UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 24

INTERNATIONAL SHIPPING AGENCY, INC.
AND MARINE TERMINAL SERVICES, INC.,
AND TRUCK TECH SERVICES, INC.,
SINGLE EMPLOYER

and

INTERNATIONAL SHIPPING AGENCY, INC. **Cases** **24-CA-091723**
AND TRUCK TECH SERVICES, INC., **24-CA-104185**
SINGLE EMPLOYER

and

UNION DE EMPLEADOS DE MUELLES (UDEM),
ILA 1901, AFL-CIO

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE HONORABLE BOARD:

The undersigned Counsel for the General Counsel (hereinafter CGC) hereby opposes Respondents' Motion for Partial Summary Judgment and Memorandum of Law in Support Thereof (the Motion) in the above case, which was filed with the Board on November 7, 2013. Preliminarily, CGC urges the Board to dismiss the Motion because the pleadings raise substantial and material issues of fact, including issues of credibility, which can best be resolved by a hearing. CGC respectfully urges the Board to reject Respondent's effort to dismiss portions of the case by virtue of affidavits which it prepared and self-serving statements that have not been subjected to cross-examination, and further states as follows:

I. THE COMPLAINT, ANSWER AND MOTION

On July 31, 2013, the Regional Director for Region 24 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the Complaint) in the above-captioned cases. Thus, Respondent's motion was timely, but was filed over three months after the issuance of complaint and only 32 days before the hearing, which has been scheduled to begin on December 9, 2013, since the issuance of the Complaint. The Complaint is attached hereto and marked as Exhibit 1.

The Complaint alleges, at paragraphs 5(a) and 5(b), that International Shipping Agency (Respondent Intership), Marine Terminal Services, Inc. (Respondent MTS) and Truck Tech Services, Inc. (Respondent TTS), collectively called Respondent, constitute a single employer under the Act. The Complaint also alleges, at paragraphs 11(a) through 11(d), 12(a) through 12(d), and 16, that since about September and/or October 2012, and on various occasions thereafter, including as recently as February 2013, Respondent committed violations of Section 8(a)(1) of the Act by interrogating employees about their own and other employees' union membership, activities and sympathies (on behalf of Union de Empleados de Muelles (UDEM), International Longshoremen's Association, Local 1901, AFL-CIO, herein called the Union); creating the impression of surveillance of employees' union activities; threatening employees with discharge, loss of jobs and plant closure if they sought union representation; and telling employees that Respondent MTS closed its facilities because its employees unionized. These Section 8(a)(1) violations are alleged to have been committed by the following supervisors and agents of Respondent: Respondent MTS General Manager Luis Ruiz, Respondent TTS General Manager Enrique Sosa, and Respondent TTS supervisors Ernesto Davila and Noel Lopez.

The Complaint further alleges, at paragraphs 13(a), 13(b), 15(b), 17 and 18, that on about October 19, 2012, Respondent closed its MTS facility and discharged 22 named employees because the employees of Respondent MTS joined and assisted the Union and engaged in concerted activities, and to discourage its employees from engaging in these activities, in violation of Section 8(a)(1) and (3) of the Act, and that Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and its effects, and without first bargaining to a good-faith impasse, in violation of Section 8(a)(1) and (5) of the Act.

Finally, the Complaint alleges, at paragraphs 14(a), 14(b) and 17, that on about April 26, 2013, Respondent closed its TTS facility and all of its employees, including six named employees, because the employees of Respondent TTS joined and assisted the Union and engaged in concerted activities, and to discourage its employees from engaging in these activities, in violation of Section 8(a)(1) and (3) of the Act.[1]

On August 20, 2013, Respondent filed an Answer denying that it had violated the Act in any way. The Answer is attached hereto and marked as Exhibit 2. In its Motion, Respondent contends that summary judgment is appropriate with regard to the allegations of the Complaint pertaining to Respondent's unlawful closure of its TTS operations because CGC is unable to establish that the TTS employees engaged in concerted activity and that Respondent new of any such activities, and that even if CGC could meet the initial burden of establishing that Respondent was motivated to close its TTS facility for unlawful reasons, the "undisputed facts" show that Respondent would have taken the same action even in the absence of any protected conduct. Respondent further contends that six of the 22 employees alleged to have been

