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PLEASE RESPOND TO:

**P. O. Box 352170
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November 13, 2012

Via UPS Overnight Mail

United States Government
National Labor Relations Board
Office of the Executive Secretary
1099 14th Street, N.W.
Washington, D.C. 20570-0001

**RE: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 20
(Midwest Terminals of Toledo International, Inc.)
Case No. 8-CD-086589**

Dear Executive Secretary Heltzer:

Enclosed please find an original plus eight (8) copies of International Longshoremen's Association, Local 1982's Post Hearing Brief, with regard to the above-referenced matter. Please file the enclosed brief in accordance with your normal procedure and return a file-stamped copy to the undersigned in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

KALNIZ, IORIO & FELDSTEIN CO., LPA

By: _____

Bethany German Ziviski

Enclosure

cc: Otis Brown
Basil W. Mangano
Ryan K. Hymore
Ron Mason
Aaron Tulencik

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8
CLEVELAND, OHIO**

Midwest Terminals of Toledo Int'l, Inc.,	*	Case No. 8-CD-086589
<i>Employer,</i>	*	<u>INTERNATIONAL</u>
	*	<u>LONGSHOREMEN'S</u>
and	*	<u>ASSOCIATION LOCAL 1982's POST</u>
	*	<u>HEARING BRIEF</u>
Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 20,	*	Bethany German Ziviski (0077656)
<i>Charged Party,</i>	*	KALNIZ, IORIO & FELDSTEIN CO.,
	*	LPA
and	*	5550 W. Central Ave.
	*	P.O. Box 352170
International Longshoremen's Association, Local 1982,	*	Toledo, OH 43635-2170
	*	(419) 537-1954
<i>Party in Interest.</i>	*	(419) 535-7732 (facsimile)
	*	

On October 25, 2012, a hearing was held pursuant to a Notice issued by Region 8 of the National Labor Relations Board regarding a work jurisdiction dispute. From the outset, the International Longshoremen's Association, Local 1982 has argued that this matter is not properly before the National Labor Relations Board ("NLRB") and that the NLRB lacks reasonable cause to decide this issue. See Board Ex. 2. If the NLRB does decide this matter, then it must find that the work in dispute properly belongs to the International Longshoremen's Association, Local 1982, which has contractual work jurisdiction over the entirety of the Port of Toledo according to both the International



Longshoremen's Association's Master Agreement (Jt. Ex. 2) and the local agreement with Midwest Terminals of Toledo International, Inc. (Jt. Ex. 3 and ILA Ex. 1). Further, only the employees represented by ILA Local 1982 possess the necessary skills to perform the work in dispute.

I. FACTS

The Employer, Midwest Terminals of Toledo International, Inc., provides stevedoring services to its customers that include loading and offloading vessels, trucks, and trains. *See* Transcript p. 34. In addition, the Employer provides warehouse services to shipping companies that are engaged in interstate and foreign commerce. *See* Transcript p. 9. The Employer took over operations at the Port of Toledo in 2004. *See* Transcript p. 84.

The Employer employs a varying number of employees represented by ILA Local 1982. Depending on the availability of work, between eleven (11) and fifteen (15) Longshoremen may be working on any given day, though there may be more if multiple vessels are coming into the Port of Toledo. *See* Transcript p. 99.

ILA Local 1982 and the Employer are subject to the terms of a collective bargaining agreement (ILA CBA) with effective dates of January 1, 2011 through December 31, 2012, though the parties are currently in a dispute regarding the contract. *See* ILA Ex. 1. The ILA CBA covers employees of the Employer "in stevedore and warehouse operations such as longshoremen, warehousemen, crane operators, power operators, fork-lift operators, end-loaders, material handlers, checkers, signalmen, winchmen, linemen, line dispatcher, and hatch leaders." *See* ILA Ex. 1, p. 2. The Employer asserts that it is still working under the terms of the previous contract with effective dates of January 1, 2006 through December 31, 2010. *See* Jt. Ex. 3; Transcript p.

45.

Neither the 2006-2010 agreement nor the ILA CBA effective 2011-2012 contains a limitation regarding the location or work area jurisdiction to be performed by bargaining unit members for the Employer. *See* Jt. Ex. 3; ILA Ex. 1. In addition, by executing the Master Agreement Between Great Lakes Stevedore Employers and Great Lakes Council – Atlantic Cost District International Longshoremen’s Association AFL-CIO, the Employer has agreed “not to divert, assign or transfer any work under the jurisdiction of this agreement to any affiliated or subsidiary Company.” *See* Jt. Ex. 2, p. 2.

The Employer also employs approximately six (6) employees represented by Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 20 (“Teamsters Local 20” or “Teamsters”). *See* Transcript p. 99. The collective bargaining agreement between Teamsters Local 20 and the Employer (the “Teamsters CBA”) is limited in terms of scope of work and geography:

*This agreement covers forklift operators and warehousemen engaged in warehouse work at this facility east of St. Lawrence Drive. **This does not include work performed in the area known as Facility #1 specifically bordered by the Maumee River on the west and St. Lawrence Drive on the East.***

See Jt. Ex. 1, p. 4 (emphasis added). The rates of pay set forth in the Teamster CBA are solely for forklift drivers and warehousemen. *See* Jt. Ex. 1, p. 7. Accordingly, the Teamsters work is limited by the four corners of the Teamster CBA to forklift and warehouse work on the east side or dry side of St. Lawrence Drive. In practice, the Teamsters load and unload trucks and rail cars and move metals and products around in the yard. *See* Transcript p. 104.

