

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

**THE GULFPORT STEVEDORING *
ASSOCIATION-INTERNATIONAL *
LONGSHOREMEN'S ASSOCIATION *
CONTAINER ROYALTY PLAN ***

and * *

Cases 15-CA-096939

**TOMMY EVANS, an Individual *
* ***

**INTERNATIONAL LONGSHOREMEN'S *
ASSOCIATION LOCAL 1303 *
* ***

and * *

15-CB-096934

**TOMMY EVANS, an Individual *
* ***

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF TO THE
GULFPORT STEVEDORING ASSOCIATION-INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION CONTAINER ROYALTY PLAN'S CROSS-
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF

Counsel for the General Counsel (Counsel) in the above-captioned case submits this Answering Brief in response to the Gulfport Stevedoring Association-International Longshoremen's Association Container Royalty Plan's (Respondent Plan) Cross-Exceptions to the Decision of the Administrative Law Judge.¹

I. STATEMENT OF THE CASE²

Although in his February 27, 2014 Decision, ALJ Michael A. Marcionese (ALJ) dismissed the complaint in the above-captioned cases and referred the cases to the National Labor Relations Board (Board), he found that Respondent Plan is an Employer. On May 9, 2014, Respondent Plan filed Cross-Exceptions and a Brief in Support of its Cross-Exceptions. Based on the ALJ's findings in his Decision and the facts as noted below, Counsel concurs with the ALJ findings that Respondent Plan is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (Act).

II. Summary of Pertinent Facts

A. The International Longshoremen's Association Local 1303

The International Longshoremen's Association Local 1303 (Respondent Union) is a

¹ Respondent Plan filed 12 Cross-Exceptions. Cross-Exceptions 1-10 are related to jurisdiction and are addressed herein. Cross-Exceptions 11 and 12 are related to factual issues raised by Counsel in Counsel's Exceptions to the Decision of the Administrative Law Judge. Counsel's position regarding Cross-Exceptions 11 and 12 are fully briefed in Counsel to the General Counsel's Brief in Support of its Exceptions to the Decision of the Administrative Law Judge and are incorporated by reference herein.

² Reference to Exhibits of the General Counsel, Respondent Union, Respondent Plan, and Joint Exhibits will be designated as "GCX", "RUX", "RPX," and "JEX," respectively with the appropriate number for those exhibits. Reference to the transcript and the ALJD will be designated as "Tr." and "ALJD," respectively.

labor organization within the meaning of the Act engaged in collective bargaining on behalf of and representation of employees working as longshoremen at the Port of Gulfport (Port).

Respondent Union is charged with operating the hiring center at the Port which refers workers to unload vessels at the Port pursuant to the collective bargaining agreement between Respondent Union and the Gulfport Stevedoring Association (GSA), and other collective bargaining agreements covering the employment of longshoremen through Respondent Union's Hiring Center. Tr. at 452, 2-18; GCX -3; GCX-26; GCX-27.

B. The Gulfport Stevedoring Association

The Gulfport Stevedoring Association (GSA) is a multi-employer association that is a party to the collective bargaining agreement with Respondent Union. GSA is comprised of two stevedoring companies, Ports America and SSA. Tr. at 56, 18-25. The stevedoring companies are the entities that load and unload cargo from merchant vessels at the Port. They contract with ship-owners to handle the cargo, and they hire longshoremen through the hiring center in accordance with the collective bargaining agreement to perform the actual loading and unloading of goods.

C. The Gulfport Stevedoring Association- International Longshoremen's Association Container Royalty Plan

1. Plan History and Purpose

The Gulfport Stevedoring Association-International Longshoremen's Association Container Royalty Plan (Respondent Plan) is an employee benefit plan created in 1974 that collects royalty money from signatory employers and distributes part of the money annually to

employees who work 700 hours in the previous plan year in accordance with the terms of the collective bargaining agreement between Respondent Union and GSA. RPX-1; JEX-1.

Respondent Plan is one of a few container royalty plans in the United States and was created during the boom of containerization in the 1970s in order to offset some of the losses experienced by longshoremen due to a reduction in work hours resulting from containerization. The main function of the fund is to enforce the terms of the collective bargaining agreement by providing supplemental cash benefits to longshoremen who work pursuant to the collective bargaining agreement. RPX-1, 2.