[1] The date of this violation in the Complaint, April 26, **2012**, is erroneous, and General Counsel intends to amend that date to read April 26, 2013, the date of closure of TTS that Respondent admits in its Answer.

unlawfully discharged upon the closure of Respondent MTS were not bargaining unit employees so any allegations regarding these individuals should be summarily dismissed. Respondent asserts that three of the six are contractors, and the other three are non-unit employees, a salesperson, an accountant, and an office clerk. As noted above, in support of the Motion, Respondent submitted affidavits that it apparently prepared and certain other documents.

II. THE LEGAL STANDARD FOR SUMMARY JUDGMENT

CGC submits that Respondent is improperly asking the Board to make findings of fact and conclusions of law, including credibility findings, that should be made by an administrative law judge who has had the benefit of receiving evidence, listening to the examination and cross-examination of witnesses presented by all parties, rather than just a respondent, and observing the demeanor of witnesses in a hearing. Furthermore, Respondents' motion improperly seeks discovery in the instant Board proceeding, because it is an attempt to require the CGC to reveal the evidence relied on to prove the allegations of the Complaint. As a result, CGC respectfully request that Respondent's Motion be denied in its entirety.

Pursuant to Section 102.24(b) of the Rules and Regulations, the Board, in its discretion, may deny a motion for summary judgment where it believes that a genuine issue of fact may exist. A motion for summary judgment may properly be granted only where there is no genuine issue of material fact to be tried, and the facts as to which there is no such issue warrant judgment for the moving party as a matter of law. *See Fed.R.Civ.P. 56(c); see, e.g., Madonna v. American Airlines, Inc.*, 82 F.3d 59, 61 (2d Cir.l996). The function of the court in considering the motion for summary judgment is not to resolve disputed questions of fact, but only to determine whether, as to any material issue, a genuine factual dispute exists. See, e.g., *Liberty Lobby,* 477 U.S 242, 249-50 (1986).

As the found by the United States Court of Appeals for the Second Circuit:

> ….summary judgment is appropriate only when a review of the entire record demonstrates "that there is no genuine issue as to any material fact." The burden, therefore, is on the moving party to establish that no relevant facts are in dispute. See *Heyman v. Commerce & Industry Insurance Co.*, 524 F.2d 1317, 1319 (2d Cir. 1975); Accord, *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). Indeed, the court "must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought." *Heyman*, supra, 524 F.2d at 1320; Accord, 6 Moore's Federal Practice P 56.02(1) (2d ed. 1976). Thus, when the party against whom summary judgment is sought comes forth with affidavits or other material obtained through discovery that generates uncertainty as to the true state of any material fact, the procedural weapon of summary judgment is inappropriate.

Quinn v. Syracuse Model Neighborhood Corp., 613 F.2d 438, 444-445 (2d Cir. 1980) (Emphasis supplied). Summary judgment is inappropriate when the admissible materials produced in opposition to the summary judgment motion merely "make it arguable" that the motion for summary judgment has merit. *Id.*

Where, as here, the moving party has failed to establish, by admissible evidence, that there is "no genuine issue as to any material fact," the burden does not shift to the opposing party (that is, to CGC herein) to show that there is a genuine issue for hearing. See *Lake Charles Mem. Hosp.*, 240 N.L.R.B. 1330 (1979). The Board has held that a simple denial of unlawful conduct is sufficient to raise a material question [appropriate for hearing]. Id. See also *Florida Steel Corporation*, 222 NLRB 586 (1976).