The Employer’s facility includes a total of seven (7) warehouses. *See* Transcript p. 36. Five (5) warehouses—two (2) on the waterside and three (3) on the east side of St.

Lawrence Drive—are certified by the London Metal Exchange (LME).¹ *See* Transcript 42. Typically, Longshoremen work in the warehouses identified on Jt. Ex. 5-B as A, A1, B, C, and D. *See* Transcript p. 187. Longshoremen also perform work in Building J. *See* Jt. Ex. 5-B, Transcript pp. 151-152. In addition, Longshoremen load coke in an area behind warehouse D. *See* Transcript p. 124.

Teamsters employees do not typically work in the warehouses identified on Jt. Ex. 5-B as A, A1, B, C, and D. *See* Transcript pp. 110-111, 227. They work only in the triangle area bordered by St. Lawrence Drive, George Hardy Drive, and John Carey Drive. *See* Transcript pp. 104.

Employees in the ILA Local 1982 bargaining unit are experts at loading and unloading all types of cargo (including bulk cargo, petroleum coke, heavy machinery, etc.) from ships entering the Port of Toledo. *See* Transcript p. 144-145. When the cargo is offloaded, it is then moved to a storage place where it will sit until the customer needs it. *See* Transcript p. 48. Employees in the Local 1982 bargaining unit are qualified to load and unload ships, rail cars, and trucks, and they are qualified to transport cargo throughout the Employer's facility using equipment owned by the Employer. *See* Transcript p. 159. Longshoremen are qualified to drive frontend loaders, use fork lifts, operate cranes, work conveyor belts, and check cargo. *See* Transcript p. 183, 189. They also regularly handle all petroleum pep coke at the Employer's facility on both the wet and dry side.² *See* Transcript pp. 134, 193, 234-235.

¹ All Longshoremen carry a TWIC card or "Transportation Worker Identification Credential." The TWIC card gives them clearance to access the Port of Toledo. *See* Transcript pp. 158-159.

² The Teamsters are not qualified to handle coke because they cannot operate the cranes used to remove product from ships or from rail cars. *See* Transcript p. 133-134. Nor are they properly trained to operate the equipment necessary to perform the work typically done by Longshoremen in Buildings A1, A, B, C, and D. *See* Transcript p. 116.

Historically, the work in the field on the “dry” side of St. Lawrence Drive was done by Longshoremen. The Longshoremen would unload vessels then transfer the cargo including wire rod, straight bar, beams, coal, and rolled steel using forklifts into the field or to the warehouses on site.³ *See* Transcript p. 185. The Employer is aware of this past practice. According to Terry Leach, the Director of Operations for the Employer, in 2009 former ILA Local 1982 President Miguel Rizo Sr. told him “the war stories” about when the ILA used to handle all cargo in the field and on the dock. *See* Transcript p. 68.

This past practice comports with the industry practice, which is for Longshoremen to load and unload cargo at a port and to transport that cargo to the warehouses and land surrounding the port. *See* Transcript 158. In many ports, the International Longshoremen’s Association is the only union representing the employees because the Longshoremen handle offloading, loading, and all modes of transporting the cargo. *See* Transcript p. 152.

In or around 2007, the Longshoremen’s work included pushing up oats in the shed behind the 3-sided FTZ building and D warehouse and pushing up product in the sugar warehouse attached to the FTZ building. *See* Transcript p. 186. The Employer did not permit Teamsters to use frontend loaders to load or move the oats. *See* Transcript p. 186. During the same time period, ILA Local 1982 members worked the sugar cargo in the

³ Currently, Longshoremen unload cargo from ships arriving at the Port and load the cargo on flatbed trucks. The Employer then has a non-union trucking company, Lloyd Trucking, drive the trucks to the warehouse, where Teamsters unload them. *See* Transcript p. 64. The Employer acknowledges that it does not have to use the transfer trucks, and that it could instead use its personnel to move items around the facility. *See* Transcript p. 48. The Employer cannot justify why it is diverting work that should be performed by Longshoremen to Lloyd Trucking in violation of the Master Agreement and the ILA CBA (Jt. Ex. 2, Jt. Ex. 3, ILA Ex. 1), nor can it justify or explain the cost for such a ridiculous waste of time and resources. In terms of efficiency, allowing the Longshoremen to handle cargo they unload from the ships coming in to the Port and transporting that cargo to its final resting place at the Employer’s facility would be far more efficient than the way the Employer currently directs the transportation and storage of cargo at its facility, which results in wait times. *See* Transcript pp. 159, 194.

building labeled "FTZ" on Jt. Ex. 5-B. Work in the field also included handling cargo such as wire rod and steel beams. *See* Transcript pp. 185-186.