2. Board of Trustees

Respondent Plan is administered by a Board of Trustees consisting of two representatives of the two stevedoring companies who comprise GSA and two representatives of Respondent Union. RPX-1, 3. At all material times, the trustees have been Greg Schruff, representing SSA, Kendall Lamb, representing Ports America, and Donald Evans and Darius Johnson, representing Respondent Union. Tr. at 58, 2-5; at 748, 1-17.

3. Contributors to the Plan

The actual contributors to the Plan are the companies whose container ships are unloaded by the longshoremen referred through Respondent Union's hiring hall pursuant to the collective bargaining agreement between GSA and Respondent Union. At all relevant times, the three companies contributing royalty payments to Respondent Plan were Dole, Chiquita, and Crowley (Port Employers, collectively). Tr. at 57, 6-10; GCX-26-27. Crowley contributes to Respondent Plan pursuant to the international agreement. Tr. at 581, 10-25. Tr. at 582, 1-12.

At least once a week, each of the Port Employers has a ship that makes a delivery to the Port which is unloaded by the longshoremen who are dispatched to work through Respondent Union's Hiring Center. Tr. at 167, 1-3; RPX-18(a). In addition, Dupont also unloads its barges at the Port using longshoremen who are dispatched to work through Respondent Union's Hiring Center.³

Both Respondent Plan and Respondent Union stipulated to the Board's statutory jurisdiction over the Port Employers individually, and the two stevedoring companies – SSA and Ports America, that together comprise GSA. GCS-34; GCS-35; TR. at 14, 10-14; at 298, 18-25, at 300, 1-25.

4. Funds Contributed to Respondent Plan

The Port Employers contribute \$3 per ton of cargo assessed royalty into the fund. The money is used to distribute a supplemental wage payment to qualifying longshoremen at the end of the plan year, to administrative expenses of Respondent Plan, and distribute monies to the other fringe benefit plans. Tr. at 59-60, 1-25, 1-15. For Plan Year's 2009-2010, 2010-2011, and 2011-2012, Respondent Plan received contributions from the Port Employers totaling \$1,522,976.81, \$1,522,976.81, and \$1,430,096.92, respectively. GCX-12; GCX-13; GCX-30.

In 2012, 131 longshoremen qualified for a container royalty check from Respondent Plan, and each eligible longshoreman received a net check amount of \$2,989.68 after deductions for FICA, Federal Withholding, State Withholding, and Respondent Union's Dues Check-off. GCX-

³ See Cuevas notes attached to RP X18(a) and 19 and Counsel's Post-trial Brief Exhibits 1, 2, 3, and 4 attached to General Counsel's Brief in Support of its Exceptions to the Decision of the Administrative Law Judge and are incorporated by reference herein.

30.⁴ The checks are prepared and issued to the longshoremen with all the deductions already made. Although Respondent Plan is not suppose to deduct union dues from a longshoreman's check until after he has completed the dues checkoff form, the checks are prepared with the union dues deducted from the check, and the longshoremen signs the dues checkoff form prior to receiving his check.⁵ Tr. at 684-685, 18-24, 1-3.

5. Services Provided by Respondent Plan

Although Respondent Plan's Administrator, Victor Walsh, disingenuously testified that the Respondent Plan does not provide any services to the Respondent Union, Respondent Plan provides services to Respondent Union, GSA, Port Employers, DuPont, and the other fringe benefit plans by operating the Hiring Center on behalf of Respondent Union and GSA , collecting and keeping in trust the Container Royalty contributions made by the Port Employers in accordance with applicable collective bargaining agreements, investing the contributions, annually distributing the contributions to the qualifying longshoremen in accordance with the applicable collective bargaining agreements, distributing excess funds to the other fringe benefit plans in accordance with the applicable collective bargaining agreements, and dispatching longshoremen to unload the DuPont merchant vessels.

In order to fulfill Respondent's main function of operating Respondent Plan's Hiring Center, Respondent Plan employs two Container Inspector-Dispatchers (CI-D) who are

⁴ The total amount of funds issued to longshoremen in 2012 was \$694,990.55. GCX-30.