Citing Rule 56(e) of the Federal Rules of Civil Procedure and *Varella Cid v Boston Five Cents Savings Bank*, 787 F.2d 676 (1st Cir. 1986), Respondent argued that "in confronting a motion for summary judgment, the non-movant cannot merely reargue its case or deny the other party's allegation." Respondents further stated that although the "trier of facts does not engage in weighing evidence and credibility considerations when ruling upon a motion for summary

judgment, it is clear that he must assess whether the evidence presented by non-movant would be "sufficient" for a reasonable jury to find in its favor."[2]

Respondent's application of Rule 56(e) of the Federal Rules of Civil Procedure, as stated in its motion, is misplaced. Pursuant to Section 102.24(b) of the Board's Rules and Regulations, CGC may dispute the facts alleged by the Respondents without the need of exposing its evidence. The Board has no counterpart to Rule 56(e), under which a party moving for summary judgment can set forth its version of the facts, and the other party must either admit or controvert them with specific facts. Rule 56 contemplates that summary judgment motions will be ruled on only after adequate time for discovery. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). However, pretrial discovery like that which is customary in Federal court proceedings is not allowed in Board proceedings. Section 102.24(b) provides, in relevant part, that a party opposing a motion for summary judgment or dismissal is not required to submit affidavits or documentary evidence to show that there is a genuine issue for hearing, and that "[t]he Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist." See Board Rules and Regulations, 29 CFR § 102.24(B) and *Kiro, Inc.*, 311 N.L.R.B. 745 (1993).

III. PARTIAL SUMMARY JUDGMENT IS NOT APPROPRIATE AND THE MOTION SHOULD BE DENIED

In the instant case, there are substantial issues of material fact. These issues include whether Respondent Intership, Respondent MTS and Respondent TTS are a single employer; whether Respondent threatened employees of TTS with plant closure if they engaged in union activities as employees had done at MTS; whether or not Respondent was motivated to close its

[2] Citing *Smith v Stratus Computer Inc.*, 40 F.3d 11, 16 (1st Cir. 1994).

TTS facility and discharge its employees in order to discourage them from engaging in union or other concerted activities; whether Respondent's purported economic reasons for closing TTS are valid; whether the three alleged contractors of MTS who performed the same type of work as bargaining unit employees (Angel Garcia Garcia, Angel Garcia Pabon, and Luis Allende) were employees of Respondent within the meaning of the Act or independent contractors, whether those three individuals and the three persons who Respondent contends were not non-unit employees of MTS and the three persons Respondent contends were contractors to MTS were discharged because Respondent's closure of MTS constituted an unlawful partial closure to discourage unionization in other parts of Respondent's operation, and thus resulted in the unlawful discharge of all employees working at Respondent's MTS facility, even assuming for the sake of argument that certain of those employees were not in the bargaining unit or active in the Union. All of these factual issues raised by the pleadings warrant an administrative hearing.

Respondent's claims of "uncontested facts" are belied by the fact that the contrary assertions in the Complaint and the Answer require factual determinations to determine each of the complaint allegations as to which Respondent seeks summary judgment.

For example, Respondent denies that Intership, MTS and TTS are a single integrated enterprise and single employer, whereas General Counsel alleges that given the integrated nature of all three Respondents, the closing of the MTS portion of its operations had the effect of discouraging the union activities of the employees in its remaining operations. In addition, although Respondent asserts that it is "uncontested" that it closed the MTS and TTS facilities for economic reasons, General Counsel alleges that the closings and discharges were motivated by the employees' union activities, and these allegations are very closely related to the allegations of independent violations of Section 8(a)(1) of the Act set forth in paragraphs 11 and 12 of the

Complaint, as to which Respondent does not claim summary judgment is appropriate. Respondent also contends that six named discriminatees are not entitled to a remedy on the grounds that they were not part of the MTS bargaining unit, did not vote in the representation election, and did not appear in the payroll eligibility list for that election. However, General Counsel contends that the issue is not whether they were part of the unit, but rather whether they were employees at the MTS facility who were discharged as a result of Respondent's discriminatory conduct in the closing of the MTS facility because of the union activities of the MTS employees as a whole, and to discourage union activities among Respondent's employees at its remaining facilities. As noted above, as to the three individuals Respondent alleges were contractors, CGC submits that they were employees within the meaning of the Act.

Pursuant to the Rules and Regulations that govern the instant motion, General Counsel is not required to set forth the precise facts and/or analysis on which it relies. As established above, it is incumbent on the movant (in this case, Respondent) to establish that there are no issues of material fact that require a hearing. Since Respondent has failed to meet said standard, it is submitted that the burden has not been shifted to the General Counsel to establish otherwise.