Until approximately 2010, the Teamsters Union worked just two types of cargo, aluminum and titanium cargo, inside a warehouse east of St. Lawrence Drive. In 2010, the Teamsters Union began expanding the scope of its work area to include handling additional types of cargo outside of the warehouse and in the field. *See* Jt. Ex. 5-B. The Employer initiated, encouraged and permitted the Teamsters Union's expansion of the scope of its work area to the detriment of ILA Local 1982 and its members.

In the past, Teamsters worked only in the warehouse identified as "FTZ" in the triangle shaped area at the corner of St. Lawrence Dr. and John Q. Carey Dr., and ILA Local 1982 filed no grievance regarding work performed inside that building. *See* Transcript p. 174; Jt. Ex. 5-B. As a result of the Employer's improper expansion of the work area of the Teamsters, the Teamsters also now work in the area identified as the field, where they do end loader work that the Longshoremen previously performed. *See* Transcript 104-105; Jt. Ex. 5-B. The Teamsters also work the large stockpiles of titanium cargo now stored in the field.⁴ *See* Transcript.

With regard to aluminum, the Longshoremen unload the aluminum off of barges, set the aluminum on the dock, and put it into categories. Although Longshoremen used to load the aluminum onto a truck and transport it to the FTZ warehouse, another trucking company now drives the trucks across the street. *See* Transcript 64. Aluminum is now stored in large quantities both inside and outside the FTZ warehouse, where the Teamsters store and load the cargo. *See* Transcript p. 189. In addition, aluminum is stored by ILA Local 1982 members in several warehouses, including B Shed, A1, and A. Aluminum

⁴ ILA Local 1982 members used to load the titanium stored in the field out on trucks. *See* Transcript p. 222.

may also be stored and outside around those warehouses and along St. Lawrence Drive. *See* Transcript p. 187. The aluminum is stored in accordance with purchase order or log number, and then the Longshoremen load it onto flatbed trucks. *See* Transcript p. 188.

In 2010, the Employer notified ILA Local 1982 for the first time that its members were no longer permitted to cross St. Lawrence Drive to perform work. *See* Transcript 192. As a result of the Employer's decision to improperly expand the Teamsters' work area, ILA Local 1982 began filing grievances against the Employer challenging the reassignment of its work to the Teamsters Union.⁵ *See* Jt. Ex. 4. These grievances remain pending and are being processed through the contractual grievance procedure.

When ILA Local 1982 and the Employer sat down at the bargaining table in September of 2011, ILA Local 1982 representatives questioned the Employer's assignment of ILA bargaining unit work to the Teamsters. At the first bargaining session the Employer's representatives, Terry Leach and Chris Blakeley, told the co-trustee for ILA Local 1982, Andre Joseph, that the parties had an agreement regarding the assignment of work. Joseph requested the agreement. *See* Transcript p. 146. The next time the parties met, the Employer told Joseph that it could not provide a copy of the agreement. Instead, the Employer gave Joseph a June 1, 2007 letter signed by the Vice President of Operations for Midwest Terminals, Douglas Struble. *See* Transcript 147; ILA Ex. 2. According to the document, titled "ILA and Teamster Work Area Agreement," the understanding of the parties is as follows:

- Any cargo typically handled by ILA will be handled by ILA in this area
 - This would include all cargo except Aluminum and Titanium.
 - Typical cargos would be Steel, (sic) lumber, heavy lifts, bulk material etc.

⁵ In responding to one such grievance, the Employer acknowledged that jurisdiction of ILA Local 1982 bargaining unit members the entire Port of Toledo. *See* Transcript p. 154; Jt. Ex. 4, pp. 56-57.

- All Cargos north of the J shed will continue to be handled by ILA
- Any cargo typically handled by Teamsters will be handled by Teamsters
 - This would include Aluminum and Titanium
 - Aluminum and Titanium stored on St. Lawrence Drive will continue to be handled by Teamsters

*The “Disputed Area” includes the area east of St. Lawrence Drive between the truck scales and rail track crossing at St. Lawrence Drive and the area East of St. Lawrence Drive and North of the Guard Shack

See ILA Ex. 2.⁶ The Employer confirmed that steel cargo and heavy lifts are handled exclusively by ILA Local 1982 bargaining unit members. See Transcript p. 244. There is no mention in the Work Area Agreement of an alleged Mason Dixon line east of the railroad tracks.

As noted on the record at the October 25, 2012 hearing, NLRB Region 8 has issued a Third Order Consolidating Cases, Third Amended Consolidated Complaint and Notice of Hearing in the cases involving the Employer, ILA Local 1982, Miguel Rizo, Jr. (a former ILA Local 1982 President, and Otis Brown (the current ILA Local 1982 President). These cases stem from multiple charges filed against the Employer in Case Nos. 08-CA-038581, 08-CA-038627, 08-CA-063901, and 08-CA-073735, and include the allegations that the Employer refused to hire employees who had filed lawsuits or unfair labor practice charges against the Employer with the NLRB, that the Employer has failed and refused to implement the terms of the complete successor agreement (ILA Ex. 1), and that the Employer has discouraged membership in ILA Local 1982.

