



*A bold voice for transportation workers*

July 15, 2016

The Honorable Anthony Foxx  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Foxx:

As the Department of Transportation (DOT) convenes its Port Performance Freight Statistics Working Group today, I urge you to implement the statute creating this group and the broader port statistics program as directed by Congress in Section 6018 of the FAST Act. Attempts by some to broaden the scope of the Port Performance program to include the collection of worker productivity measurements should be dismissed by the DOT. As you know, the collection of these worker productivity metrics was debated and ultimately rejected by Congress during consideration of the FAST Act. Now certain interests are promoting this data collection in a deliberate and poorly veiled attempt to undermine the collective bargaining process in the seaport sector, even though it contradicts the views of this Administration and goes beyond the scope and mission of DOT and its Bureau of Transportation Statistics (BTS).

Specifically, the DOT should dismiss requests from the National Retail Federation (NRF) and others to include prescriptive monthly worker productivity metrics in the BTS' annual report to Congress. This Administration has a strong record of defending collective bargaining rights, a view which was reflected in your letter to Congress in clear opposition to these precise metrics during consideration of the FAST Act. In fact, the agenda of the NRF and its allies stands in direct opposition to the President's interest in promoting the rights of workers. More to the point, there is nothing in section 6018 of the FAST Act that directs BTS to collect this type of data, level of detail, or workplace-based information. To the contrary, the legislative history clearly shows that Congress examined these precise measures and identified worker productivity metrics as items not to be included in the Port Performance Freight Statistics Program.

The Senate version of the FAST Act at one point included monthly worker productivity measures that would be submitted to Congress starting a year prior to and throughout the duration of a union contract negotiation. Fortunately, Congress recognized that these imprudent metrics and monthly reporting requirements went beyond BTS' mission and would inject the agency into delicate labor-management relations. The monthly reporting requirements were removed during Senate consideration, and all of the prescriptive worker productivity metrics were subsequently taken out during conference. It is incumbent on the DOT and the Bureau to honor both the spirit and letter of the law and proceed with an annual report of port throughput and capacity, measured annually, absent worker productivity measures.

We made the case during debate on the FAST Act, and this is still true today, that worker productivity metrics being pursued by corporate shipping companies were simply meant to support more frequent federal intervention in labor-management disputes as provided under current law and serve as triggers for new injunctions and other limitations on collective bargaining being offered in complementary bills under congressional consideration. In effect, these measures ignore the innumerable variables that affect port productivity and would simply blame the collective bargaining process for all problems related to port efficiency and congestion absent any justification or consideration for the complicated nature of port

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



logistics networks. The supporters of these anti-worker provisions have never hid this intention.

We view the NRF and other business groups' renewed interest in securing these metrics – and the attendant dangers they pose to labor relations – at the executive level as irresponsible. The BTS should ignore this attempt to circumvent the statute and instead move forward with the Port Performance Freight Statistics Program as passed by Congress, so that BTS can help support ports, states and other stakeholders make effective investments in our multimodal freight supply chain. This goal, which is consistent with the Administration's original Port Performance Statistics Program unveiled in its Grow America Act, appropriately has nothing to do with port workers, their unions or the collective bargaining process, and has everything to do with making our seaports gateways for economic growth.

I am hopeful that this Administration will agree with our view that DOT and BTS should honor the FAST Act and reject any metrics and measures related to worker productivity or port labor-management relations as you move to implement section 6018. Thank you for your consideration and please let me know if I can provide additional information or answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a large, stylized flourish at the end.

Edward Wytkind  
President

cc: Patricia S. Hu, Director, Bureau of Transportation Statistics  
Paul N. Jaenichen, Sr. Maritime Administrator, U.S. Maritime Administration