As acknowledged by Respondent in its Motion, the Board should not engage in the weighing of evidence or make credibility considerations when ruling on the appropriateness of summary judgment. However, Respondent urges the Board to credit its untested representations of fact without affording CGC the opportunity to cross examine witnesses, and instead urges the Board to credit its witnesses' rote assertions that employees did not engage in concerted protected conduct, that Respondent had no knowledge of employees' protected activities, that Respondent closed its MTS and TTS operations for economic reasons, and that certain alleged

discriminatees are not entitled to a remedy. Under these circumstances, the Motion for partial summary judgment is not appropriate.

IV. CONCLUSION

Based on the above, it is submitted that the outstanding Complaint in this matter, together with Respondents' answer thereof, raises substantial and material issues of fact as to which there is a genuine dispute, the merits of which should be heard before an administrative law judge.

WHEREFORE, Counsel for the General Counsel respectfully urges the Board to deny Respondents' Motion in its entirety.

Dated at San Juan, Puerto Rico, this 15th day of November 2013.

Respectfully submitted,

/s/ Isis M. Ramos Melendez
Isis M. Ramos Meléndez
Counsel for the General Counsel
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Sub-Region 24
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CERTIFICATE OF SERVICE

I hereby certify that a copy of **COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** in Cases 24-CA-091723 and 24-CA-104185 was electronically filed with the National Labor Relations Board Office of the Executive Secretary and served by electronic mail upon the below- listed parties on this 15th day of November, 2013:

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/s/ David Cohen

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EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

INTERNATIONAL SHIPPING AGENCY, INC. AND MARINE TERMINAL SERVICES, INC., AND TRUCK TECH SERVICES, INC., SINGLE EMPLOYER and INTERNATIONAL SHIPPING AGENCY, INC. AND TRUCK TECH SERVICES, INC., SINGLE EMPLOYER and UNION DE EMPLEADOS DE MUELLES (UDEM), ILA 1901, AFL-CIO	Cases 24–CA-091723 24-CA-104185

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 24-CA-091723, which is based on a charge filed by Union de Empleados de Muelles (UDEM), ILA 1901, AFL-CIO (the Union), against International Shipping Agency, Inc. (Respondent Intership) and Marine Terminal Services, Inc. (Respondent MTS) and Truck Tech Services, Inc. (Respondent TTS), collectively called Respondent, and Case 24-CA-104185, which is based on a charge filed by the Union against Respondent Intership and Respondent TTS, are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below:

1. (a) The charge in Case 24-CA-091723 was filed by the Union on October 19, 2012, and a copy was served by regular mail on Respondent MTS on October 22, 2012.

(b) The first amended charge in Case 24-CA-091723 was filed by the Union on November 13, 2012, and a copy was served by regular mail on Respondent Intership and Respondent MTS on the same date.

(c) The second amended charge in Case 24-CA-091723 was filed by the Union on December 3, 2012, and a copy was served by regular mail on Respondent Intership and Respondent MTS on the same date.

(d) The third amended charge in Case 24-CA-091723 was filed by the Union on April 15, 2013, and a copy was served by regular mail on Respondent on April 16, 2013.

(e) The fourth amended charge in Case 24-CA-091723 was filed by the Union on May 17, 2013, and a copy was served by regular mail on Respondent on May 20, 2013.

(f) The charge in Case 24-CA-104185 was filed by the Union on May 2, 2013, and a copy was served by regular mail on Respondent TTS on the same date.

(g) The first amended charge in Case 24-CA-104185 was filed by the Union on June 28, 2013, and a copy was served by regular mail on Respondent Intership and Respondent TTS on the same date.

2. (a) At all material times, Respondent Intership has been a corporation with an office and place of business in San Juan, Puerto Rico (Intership's facility) and has been engaged in the handling, loading and unloading of cargo.