As a result of the Employer’s conduct that has expanded the Teamster’s work area jurisdiction, ILA Local 1982 and its members have been harmed. Since approximately 2008, the number of ILA Local 1982 bargaining unit employees regularly working at the

⁶ ILA Local 1982 has found no record that its members ever voted on the Work Area Agreement. See Transcript p. 148.

Employer's facility has decreased from fifteen (15) to eleven (11). Further, man hours have decreased dramatically from approximately fifty thousand (50,000) man hours in 2008 to approximately 23,000 man hours in 2012. *See* Transcript p. 152. The Employer now wishes to further reduce ILA Local 1982's work area, removing Longshoremen from all warehouses at the Port of Toledo.

For the reasons that follow, employees in the bargaining unit represented by ILA Local 1982 are entitled to the work in dispute.

II. LAW AND ARGUMENT

A. **The NLRB lacks jurisdiction to decide this matter.**

The NLRB lacks jurisdiction over this matter because it is not ripe for adjudication by the NLRB.⁷ The criteria for holding a 10(k) hearing have not been met. The NLRB may proceed with the determination of a jurisdictional dispute pursuant to Section 10(k)⁸ of the Act *only if*:

(1) There are competing claims for the disputed work among rival unions;

(2) There is reasonable cause to believe that Section 8(b)(4)(D)⁹ has been violated; and

⁷ ILA Local 1982 filed a motion to dismiss. *See* Board Ex. 2. ILA Local 1982 requests that the motion to dismiss be considered by the Board, alternatively, as a motion to quash the hearing.

⁸ According to Section 10(k):

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [section 158(b) of this title], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Section 10(k).

⁹ It shall be an unfair labor practice for a labor organization or its agents-- * * *

(3) The parties have not agreed upon a method for the voluntary adjustment of the dispute.

Local 3-90, Western States Regional Council No. 3, International Woodworkers of America, AFL-CIO, 261 NLRB 615 (1982). In a 10(k) dispute, the NLRB is required to find "that there is reasonable cause to believe that there are competing claims to the disputed work among rival groups of employees and that a party has used proscribed means to enforce its claim to the work in dispute." *International Union of Operating Engineers Local 150, AFL-CIO*, 345 NLRB 1137, 1139 (2005).

Before deciding a dispute brought before it pursuant to Sections 8(b)(4)(D) and 10(k) of the Act, the NLRB "should look to the real nature and origin of the dispute in deciding whether it is actually jurisdictional." *Teamsters Local 578*, 280 NLRB 818, 820-821 [123 LRRM 1074, 1075] (1986). The NLRB has admonished:

Section 8(b)(4)(D) was not designed to authorize the Board to arbitrate disputes between an employer and a union, particularly with regard to the union's "attempt to retrieve the jobs" of employees the employer chose to supplant by reallocating work to others.

Teamsters Local 578, 280 NLRB 818 [123 LRRM 1074, 1075] (1986), citing *Longshoremen ILWU Local 26 (American Plant Protection)*, 210 NLRB 574, 576 [86

4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is- -

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *

Section 8(b)(4)(D).



LRRM 1151] (1974). An employer cannot create a dispute by breaching its collective bargaining agreement with a union and then turn to the NLRB's 10(k) process to avoid its contractual obligations. *Teamsters Local 578*, 280 NLRB 818 [123 LRRM 1074, 1077] (1986). Under such circumstances, no jurisdictional dispute exists because the dispute is essentially between the employer and the employees' union and because the employer has created the dispute. *IBEW Local 103 (T Equipment Corp.)*, 298 NLRB 937 [134 LRRM 1269] (1990).

In this matter, the Employer has gradually removed work at the Port of Toledo from ILA Local 1982, resulting in the loss of thousands of man hours between 2008 and the present. *See* Transcript p. 152. During that time, ILA Local 1982 has undergone a struggle internally, first with a weak leadership that was forcibly removed by the members, and then when ILA Local 1982 fell under the auspices of a trusteeship imposed by the International Longshoremen's Association. *See* Transcript 160-161.

As ILA Local 1982 bargaining unit members became more active, began filing grievances, and began filing unfair labor practice charges and lawsuits to protect their contractual and statutory rights, the Employer engaged in conduct that led to multiple unfair labor practice charges (Case Nos. 08-CA-038581, 08-CA-038627, 08-CA-063901, 08-CA-073735). *See* Transcript p. 180. NLRB Region 8 has issued a Third Order Consolidating Cases, Third Amended Consolidated Complaint and Notice of Hearing in the cases involving the Employer, ILA Local 1982, Miguel Rizo, Jr. (a former ILA Local 1982 President, and Otis Brown (the current ILA Local 1982 President). This matter must be viewed in the context of the ongoing labor dispute between the Employer and ILA Local 1982 that is presently before NLRB Region 8.



