The port congestion on the West Coast continues to pose a risk to incoming shipments. While we have not seen a material financial impact thus far, we have experienced an increase in delays, which are resulting in additional airfreight cost and other transportation fees. While we have factored these increased expenses into our fourth-quarter guidance, there is some risk of additional delays that could result in lower revenues and higher costs than what we have anticipated."
- Ralph Lauren CEO Christopher Peterson: “We did have to airfreight more product during the quarter. We also wound up routing a lot of product via water routing, so we shifted around the U.S. and received it in the East Coast ports.”

[Economic Damage Worsens Going Into Second Port Shutdown](#) (Daily Caller)

- Meat and poultry industry loses \$40 million a week; agriculture exports down 50%.

[West Coast Container Volume Plumets by Nearly a Quarter](#) (JOC)

- West Coast exports/imports down by a nearly a quarter in first two months of year.

[Slowdown at West Coast Ports Begins to Affect Local Businesses](#) (The Daily News)

- Tacoma-based Northwest Hardwoods had to cut production at three sawmills as result of the West Coast port slowdowns.

[Frustrations Mount Amid Port Slowdowns](#) (ASI Central)

- Major retailers including Ann Taylor, The Loft, Lane Bryant and Justice all have recently acknowledged product delays caused by the West Coast dispute.

[Impact of West Coast Shutdown Could Top \\$20 Billion](#) (ABC 7 News- San Francisco)

- The owners of Peerless Coffee in Oakland, who rely on imported beans that arrive by ship, are looking for alternatives. "I can't roast air. I need beans," George Vukasin said. "I think you're going to see how coffee comes to the United States change pretty dramatically, sadly. And it's going to veer away from the West Coast Ports and it's going to go to Houston or to the East Coast ports."
- Tony Meneghetti's San Francisco company Timbuk2, which makes messenger bags, also had issues with new 2015 products sitting on boats in the port for weeks.
- More than 500 companies in the agriculture transportation industry sent a letter to California's congressional delegation urging them to put pressure on the PMA/ILWU to settle their differences.

Exhibit A

1. Amend 29 U.S.C. § 151 entitled “Findings and declaration of policy” to add a new paragraph:

International trade is one of the most important components of our nation’s economy and will likely continue to grow in the future. In order to remain competitive in an increasingly competitive global economy, it is essential that our nation possess a highly efficient and reliable public and private transportation network. The nation’s ports are an increasingly important part of that transportation network. Experience has demonstrated that frequent and periodic disruptions in the maritime industry in the form of deliberate and unprotected employee slowdowns at our nation’s ports has led to substantial economic disruptions and losses, interfering with the free flow of domestic and international commerce and threatening the economic health of the nation and its citizens and businesses. These frequent disruptions hurt the reputation of the United States in the global economy, cause a loss of business to U.S. ports, and represent a serious and burgeoning threat to the financial health and economic stability of our nation. It is hereby declared to be the public policy of the United States to eliminate the causes and mitigate the effects of these disruptions to commerce in the maritime industry and to provide effective and prompt remedies to those injured by them.

2. Amend 29 U.S.C. § 152 entitled “Definitions” to include two new subsections (15) and (16):

(15) The term “employees engaged in maritime employment” will be defined in the same manner, and subject to the same exclusions, as provided for in Section 902(3) of the Longshore & Harbor Workers Compensation Act.

(16) The term “slowdown” shall include any intentional effort to reduce productivity or efficiency in the performance of the duties of employees that is not required by a good faith belief that abnormally dangerous conditions exist at the employees’ place of employment.

3. Amend 29 U.S.C. § 158(b) to include new subsection (8)(b)(8), making it an unfair labor practice for a maritime union to engage in slowdowns:

It shall be an unfair labor practice for a labor organization or its agents representing employees engaged in maritime employment, including longshoremen or other persons engaged in longshoring operations, to engage in a work slowdown at any time, either during the term of a collective bargaining agreement, after the expiration of a collective bargaining agreement, or otherwise.

4. Amend 29 U.S.C. § 160(l) regarding injunctive relief to include reference to the new subsection (b)(8) and to permit district courts to enjoin prohibited slowdowns:

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b) or section 8(e) or section 8(b)(7) **or section 8(b)(8)**, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like

character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should be issued, he or she shall, on behalf of the Board, petition any district court of the United States (including the United States District Court for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter.

5. Amend 29 U.S.C. § 187 regarding damage claims to include new subsections (c), (d), and (e) and permit civil damage claims for slowdowns in violation of section 8(b)(8):

(c) It shall be unlawful, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(8) of the National Labor Relations Act, as amended [29 USCS § 158(b)(8)].

(d) Whoever shall be injured in his or her business or property by reason of any violation of subsection (c) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof [29 USCS § 185] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages sustained as well as costs and reasonable attorney fees incurred.

(e) It shall be no defense to a damage action under subsection (d) above that the injured party has in any manner waived, or purported to waive, its rights to pursue monetary damages in connection with contractual grievances alleging a violation of a no-strike or similar clause in a collective bargaining agreement or in connection with an action for breach of such a clause in said collective bargaining agreement under section 301 hereof [29 USCS § 185] with regards to the slowdown at issue.

6. Amend 29 U.S.C. § 159 regarding effect on representational status of any labor organization engaging in intentional slowdown, to include new subsection (f):

(f) In the event that a labor organization has been found, pursuant to a final Board order, to have violated 29 U.S.C. § 158(b)(8), the Board shall

(1) revoke the exclusive recognition status or certification of the labor organization, which shall then immediately cease to be legally entitled to represent employees in the bargaining unit; or

(2) take other appropriate disciplinary action