(b) At all material times, Respondent Intership has had the following subsidiaries: Marine Terminal Services, Inc., at Bayamon, Puerto Rico; Sea Air Systems, Inc., at Guaynabo,

Puerto Rico; Marine Asset Management Inc., at San Juan, Puerto Rico; Oceanic General Agency, Inc., at San Juan, Puerto Rico; and, Truck Tech Services, Inc., at Bayamon, Puerto Rico.

(c) During the 12-month period ending December 31, 2012, Respondent Intership, in conducting its operations described above in paragraph 2(a), purchased and received at its Intership facility, goods valued in excess of $50,000 directly from points outside of Puerto Rico.

3. (a) At all material times, Respondent MTS has been a corporation with an office and place of business in Bayamon, Puerto Rico (MTS' facility) and has been engaged in the mechanical repair of heavy equipment, such as chassis and containers.

(b) During the 12-month period ending December 31, 2012, Respondent MTS, in conducting its operations described above in paragraph 3(a), purchased and received at its MTS facility, goods valued in excess of $50,000 directly from points outside of Puerto Rico.

4. (a) At all material times, Respondent TTS, Inc., has been a corporation with an office and place of business in Bayamon, Puerto Rico (TTS' facility) and has been engaged in the mechanical repair of kalmars and toll trucks.

(b) During the 12-month period ending December 31, 2012, Respondent TTS, in conducting its operations described above in paragraph 5(a), purchased and received at its TTS facility, goods valued in excess of $50,000 directly from points outside of Puerto Rico.

5. (a) At all material times, Respondent Intership, Respondent MTS and Respondent TTS have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations and have held themselves out to the public as a single-integrated business enterprise.

(b) Based on its operations described above in paragraph 5(a), Respondent Intership, Respondent MTS and Respondent TTS constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

6. (a) At all material times, Respondent Intership has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent MTS has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(c) At all material times, Respondent TTS has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

7. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

8. The following employees of Respondent MTS (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included**: All full time mechanics, welders, utility, tire repair, and maintenance employees employed by Marine Terminal Services, Inc. (MTS), at its Bayamon facility.
>
> **Excluded**: All other employees, managers, supervisors and guards, as defined by the Act.

9. (a) On October 17, 2012, a representation election was conducted among the employees in the Unit and, on October 25, 2012, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(b) At all times since October 17, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act):

David Segarra	-	Intership, MTS and TTS' President
Maria Caraballo	-	Intership, MTS and TTS' Chief Financial Officer
Anthony Vazquez	-	Intership, MTS and TTS' Chief Operating Officer
Daisy Quiñones	-	Intership, MTS and TTS' Controller
Luis Ruiz	-	MTS General Manager
Enrique Sosa	-	TTS General Manager
Noel Lopez	-	TTS Special Project Supervisor
Ernesto Davila	-	TTS Supervisor

11. Respondent, by MTS' General Manager Luis Ruiz, at its MTS facility:

(a) In or about September and/or October 2012, on several occasions, interrogated its employees about their union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees.

(b) In or about September and/or October 2012, on several occasions, threatened its employees with discharge, loss of jobs, and plant closure if the Union won a Board scheduled election.

(c) In or about September and/or October 2012, on two separate occasions asked its employees to solicit other employees to vote against the Union in an upcoming Board scheduled election.

(d) In or about September and/or October 2012, created an impression among its employees that their union activities were under surveillance by showing them a list identifying employees as Union and non-Union supporters.

12. (a) In or about November 2012, on various occasions, Respondent, by TTS' Supervisor Ernesto Davila, at its TTS facility, threatened employees with discharge, loss of jobs, plant closure if employees sought Union representation.

(b) In or about November, December 2012 and February 2013, Respondent, by TTS' Special Project Supervisor Noel Lopez, at its TTS facility, threatened employees with discharge, loss of jobs and plant closure if employees sought Union representation.

(c) In or about November 2012, Respondent, by TTS' General Manager Enrique Sosa, at its TTS facility, threatened employees with discharge, loss of jobs, plant closure if employees join or assisted the Union.

(d) In or about November 2012, Respondent, by TTS' General Manager Enrique Sosa, at its TTS facility, coerced employees by telling them that MTS closed its facilities because employees unionized.