⁵ Although not alleged in this proceeding as a violation, the deducting of union dues from an employee's paycheck before the employee signs the dues checkoff form and then having the employee signed the dues checkoff form before receiving the check , leaves employees to believe that dues checkoff authorization method of fulfilling financial obligations to their union is compulsory and a violation of the Act. *See Generally Rochester Manufacturing C.*, 323 NLRB 260 (1977).

responsible for dispatching longshoremen to unload vessels belonging to the Port Employers and Dupont in accordance with the applicable collective bargaining agreements. GCX-3, GCX-15.

The value of the dispatching services provided by Respondent Plan is reflected in the annual contributions it receives from the Port Employers. For Plan Year 2011-2012, this amount was over \$1,000,000.00.

6. Container Inspector-Dispatcher (CI-D)

In 1974, the Container Inspector-Dispatcher (CI-D) position was established by Respondent Plan for operations at the Port. On April 8, 1974, Tommy Kirk Evans (Tommy Evans) was hired by Respondent Plan as the first CI-D. JEX-4. Up until 2011, the Union paid 25% of the CI-D salary to assist Respondent Plan in covering cost related to the dispatching work the CI-Ds performed. Tr. at 207, 2-16; ALJD at 4, 1-2. Although Respondent Union has not been paying a portion of the CI-Ds' direct wages since 2011, the CI-Ds have been performing the same job functions related to the operation of Respondent Union's Hiring Center that they performed prior to 2011. Tr. at 206, 20-25; at 207, 1-25.

Although Respondent Plan and Respondent Union assert that the CI-Ds are not bargaining unit employees, they have specifically negotiated for and included in their collective bargaining agreements provisions that allow the CI-Ds to accrue seniority hours within the longshoremen's unit while they are employed by Respondent Plan. Tr. at 482, 20-22; GCX -3. In addition, although there is no contract between Respondent Plan and the other fringe benefit funds, the CI-Ds also received the same vacation, welfare, and pension benefits as Respondent Union's longshoremen through the fringe benefit funds. Tr. at 482, 6-19. Notably, the GSA-ILA Pension Plan and Trust defines an employee eligible to receive pension funds as, "any individual

employed by an employer for whom contributions are to be made pursuant to a collective bargaining agreement.” RPX-1.

CI-Ds employed by Respondent Plan are tasked with answering a call from the stevedoring companies’ supervisor requesting labor for a Port Employer ship and/or Dupont barge, recording a voice message announcing what ship and/or barge is coming in, at what time it is coming in, announcing the gang to work the unload, and then attending the shape-ups for each ship and/or barge in order to fill vacancies in the assigned gangs. If additional longshoremen are needed to fill the gangs, the CI-Ds are supposed to refer the most senior longshoreman present for the shape-up who also has the require skills to work with the gang.

In order to facilitate the task of operating Respondent Union’s Hiring Center, Respondent Plan paid for the establishment and maintenance of the Hiring Center’s telephone answering system. After the CI-D sets the recording on the telephone answering system, the longshoremen call the telephone answering system and listen to the CI-D’s message to find out what time a ship and/or barge is coming in so they know what time to report to the Union Hall for a shape-up. Without the CI-D performing the function of recording the telephone message, the longshoremen would not know what ship and/or barge was coming in to be unloaded, which gangs would be performing the work, and/or what time to report to the Union Hall for the shape-up. Tr. at 755, 4-14.

D. Seniority Board

Because vacancies to fill gangs at the shape-ups are based in large part upon a longshoremen’s seniority, the seniority date of the longshoremen is very important to the operation of Respondent Union’s Hiring Center. If a longshoreman believes he was not

properly referred by the CI-D in accordance with his seniority, he may file a complaint with the CI-D which is forwarded to the GSA-ILA Seniority Board (Seniority Board). GCX-39. The Seniority Board reviews the longshoreman's complaints and resolves all issues regarding seniority in accordance with the collective bargaining agreement between Respondent Union and GSA. Although there were complaints filed against the CI-Ds in 2011 and 2012, neither Respondent Union nor Respondent Plan produced any documentary evidence at trial indicating that the Seniority Board upheld a complaint against either CI-D.