This is not a case where an innocent Employer seeks assistance from the NLRB in handling a work jurisdiction dispute between two rival unions. To the contrary, this is an Employer that has fostered a dispute first by stripping work from ILA Local 1982 and then by providing ILA Local 1982's grievances to the Teamsters. *See* Transcript p. 97. This is an employer that has deliberately chosen to supplant the work of ILA Local 1982 bargaining unit members, breaching its collective bargaining agreement with ILA Local 1982.

ILA Local 1982 is not accused of taking proscribed action to coerce the employer to assign it the work. ILA Local 1982 is pursuing its lawful, protected right to grieve what is a contractual dispute between the Employer and ILA Local 1982. The Teamsters Union threatened to picket if Midwest Terminals withdraws the work in dispute from the Teamsters Union. *See* Jt. Ex. 6. However, the Employer never threatened to withdraw any work from the Teamsters. *See* Transcript pp. 112, 131. The Teamsters continue to perform more and more work, despite the fact that ILA Local 1982's collective bargaining agreement gives the ILA workers jurisdiction over the Port of Toledo, Ohio. *See* ILA Ex. 1, p. 2. The ILA Master Agreement prohibits the Employer from diverting, assigning, or transferring "any work under the jurisdiction of this agreement to any affiliated or subsidiary Company." *See* Jt. Ex. 2, p. 2.

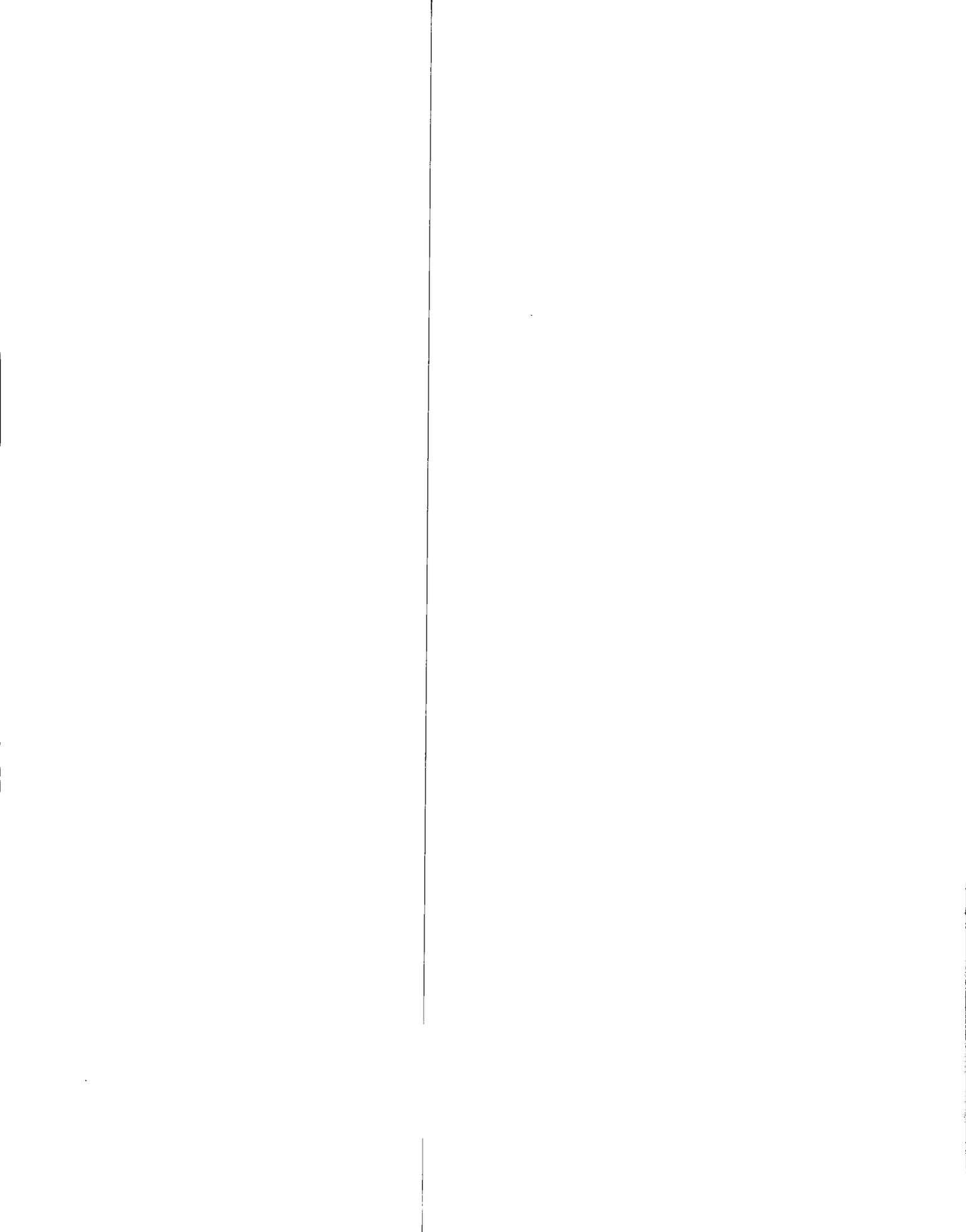
Even under the January 1, 2006 through December 31, 2010 CBA, ship, field, and warehouse work at the Port of Toledo, Ohio belong to employees in the bargaining unit represented by ILA Local 1982. *See* Jt. Ex. 3, Sec. 5. The 2006-2010 CBA clearly requires the Employer to assign the work at the Port of Toledo to ILA Local 1982 bargaining unit employees, even when there is no ship work:

5.4.2 WAREHOUSE AND FIELD. When warehouse and field work only is required, the Company will hire and assign jobs to individuals on the skilled list.... When both warehouse/field and ship work are required, the Company will hire in accordance with Section 5.4.1.

