

California, Oregon and Washington ports.

### The ILWU

In 1938, the National Labor Relations Board certified the ILWU as the exclusive bargaining representative for a bargaining unit that includes all longshore workers employed by PMA members on the Pacific Coast. See Shipowners' Association of the Pacific Coast, 7 NLRB 1002, 1041 (1938), review dismissed, 103 F.2d 933 (D.C. Cir. 1939), affirmed, 308 U.S. 401 (1940) (certifying the ILWU as the exclusive bargaining representative for "all workers who do longshore work in the Pacific Coast ports of the United States"). Thus, the PMA-ILWU bargaining agreements cover all workers employed in the loading and unloading of all dry cargo for ocean-going vessels arriving at or departing from ports along the Pacific coast of the United States, including all ports in the states of California, Oregon and Washington.<sup>3</sup>

### The Plan

The Plan was established in 1951. Plan benefits are established as part of the collective bargaining process. Plan contributions are determined under a system, established in 1983, that

governs all fringe benefit costs under the PMA-ILWU agreement. The system allocates assessments between man-hours and tonnage based on a membership agreement filed with the Federal Maritime Commission. The system works as follows. A man-hour rate is established by dividing a divisor that is established by the agreement into the total annual projected cost for all ILWU-PMA benefits. The result is a man-hour rate that is then multiplied by the total hours expected to be worked during the year to determine the amount of the benefits and costs that will be funded by man-hours. The remaining funds are collected from tonnage. To the extent that man-hours are less than the divisor, assessments are collected on tonnage to fund the benefits in an order of priority established by the agreement. The pension benefits have the highest priority on man-hour contributions. Contributions on tonnage would not be used to fund pensions unless the annual assessments on man-hours were insufficient to meet the annual pension funding obligation required by the Internal Revenue Code.

The total number of contributing employers, based on federal tax identification numbers, has remained stable over several decades. There were

100 contributors in 1972, 107 in 1979, 114 in 1996 and 114 in 2002. The contributors in 1996 that remain contributors in 2002 represent over 99% of the total contributions to the Plan.

### Current Financial Status of the Plan

The Plan operates on a July-June fiscal year. The Form 5500 filed for the 2001-02 plan year reports the Plan covered 10,526 active workers, paid benefits to 4547 pensioners and 3759 survivors, and had only 9 inactive participants (or survivors) with vested entitlements. The Plan received \$23.9 million in contributions, and paid out \$134 million in benefits, as well as \$7.8 million in administrative expenses. At year end, plan assets were approximately \$1.943 billion.

Under the current version of the special rule, the Plan actuary must provide the PBGC with annual certifications that at least 85% of the Plan's liabilities for vested benefits (determined using specified set actuarial assumptions) are covered by Plan assets. The certification must also show other information about plan contributions and benefit payments. The following table presents this data for the plan years since the PBGC last considered the withdrawal liability exemption.

	Plan year ending June 30, 1997	Plan year ending June 30, 1998	Plan year ending June 30, 1999	Plan year ending June 30, 2000	Plan year ending June 30, 2001	Plan year ending June 30, 2002
Assets .....	\$1.63 billion .....	\$1.91 billion .....	\$2.16 billion .....	\$2.40 billion .....	\$2.22 billion .....	\$1.93 billion
Vested Benefits .....	\$1.69 billion .....	\$1.66 billion .....	\$1.63 billion .....	\$1.83 billion .....	\$1.99 billion .....	\$1.84 billion
Active Participants .....	8,315 .....	8,859 .....	9,572 .....	9,395 .....	10,070 .....	10,113
Contributions .....	\$104 million .....	\$35.0 million .....	\$28.8 million .....	\$32.5 million .....	\$26.9 million .....	\$23.5 million
Benefit Payments .....	\$101.5 million .....	\$108.0 million .....	\$110.6 million .....	\$126.4 million .....	\$132.9 million .....	\$154 million
Plan Assets As Multiple of Benefits.	16.1 .....	17.7 .....	19.6 .....	19.0 .....	16.6 .....	12.5

### Future Industry Prospects

The application lays great emphasis upon the fact that PMA members handled "virtually all of the over 263 million revenue tons of dry cargo that went through West Coast ports in 2002. It is estimated that this cargo had a value of \$320 billion and generated ocean shipping revenues of approximately \$14.7 billion." The application asserts that the financial health of the Plan "is not tied to the fortunes of any one member. Rather, Plan contributions are dependent only on the amount of cargo shipped through West Coast ports. The Plan is thus not at risk even if some of its largest employers both cease operations and are not replaced by another contributing

employer (which \* \* \* is highly unlikely in any event).

The application reported that "the West Coast shipping industry has grown steadily over the past five decades. Total dry cargo at all covered ports amounted to 29 million revenue tons in 1960, 114 million revenue tons in 1980, 182 million revenue tons in 1990 and 263 million revenue tons in 2002. This change is reflected in the number of covered hours by ILWU-represented employees. Such hours increased from 15.6 million in 1992 to more than 24 million in 2002." Thus, the application contends that the PMA-ILWU "lock" on all shipping imports resembles the geographic coverage that is said to typify the construction industry.

The application asserts that "the mobility of longshore workers is quite similar to that of many construction industry workers. Many West Coast longshore workers do not typically work for the same employer on a regular basis." The application uses the payroll system to illustrate the extent of employment mobility. "[W]ithin a single week," the application states, "a longshore worker often has more than one employer." For this reason, "PMA acts as the payroll agent for all of its members. The employers remit cash wages and collectively bargained-for employee benefit contributions to PMA, which in turn issues weekly payroll checks to ILWU members and transmits contributions to various benefit funds. Because of this system, a worker tends

<sup>3</sup> Vessel operators who are not PMA members must contract with a stevedoring company or

terminal operator that belongs to PMA in order to unload cargo.