13. (a) About October 19, 2012, Respondent closed its MTS facility and discharged its employees Jesús Fernández, Hugo Adames Soto, Angel M. Rivera, José M. Velázquez, José R. Marrero, Leonardo Morales, Raul Pineda, Ramón López, José Nater, Sócrates Escotto, Bryan Alvarado, Mario Galán, Dionisio García, Carmen Morales, Jorge Mercado, Lydia E. López, Jason Marrero, Manuel Figueroa, Rafael Rodríguez, Angel García Pabón, Angel García García, and Luis Allende.

(b) Respondent engaged in the conduct described above in paragraph 13(a) because the employees of Respondent MTS, joined and/or assisted the Union and engaged in concerted activities, and to discourage its employees from engaging in these activities.

14. (a) About April 26, 2012, Respondent closed its TTS facility and discharged all of its employees, including Yamil Colon, John Alexis Rosa, Miguel Ortiz, Elvin Jovany Moran, Elliot Santiago, Edgar Alejandro Diaz.

(b) Respondent engaged in the conduct described above in paragraph 14(a) because the employees of Respondent TTS, joined and/or assisted the Union and engaged in concerted activities, and to discourage its employees from engaging in these activities.

15. (a) The subjects set forth above in paragraph 13 relates to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent engaged in the conduct described above in paragraph 13 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct and/or without first bargaining with the Union to a good-faith impasse.

16. By the conduct described above in paragraphs 11 and 12 Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

17. By the conduct described above in paragraphs 13 and 14, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

18. By the conduct described above in paragraph 13(a) and 15, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 13 and 15, the Acting General Counsel seeks an Order requiring Respondent to: a) restore its MTS' operation as it existed on October 18, 2012; b) make whole employees Jesús Fernández, Hugo Adames Soto, Angel M. Rivera, José M. Velázquez, José R. Marrero, Leonardo Morales, Raul Pineda, Ramón López, José Nater, Sócrates Escotto, Bryan Alvarado, Mario Galán, Dionisio García, Carmen Morales, Jorge Mercado, Lydia E. López, Jason Marrero, Manuel Figueroa, Rafael Rodríguez, Angel García Pabón, Angel García García, and Luis Allende for any loss of pay or benefits they may have suffered as a result of said discriminatory action and/or unilateral

change alleged; and c) bargain with the Union in good faith to an agreement or to impasse concerning any change to Unit employees' terms and conditions of employment.

As part of the remedy for the unfair labor practices alleged above in paragraph 14, the Acting General Counsel seeks an Order requiring Respondent to a) restore its TTS' operation as it existed on April 25, 2013; and b) make whole TTS's employees, including Yamil Colon, John Alexis Rosa, Miguel Ortiz, Elvin Jovany Moran, Elliot Santiago, Edgar Alejandro Diaz for any loss of pay or benefits they may have suffered as a result of said discriminatory action.

As part of the remedy for the unfair labor practices alleged above in paragraph 13, 14 and 15, the Acting General Counsel also seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no unilateral change.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 13, 14 and 15, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before August 14, 2013, or postmarked on or before August 13, 2013**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties. An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case**

Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's EFiling system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **October 22, 2013,** at **9:30am** at the **NLRB Hearing Room, La Torre de Plaza, Plaza Las Américas Mall, Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations

Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

All parties are reminded of the National Labor Relations Board's standard procedures in formal unfair labor practice proceedings which provide that all exhibits offered for evidence shall be filed in duplicate. In the event a duplicate copy of the exhibit which has been received in evidence has not been submitted to the Administrative Law Judge prior to the close of hearing, and the filling of said duplicate has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibits may be rescinded and the exhibits rejected.