In order to facilitate the functions of the Seniority Board and ensure the smooth operation of the Respondent Union's Hiring Center, Respondent Plan pays all expenses related to the functioning of the Seniority Board. In addition, members of Respondent Plan's Board of Trustees serve as members of the Seniority Board.

III. JURISDICTION ARGUMENT

A. The Board has jurisdiction over Container Royalty Plans.

The Supreme Court approved of the Board's authority over Container Royalty Plans in a 1980 decision in which the Court found such plans to be lawful as part of a negotiated agreement intended to preserve the traditional work of longshoremen during the advent of "the container revolution". N.L.R.B. v. International Longshoremen's Ass'n, AFL-CIO, 447 U.S. 490, 494 (1980). In that case, the Board had found that the Container Royalty system to be an unlawful work preservation agreement, and the Court overruled the Board and declared the system to be lawful. The Supreme Court found that the provisions of the collective bargaining agreement between the International ILA and the employer organizations in the shipping industry that were adopted in response to the containerization of shipping, including the

establishment of a Container Royalty Fund, were lawful under Section 8(s) of the Act. In that case, the Board had found the Container Royalty system to be an unlawful work preservation agreement, and the Court overruled the Board and declared the system to be lawful.

B. The Board has jurisdiction over Trust Funds established pursuant to collective bargaining agreements.

Respondent Plan is a trust fund that was established and has been maintained pursuant to the collective bargaining agreements between Respondent Union and GSA. The Board has long treated trust funds, which are established by unions and employers pursuant to collective-bargaining agreements, as employers within the meaning of the Act, and has consistently asserted jurisdiction. Roofing, Metal & Heating Associates, Inc., 304 NLRB 155, 156 (1991) See also, Chain Service Restaurant Employees Local 11, 132 NLRB 960, 961-963 (1961); Garment Workers Health & Welfare Fund, 146 NLRB 790, 791-793 (1964); Joint Industry Board of the Electrical Industry & Pension Committee, 238 NLRB 1398, 1405 (1978); Welfare, Pension & Vacation Funds Local 2, 256 NLRB 1145 fn. 1, 1156 (1981); Iron Workers Local 15, 278 NLRB 914 (1986). The jurisdictional monetary standard used by the Board to determine jurisdiction over a plan or trust fund uses a traditional inflow and outflow analysis and evaluates the value of the services provided by the trust fund, the business operations of employer-members, the contributions collected by the Fund, the gross revenues of employer-members, and the purchase of materials and supplies by employer-members. Roofing, Metal & Heating Associates, Inc., 304 NLRB 155, 156 (1991). The ALJ determined that the role of Respondent Plan is no different than the health, welfare, and pension funds over which the Board has historically asserted jurisdiction. ALJD at 4, 44-45.

C. The Board has jurisdiction over Respondent Plan based on services provided to Respondent Union.

Respondent Plan also provides services in excess of \$50,000 to Respondent Union. The CI-Ds employed by Respondent Plan administer the CBA by referring workers out of Respondent Union's hiring hall based on the seniority rules established by the CBA. Respondent Plan also administers and pays for the Seniority Board which handles complaints regarding seniority issues under the CBA. The CI-Ds are responsible for setting the tape informing Respondent Union's members when a ship is coming in as well as dispatching the labor through the hiring hall prior to the working of a vessel. Respondent Plan pays for the phone line and answering system provided by AT&T and Universal Telecom which Respondent Union's members use to call to find out when ships are scheduled, which amounts to approximately \$360.00 per month. GCX-17. Essentially, Respondent Plan's employees engage in the full operation of Respondent Union's hiring hall. The value of the dispatching services provided by Respondent Plan to Respondent Union is reflected in the annual contributions it receives from the Port Employers. For Plan Year 2011-2012, this amount was over \$1,000,000.00

Similarly, Respondent Plan provides services to Respondent Union by enforcing the terms of the collective bargaining agreement requiring the payout of a container royalty funds to longshoremen who worked 700 or more hours a year. The total amount of funds Respondent Plan issued to longshoremen in 2012 was \$694,990.55. GCX-30.

Respondent Plan also facilitates a dues check-off authorization through which workers who are paid a container royalty check has union dues deducted from that check. For Plan Year 2011-2012, Respondent Plan facilitated the collection of \$104, 248.49 in dues for Respondent Union. GCX-30.