See Jt. Ex. 3, Sec. 5. When the Employer began departing from this contractual past practice, ILA Local 1982 began challenging the Employer through the proper contractual mechanism, i.e. the grievance procedure.

While at first glance, this matter may appear on the surface to cite a valid 8(b)(4)(D) claim, this is a contractual matter brought about by the Employer's breach of the collective bargaining agreement. No actual controversy exists between the Employer and the Teamsters Union. The only dispute is between ILA Local 1982 and the Employer, and ILA Local 1982 is using its contractual grievance procedure to enforce a clear and indisputable contract claim to the work. *See* Jt. Ex. 2-4. At its heart, this is a work preservation dispute between ILA Local 1982 and the Employer. ILA Local 1982 has presented evidence that "the union's members had previously performed the work in dispute and the union was not attempting to expand its work jurisdiction." *Teamsters Local 107 (Reber-Friel Co.)*, supra, 336 NLRB No. 41, slip op. at 4.

This dispute was manufactured by the Employer so that the NLRB would give the Employer permission to abrogate the agreements the Employer has with the International Longshoremen's Association and ILA Local 1982. The Employer's intention became clear at the hearing, when it stated for the first time that its intention was to deprive ILA Local 1982 of all warehousing work at the Port of Toledo. The Employer provided the grievances filed by ILA Local 1982 to the Teamsters, most likely in an attempt to bring this dispute before the NLRB. *See* Transcript p. 97. On the basis of those grievances alone, Teamsters Local 20 threatened to picket, but that threat is limited to "the event that



Midwest Terminals takes any steps to withdraw work from the bargaining unit represented by Teamsters Local 20.” See Jt. Ex. 6 (emphasis added). No such steps have been taken or threatened.

Even the Teamsters Local 20 witnesses acknowledged that the Employer never threatened to assign the disputed work to ILA Local 1982 bargaining unit employees. *See* Transcript pp. 112, 131. Nor did the Employer ever actually assign the disputed work to ILA Local 1982 bargaining unit employees. *See* Transcript p. 97. Further, ILA Local 1982 members are merely trying to preserve the work they previously performed pursuant to their collective bargaining agreement.

Accordingly, the only current dispute is between Local 1982 and the Employer. Looking beneath the surface of this matter, it is clear that there is no true jurisdictional dispute between the Teamsters and ILA Local 1982. The Teamsters threat to picket is an empty one, since the Teamsters continue to perform the work in dispute. ILA Local 1982 and the Employer are subject to an agreement regarding the jurisdictional dispute that must be enforced, and ILA Local 1982 is pursuing its contractual rights through the grievance process. The NLRB lacks jurisdiction to hear and decide this matter and that the hearing should be quashed because there is not reasonable cause to believe that Section 8(b)(4)(D) has been violated.

B. The work in dispute must be assigned to employees in the bargaining unit represented by ILA Local 1982.

ILA Local 1982 asserts that the NLRB lacks jurisdiction to decide this matter because there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. Nevertheless, if the NLRB proceeds, the work in dispute should be awarded to employees who are in the bargaining unit represented by ILA Local 1982.

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 [47 LRRM 2332] (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 [49 LRRM 1684] (1962). The NLRB will consider the following factors in making a determination about a jurisdictional dispute:

1. Collective bargaining agreements;
2. Employer preference and current assignment;
3. Past practice;
4. Area and industry practice;
5. Relative skills and training;
6. Economy and efficiency of operations; and
7. Job loss.

Machinists District Lodge 160, Local lodge 289 (SSA Marine Inc.), 355 NLRB No. 3 [187 LRRM 1218] (2010).

1. Collective bargaining agreements.

Substantial weight should be given to a collective bargaining agreement that specifically covers the work in dispute. *Laborers Local 334 (C.H. Heist Corp.)*, 175 NLRB No. 103 [71 LRRM 1038] (1968). In this matter, the ILA Local 1982 collective bargaining agreement specifically covers the work in dispute.

The record shows that the Employer has a collective bargaining agreement with ILA Local 1982 and a Master Agreement with the International Longshoremen's Association. *See* Jt. Ex. 2-3. ILA Local 1982 has also demonstrated a history of bargaining agreements with language supporting the award of work to the local. In this regard, ILA Local 1982's current collective bargaining agreement covers the entirety of

Toledo's International Port and recognizes ILA Local 1982 as the exclusive bargaining agent for employees covered by the Agreement. *See* ILA Ex. 1. The ILA Local 1982

CBA further states:

The terms "members of the collective bargaining unit," "employee" or "employees" as used in this Agreement, mean employees of the Company in stevedore and warehouse operations such as longshoremen, warehousemen, crane operators, power operators, *fork-lift operators, end-loaders, material handlers*, checkers, signalmen, winchmen, linemen, line dispatcher, and hatch leaders."