Dated: July 31, 2013

Marta M. Figueroa

Marta Figueroa, Regional Director
National Labor Relations Board, Region 24
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San Juan, P.R. 00918-1002

Attachments

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE NATIONAL LABOR RELATIONS BOARD
REGION 24

INTERNATIONAL SHIPPING AGENCY, INC., AND MARINE TERMINAL SERVICES, INC., AND TRUCK TECH SERVICES INC., SINGLE EMPLOYER And INTERNATIONAL SHIPPING AGENCY, INC., AND TRUCK TECH SERVICES, INC., SINGLE EMPLOYER And UNION DE EMPLEADOS DE MUELLES (UDEM). ILA, 1901, AFL, CIO	Cases Number: 24-CA-091723 24-CA-104185

ANSWER TO THE COMPLAINT

COME NOW, INTERNATIONAL SHIPPING AGENCY, INC. ("INTERSHIP"), MARINE TERMINAL SERVICES INC. ("MTS"), and TRUCK TECH SERVICES INC. ("TTS) through the undersigned legal representation and **STATE** and **PRAY** as follows:

1. (a) Paragraph 1 (a) is **ADMITTED**.

   (b) Paragraph 1 (b) is **ADMITTED**.

   (c) Paragraph 1 (c) is **ADMITTED**.

   (d) Paragraph 1 (d) is **ADMITTED**.

(e) Paragraph 1 (e) is **ADMITTED**.

(f) Paragraph 1 (f) is **ADMITTED**.

(g) Paragraph 1 (g) is **ADMITTED**.

2. (a) Paragraph 2 (a) is **ADMITTED**.

(b) Paragraph 2 (b) is **ADMITTED**.

(c) Paragraph 2 (c) is **ADMITTED.**

3. (a) Paragraph Three (a) is **DENIED** as drafted. It is affirmatively alleged that MTS engaged in heavy damage refurbishing of chassis, containers, trucks and other heavy equipment for third-parties, meaning anyone that had the need for said services, which type of work could not be performed in any dock area in which Intership operates given strict regulatory prohibitions.

(b) Paragraph 3 (b) is **ADMITTED**.

4. (a) Paragraph 4 (a) is **DENIED** as drafted. It is affirmatively alleged that TTS engaged in the business of repairing trucks' fleets and other heavy equipment for third parties, meaning anyone that had the need for said purposes.

(b) Paragraph 4 (b) is **ADMITTED**.

5. (a) Paragraph Five (a) is **DENIED**.

(b) Paragraph Five (b) is **DENIED**.

6. (a) Paragraph Six (a) is **ADMITTED**.

(b) Paragraph Six (b) is **ADMITTED**.

(c) Paragraph Six (c) is **ADMITTED**.

7. Paragraph Seven is **ADMITTED**.

8. Paragraph Eight is **ADMITTED**.

9. (a) Paragraph Nine (a) is **ADMITTED**.

(b) Paragraph Nine (b) is **DENIED**.

10. Of Paragraph Ten it is **ADMITTED** that the listed individuals held the positions set forth opposite their respective names. The multiple supervisory or agency nature in several of the Respondents regarding those individuals so listed with the exception of David Segarra is **DENIED**.

11. (a) Paragraph Eleven (a) is **DENIED**.

(b) Paragraph Eleven (b) is **DENIED**.

(c) Paragraph Eleven (c) is **DENIED**.

(d) Paragraph Eleven (d) is **DENIED**.

12. (a) Paragraph Twelve (a) is **DENIED**.

(b) Paragraph Twelve (b) is **DENIED**.

(c) Paragraph Twelve (c) is **DENIED**.

(d) Paragraph Twelve (d) is **DENIED**.

13. (a) Paragraph Thirteen (a) is **DENIED** as drafted. It is affirmatively alleged on October 19, 2012 Respondent MTS closed its facilities and consequently discharged all of its employees.

(b) Paragraph Thirteen (b) is **DENIED**.

14. (a) Paragraph Fourteen (a) is **DENIED** as drafted. It is affirmatively alleged that on April 26, ***2013***, Respondent TTS closed its facilities and consequently discharged all of its employees.

(b) Paragraph Fourteen (b) is **DENIED**.

15. (a) Paragraph Fifteen (a) is **DENIED**.

(b) Paragraph Fifteen (b) is **DENIED**.