Based on the above, the Board has jurisdiction over Respondent Plan based on the services it provides to Respondent Union.

D. The Board has jurisdiction over Respondent Plan based on services provided to GSA.

GSA is comprised of two stevedoring companies – SSA and Ports America. GSA and the two stevedoring companies are employers under the Act. The stevedoring companies contract with ship-owners to handle the cargo. The stevedoring companies via GSA entered into a collective bargaining agreement with Respondent Union, not Respondent Plan, to provide longshoremen to perform the actual unloading of the vessels. Although the contract is with Respondent Union, James Lamb, Ports America’s manager, testified that his company is a service provider to the ships that unload their cargo at the Port and that in order to provide services to its customers Ports America counts on the dispatcher to order labor. Tr. at 749, 9-24; Tr. at 755, 4-12. Lamb further testified that because Ports America does not have the means to put together labor, it needs the dispatcher to perform the dispatching duties; otherwise, the ships do not get unloaded. Tr. at 755, 4-12. Therefore, if the dispatchers do not dispatch the longshoremen, the vessels do not get unloaded, the vessels merchandise do not make it to market, the stevedoring companies do not get paid, the longshoremen do not work and do not get paid in accordance with the terms of the collective bargaining agreement, and payments are not made to the fringe benefit funds in accordance with the terms of the collective bargaining agreement.

Therefore, although the Administrator testified that the dispatchers do not provide a service to Respondent Union and/or GSA, the evidence clearly indicates that without the

dispatcher services everything at the Port comes to a complete stop. The value of the dispatching services provided by Respondent Plan to GSA is reflected in the annual contributions it receives from the Port Employers after the dispatchers dispatch the longshoremen. For Plan Year 2011-2012, the value of the services was over \$1,000,000.00.⁶

Based on the above, the Board has jurisdiction over Respondent Plan related to the services it provides to GSA.

E. The Board has jurisdiction over Respondent Plan based on services provided to the other fringe benefit plans.

According to Lamb, not only do the dispatchers account for funds due Respondent Plan, they also account ... “for the amount of containers that are due royalty to the pension, vacation and welfare...” funds. Tr. at 748, 18-24. To this end, Respondent Plan regularly transfers excess container royalty funds to the GSC-ILA Pension Plan & Trust (Pension Plan), GSC-ILA Welfare Plan (Welfare Plan), and the GSC-ILA Vacation Plan (Vacation Plan). For example, on October 25, 2012, Respondent Plan’s Board of Trustees voted unanimously to transfer \$200,000 from Respondent Plan to the other GSC-ILA Plans noted above. GCX -8. Thereafter, on November 6, 2012, the Board of Trustees voted to transfer \$230,000 from Respondent Plan to the Welfare Plan. Therefore, in 2012, Respondent Plan contributed \$430,000 of container royalty funds to the other GSA-ILA plans to ensure those plans could meet their obligations to the longshoremen in accordance with the terms of the collective bargaining agreement between Respondent Union and GSA. Based on the above, the minimum value of the services Respondent Plan provided to the other fringe benefit plans is \$430,000. Therefore, the Board has

⁶ The Board asserted jurisdiction over a trust fund based on a finding of in excess of \$50,000 of total employer-member contributions, gross revenues of an employer-member in excess of \$500,000, and the purchase of materials and supplies in excess of \$50,000 in Roofing, Metal & Heating Associates, Inc., 304 NLRB 155, 156 (1991).

jurisdiction over Respondent Plan based on the services it provides to the other fringe benefit plans.

F. The Board has jurisdiction over Respondent Plan based on Respondent Plan's relationship with the Port Employers.

At trial, Respondent Plan and Respondent Union stipulated that Dole and Chiquita are employers under the Act.

Respondent Plan employs the CI-Ds to ensure longshoremen are dispatched to Dole and Chiquita to unload their respective ships. Thereafter, Dole and Chiquita make container royalty payments to Respondent Plan in accordance with the collective bargaining agreement. RPX-1, GCX-3. In each of the last three years, Dole and Chiquita combined contributed more than \$1,000,000 in container royalty funds to Respondent Plan. Based on the above, the Board has jurisdiction over Respondent Plan. The ALJ correctly found that Respondent Plan collected almost \$1.5 million in royalty payments from Dole, Chiquita, Crowley, and other employers who directly engaged in commerce.