See ILA Ex. 1, p. 2 (emphasis in original). The jurisdiction of the ILA Local 1982 bargaining unit is "the whole Port of Toledo." *See* Transcript p. 174.

The prior collective bargaining agreement in effect from 2006 through December 31, 2010 (and under which the Employer claims to still be operating) likewise covers the work in dispute. *See* Jt. Ex. 3, Sections 1-2. The 2006-2010 ILA Local 1982 CBA provides:

1. DEFINITIONS

For purposes of this Agreement "Company" means Midwest Terminals of Toledo International and its successors and assigns, and "Union" means INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local No. 1982, AFL-CIO. The terms "members of the collective bargaining unit," "employee" or "employees," as used in this Agreement, mean employees of the Company in stevedore and warehouse operations such as longshoremen, warehousemen, crane operators, power operators, checkers, signalmen, winchmen, linemen, line dispatcher, dock steward and hatch leaders.

2. RECOGNITION

The Company hereby recognizes the International Longshoremen's Association, Local 1982, AFL-CIO, as the exclusive collective bargaining agent for all employees who are covered by this Agreement, with respect to hours of employment, rates of pay, grievances and other items and conditions of employment. It is understood that the provisions of this Agreement do not apply to office, clerical, professional and supervisory and security employees.

See Jt. Ex. 3, Sections 1-2.

Accordingly, both ILA Local 1982 collective bargaining agreements cover the entire work area owned by Midwest Terminals of Toledo International and include both stevedore and warehouse operations. In addition, ILA Local 1982 presented testimony from an employee who has worked at the Port of Toledo for thirty-four (34) years to substantiate the long bargaining history between the ILA and the Employer. *See* Transcript p. 182.

In contrast, Teamsters Local 20 scope of work is limited:

This agreement covers forklift operators and warehousemen engaged in warehouse work at this facility east of St. Lawrence Drive. ***This does not include work performed in the area known as Facility #1 specifically bordered by the Maumee River on the west and St. Lawrence Drive on the East (sic).***

See Jt. Ex. 1, p. 4 (emphasis added).¹⁰ The limitations imposed on the Teamsters impact both the type of work the Teamsters can perform as well as the location where that work can be performed. The Teamsters employed by the Employer can work only in the area west of St. Lawrence Drive. The work they can perform is warehouse work.

All work performed at the Employer's facility in the area bordered by the Maumee River on the west and St. Lawrence Drive on the east must be assigned to employees of the Employer in the ILA Local 1982 bargaining unit because the Teamsters Local 20 contract specifically disclaims that work. Further, employees of the Employer represented by ILA Local 1982 have a contractual right to perform stevedore and warehouse operations at the remainder of the Employer's facility.

¹⁰ The sole Teamsters Local 20 collective bargaining agreement in the record is the agreement with effective dates of March 1, 2012 through February 28, 2015. To the extent that no other agreements are in the record, the NLRB should give no weight to any alleged "bargaining history" between Teamsters Local 20 and the Employer. *Iron Workers Local 395*, 321 NLRB 1168 [154 LRRM 1045] (1996).

The ILA collective bargaining agreement covers the work in dispute. In view of the bargaining history between the Employer and ILA Local 1982, as demonstrated by the evidence in the record, the work in dispute must be awarded to ILA Local 1982.

3. Employer preference and current assignment.

The NLRB has recognized that there are times when an employer's preference regarding the assignment of work should not be given any weight. *See Millwrights Local 1906*, 310 NLRB 646 [143 LRRM 1253] (1993). For instance, where the employer's preference is the result of coercion, the NLRB will not reward the party who has engaged in unlawful coercion. *See e.g. Millwrights Local 1906*, 310 NLRB 646 [143 LRRM 1253] (1993).

In this matter, it is the Employer that is engaging in coercive activity. The Employer expressed its preference that Teamsters Local 20 bargaining unit employees perform the work in dispute. However, for the reasons that follow, the NLRB should not give any weight to the Employer's preference.

One significant difference between the Teamsters and the Longshoremen is the rate of pay. Teamsters rates per hour start as low as \$8.00 per hour for new hires, with warehousemen making \$14.50 per hour, and forklift drivers making \$19.90 per hour. *See Jt. Ex. 1*, p. 7. In contrast, the rate of pay for Longshoremen apprentices is \$22.00, with straight time hourly rates for cranes men and dispatchers at \$26.65. *See ILA Ex. 1*. The less skilled Teamsters Local 20 labor force is by far a cheaper work force than the Longshoremen, which is likely why the Employer has now stated its preference for using the Teamsters work force. Nevertheless, the Employer agreed to the rates stated in the ILA CBA, and the Employer must comply with its contractual obligations.