16. Paragraph Sixteen is **DENIED**.

17. Paragraph Seventeen is **DENIED**.

18. Paragraph Eighteen is **DENIED**.

19. Paragraph Nineteen is **DENIED**.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which a relief can be granted.
2. The Complaint pleads statutory violations that are not closely related to the corresponding charge.
3. The Complaint is time-barred in whole or in part. Moreover, the General Counsel has improperly consolidated two cases that have no relationship which each other for the sole purpose of attempting to evade the time limitations of the Act.

4. As it relates to the events pleaded in the Complaint, there was no bargaining duty regarding either the decision or its effects because the general obligation to bargain had not arisen yet.
5. In any case, the closing of facilities pleaded in the Complaint refers to quintessential managerial decisions that are privileged under the Act over which there is no decisional bargaining obligation. In any case, these decisions were caused for extenuating economic reasons so compelling that bargaining could not have altered them.
6. In the alternative, even if it is determined that there was any effect bargaining obligation, the Union waived such right. In the event it is determined that there was any effect bargaining obligation and that the Union did not waive it, the corresponding Employer fulfilled said obligation.
7. In any case, the Complaint as it relates to Respondent MTS includes and pleads bargaining obligation as to alleged "employees" to which the Employer had no bargaining obligation whatsoever because they did not belong or were included in the bargaining unit.
8. None of the decisions and/or actions pleaded in the Complaint was taken because of or on account of Union animus. All of the decisions and/or actions pleaded in the Complaint were taken for valid business reasons neutral to any protected conduct.

9. In any case, as it relates to Respondent MTS, the Complaint includes and seeks remedies for individuals that were not in the bargaining unit and that engaged in no concerted activity whatsoever to the extent that are not covered individuals for purposes of the Act or the remedial powers of the Board.

10. No supervisor or agent of Respondent MTS interrogated its employees about their union membership or activities of their sympathies.

11. No supervisor or agent of Respondent MTS threatened its employees with discharge, loss of jobs, and/or plan closure if the Union won a Board Election.

12. No supervisor or agent of Respondent MTS asked its employees to solicit other employees to vote against the Union in an upcoming Board election.

13. Moreover, in the case of Respondent TTS, none of its employees engaged in any concerted activity known or that could have been known by the Employer or any supervisor or agent, and accordingly, there can be no nexus between any protected activity and the Employer's decision.

14. No supervisor or agent of any of the Respondents proffered any statement or engaged in any conduct that interfered, restrained or in any way coerced employee's protected activity.

15. No supervisor or agent of any of the Respondents proffered any statement or engaged in any conduct that could lead a reasonable employee to believe that his union or protected activity have been placed under surveillance.

16. In any case, any of the alleged violations of Section 8(a)(1) has by now become moot.

17. Any statement or conduct that any supervisor and/or agent of the Respondents may have proffered or engaged in is clearly protected by Section 8(c) of the Act as there was no threat of reprisal or force or promise of benefit.

18. Respondents were distinct and separate business enterprises that engaged in separate and distinct lines of business with no centralized control of labor relations.

19. In any case, no restoration order is proper in this case because of extenuating circumstances and because it would place an unwarranted burden on the employer.

20. In the alternative, any remedy should be governed by *Transmarine Navigation Corp. 10 NLRB (1986)* and *Compu-Net-Communications, 315 NLRB 216, Fn.3 (1994).*

21. In any case, all interim earnings should be deducted from any back pay.

22. The General Counsel has presented a Complaint with no reasonable basis in facts or applicable law.

23. The Respondent reserves its right to amend-this Answer to include or exclude any affirmative defense.

WHEREFORE, Respondents respectfully request that the Complaint be **DENIED** and consequently that it be **DISMISSED**.

RESPECTFULLY SUBMITTED.

IT IS HEREBY CERTIFIED that on this same day the foregoing document was filed as a Pdf document containing the required signature so that no paper copies need to be notified to the Regional Office. It is also certified that Counsel for the General Counsel has been notified with a true copy of this pleading through Isis M. Ramos Melendez, Esq. at Isis.Ramos-Melendez@nlrb.gov and that the Charging Party has been notified with a true copy of this document by regular mail to its address of record pursuant to Section 102.114 of the Board's Rules and Regulations.

In San Juan, Puerto Rico this 20th day of August of 2012.

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