G. Respondent Plan and Respondent Union are Joint Employers of the Container-Inspector Dispatchers⁷

Respondent Union exerts control over the CI- Ds and receives the benefits of their services to a degree sufficient to make it a joint employer with Respondent Plan. Joint employer relationships are found where even in the absence of common ownership, one entity effectively and actively participates in the oversight and control of working conditions and labor relations of

⁷ Although Respondent Plan asserts that it is a non-profit trust organization duly recognized by its tax filings with the federal government, none of the trust documents it offered at trial indicate that it notified the IRS that Respondent Union was paying a portion of the CI-Ds' salary for their role in dispatching longshoremen to work on the ship, a function normally the sole responsibility of a union's hiring center.

employees of another entity. The Board considers four factors to determine whether employers will be treated as a joint employer, (1) interrelationship of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. Holiday Inn of Benton, 237 NLRB 1042, 1044 (1978) citing Sakrete of Northern California, Inc., 137 NLRB 1220 (1962).

Although it is Respondent Union's responsibility to operation the Hiring Center, the task falls to the CI-Ds. Not only do the CI-Ds dispatch longshoremen to container vessels – Dole, Chiquita, and Crowley - through the Hiring Center for Respondent Union, they also dispatch longshoremen to non-container vessels, in particular the Dupont barges, through the Hiring Center. According to Cuevas' notes, in addition to making tapes for the Port Employers, he also made tapes for the Dupont barges. RPX -18a, RPX-19. When Cuevas conducted the shape-ups for the Dupont barges, he indicated so on the shape-up form. RPX -18a, Bates Nos. 000049, 000062, 000063, and 000088.

Because the CI-Ds have been performing the Union's dispatching function, up until 2011, Respondent Union paid 25% of the CI-Ds salary as compensation to offset their dispatching duties. The Administrator testified that although Respondent Union stopped paying for part of the CI-Ds' salary in 2011, the dispatching duties of the CI-D's have not change.

To facilitate the CI-Ds performing the duties related to dispatching, Respondent Plan pays for the phone system used by the CI-Ds to notify the longshoremen of work. CI-Ds also use this phone system to notify longshoremen of Respondent Union's meetings. RPX 18a, Bates No. 000167.

When a CI-D takes leave, he is not required to notify the Administrator and/or a member of the Board of Trustees. He is only required to notify Respondent's Union Vice President. For

example, when Cuevas took leave in the summer of 2012, the only person he spoke with and obtained permission to go on leave was his immediate supervisor, Glen Evans. At that time, Glen was not a member of the Board of Trustees but was Respondent's Union Vice President.

Furthermore, when a CI-D is not available to perform dispatching duties, Glen Evans would perform those duties. Because Glen Evans was a paid union representative, Respondent Plan did not have to pay him for the dispatching services he performed.

When a longshoreman has a complaint regarding a CI-D, the complaint was filed with the dispatcher and then forwarded to the Seniority Board for review. The Seniority Board would then make a decision which was binding on the longshoreman and Respondent Union. The Seniority Board's expenses are borne by Respondent Plan and not Respondent Union.

Finally, Respondent Union effectively controls the hiring and firing of the CI-Ds. As previously noted the Board of Trustees did not consider discharging Tommie Evans until it was requested by Respondent. In addition, Respondent Union selected and notified Tommie Evans' replacement of his hiring before the Board of Trustees knew that they were meeting to terminate Tommie Evans' employment. Once Respondent Union informed the Board of Trustees that it wanted Tommie Evans' terminated from his employment, the Board of Trustees merely approved the termination and hire the newly elected Respondent Union's Secretary/Treasurer who was not qualified to perform the job.

Based on the above, it is apparent that the Respondent Union and Respondent Plan are joint employers of the dispatcher. Therefore, because the Board has jurisdiction over Respondent Union, it also exercises jurisdiction over Respondent Plan regarding the CI-Ds.

IV. CONCLUSION

For the foregoing reasons, Counsel for the Acting General Counsel respectfully requests the Board uphold the ALJ's findings that Respondent Plan is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Dated: May 22, 2014.

Respectfully Submitted,

_____/s/_____

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