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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Port Of LA, Union Accused Of Forcing Out Developer

By **McCord Pagan**

Law360 (April 8, 2020, 4:14 PM EDT) -- The Port of Los Angeles, its director and the union representing dockworkers there were sued in California federal court by a company alleging that its contract to develop and improve certain port infrastructure was terminated due to pressure from organized labor.

Harbor Performance Enhancement Center LLC sued the port; its executive director, Eugene D. Seroka; the International Longshore and Warehouse Union and its Local 13 in federal court Tuesday, alleging they engaged in an antitrust conspiracy by trying to force the developer to earmark jobs at the site for ILWU workers and causing it to lose its contract.

"Since the Port, ILWU and Local 13 could not coerce HPEC into agreeing to monopolize the drayage [trucking] jobs for ILWU members, the Port agreed not to work with HPEC," according to the lawsuit. "Defendants conspired to kill the project and replace it with a different project that would better benefit the ILWU and Local 13."

In 2015, the port selected HPEC for a project to transform a vacant 110-acre lot into a site to relieve cargo congestion at the terminal, and the developer later raised \$130 million from Macquarie Group Ltd., an infrastructure investor. When the project was complete, HPEC expected to earn \$59 million a year in profit from the site, it said.

The memorandums of understanding between the port and HPEC did not require the developer to secure jobs for ILWU, or grant the ILWU union veto authority over the project, according to the suit. The project could only be terminated with written notice to HPEC that the harbor department no longer thought the project is feasible, according to court documents.

HPEC said in filings that it was only a developer and that the project would have been operated by a third party. But it said the groups terminated the project because HPEC envisioned working with the ILWU's rival, the International Brotherhood of Teamsters, rather than the longshoremen's union.

"Defendants' conduct is harmful to competition in the markets for the purchase of container terminal support services and the purchase of construction of container terminal support facilities," according to the lawsuit. "It will reduce the number of potential suppliers, increase prices, output, or quality in these markets and is designed to further the anticompetitive goal of the ILWU and Local 13."

The project was approved by the Los Angeles Board of Harbor Commissioners and the port itself,

but after the reports of Macquarie's investment, HPEC was allegedly threatened with "war" from ILWU Local 13 president Mark Mendoza, who wanted to ensure the drayage jobs at the site went to members of his union, according to the suit.

Seroka then postponed the start of a pilot project at the site even though HPEC had already spent more than \$250,000 there, and the developer was told by the City Attorney's Office that the board had never properly approved an amendment to the exclusive negotiating agreement allowing the port to engage in talks, according to court documents.

Next, the documents allege, Seroka told HPEC it would have to grant exclusive jurisdiction over intra-port drayage to the ILWU, which he said "run the port and will put up a fight every step of the way. The board will be hard pressed without their support at any level."

The port eventually sent a termination letter to HPEC in May 2019, saying the project was no longer feasible but did not mention the validity of the amended contract, which was previously raised as an issue, according to the suit.

"Either the amendment to the [exclusive negotiating agreement] is valid and the Port's claim is false or the Port failed to get the amendment properly approved and concealed the truth from HPEC," the developer said.

Among other things, HPEC is seeking various forms of damages which it said it would prove at trial, attorney's fees and restitution.

Spokespeople for the Port of Los Angeles, the ILWU and Local 13 declined to comment.

Counsel information for the port, the ILWU and the Local was not available.

Counsel for HPEC did not immediately return a request for comment.

HPEC is represented by Jeffrey B. Valle and Katherine Balatbat of Valle Makoff LLP.

The case is Harbor Performance Enhancement Center LLC v. City of Los Angeles Harbor Department et al., case number 2:20-cv-03251, in the U.S. District Court for the Central District of California.

--Editing by Peter Rozovsky.

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