Another distinction between the Teamsters and the Longshoremen is the number of grievances and unfair labor practices the Longshoremen have filed against the Employer. As referenced *supra*, the Employer engaged in conduct that led to multiple unfair labor practice charges (Case Nos. 08-CA-038581, 08-CA-038627, 08-CA-063901, 08-CA-073735). From the Employer's perspective, ridding itself of the Longshoremen through these proceedings would undoubtedly be its preference. As the Complaint alleges, the Employer has a history of refusing to hire employees who file grievances, unfair labor practices, or lawsuits against it. *See* Third Order Consolidating Cases, Third Amended Consolidated Complaint and Notice of Hearing, Case Nos. 08-CA-038581, 08-CA-038627, 08-CA-063901, and 08-CA-073735.

ILA Local 1982 urges the NLRB to view this matter in the context of the ongoing labor dispute between the Employer and ILA Local 1982 that is presently before Region 8 of the NLRB. The Employer has an agenda, and that agenda is to slowly but surely rid itself of the Longshoremen – or reduce their numbers to the point where they can no longer utilize the contractual and statutory mechanisms they have in place to enforce their rights. The Employer is not a victim of outside circumstances. The Employer has *created* these circumstances by reassigning work formerly performed by employees in the ILA Local 1982 bargaining unit to employees in the Teamsters Local 20 bargaining unit. When ILA Local 1982 filed grievances, the Employer provided those grievances to the Teamsters, sparking a make-shift jurisdictional issue where in reality none exists.

Further, Teamsters Local 20 has engaged in coercive conduct that may have improperly influenced the Employer's award of work. *See* Jt. Ex. 6. Teamsters Local 20 has threatened to "engage in any and all efforts to fight ... a withdrawal of work, including, but not limited to picketing activities" *See* Jt. Ex. 6. The Employer's gushing praise of

the Teamsters workforce simply does not ring true. The Teamsters are warehousemen and forklift operators. In contrast, ILA Local 1982 members possess expertise in cargo of all types and are far more qualified to handle the diverse array of cargo entering the Port of Toledo. Further, ILA Local 1982 members are just as efficient, safe, and detail-oriented as the Teamster employees, if not more so.

To the extent the Teamsters' threat has prevented both the arbitration of the contractual dispute and has influenced the award of work to the Teamsters, such coercive activity should not be rewarded. The NLRB should not encourage or endorse the Employer's actions or the Teamsters' threats, and should not give the Employer's preference any weight given the unusual circumstances of this case. The Employer is not an innocent in a dispute between two rival unions. The Employer instigated this dispute and is manipulating the circumstances to its advantage to rid itself of ILA Local 1982. Accordingly, the Employer's preference and current assignment should not be a controlling factor.

4. Past practice.

The present Employer practice represents a departure from past practice at the Port of Toledo. ILA Local 1982 bargaining unit employees were previously responsible for unloading cargo from ships and then transporting that cargo to the field or to the warehouse, wherever the final resting place of the cargo may be. *See* Transcript p. 185. In and around 2007, Longshoremen worked on cargo from oats to sugar both in and around the FTZ warehouse. *See* Transcript pp. 186, 189-190, 218; Jt. Ex. 5-B. The Employer recognized the work as belonging to employees in the ILA Local 1982 bargaining unit, and prohibited Teamster employees from performing the work. *See* Transcript p. 186.

In contrast, the past practice for Teamster employees is that they worked just aluminum and titanium cargo, and their work was limited to the FTZ warehouse on the east side of St. Lawrence Drive in the triangle shaped area at the corner of St. Lawrence Dr. and John Q. Carey Dr. *See* Transcript p. 221. The Teamsters sole duty has been handling warehousing on the dry side of St. Lawrence Drive since 2007. *See* Transcript p. 63. Since 2007, the Employer permitted the gradual expansion of the work performed by employees in the Teamsters' bargaining unit. In 2010, the Employer declared the dry side of St. Lawrence Drive off-limits to ILA Local 1982 bargaining unit employees – a declaration that ILA Local 1982 continues to challenge through the grievance process. *See* Jt. Ex. 4.

To the extent the NLRB gives weight to the factor of past practice, only the work assignments made prior to 2010 should be considered. During that time period, ILA Local 1982 bargaining unit members worked without restriction throughout the Employer's facility storing, loading, and checking wire rod, coils, aluminum, oats, sugar, and more. The Employer's decision to assign a part of the work in dispute to the Teamster employees violates the work jurisdiction specifically set forth in ILA Local 1982's collective bargaining agreement and the ILA Master Agreement. Moreover, in light of the circumstances, the Employer's work assignments since 2010 are coercive and retaliation against employees represented by ILA Local 1982 for exercising their statutory and contractual rights.

Employees in the ILA Local 1982 bargaining unit have performed the work in dispute for many years safely and efficiently. Teamsters Local 20 employees have less experience and lack the necessary certifications to operate much of the equipment needed to handle the diverse array of cargo that enters the Port of Toledo. Accordingly, the work

in dispute should be awarded to employees in the bargaining unit represented by ILA Local 1982.

5. Area and industry practice.

In terms of industry practice, the un-rebutted testimony of the International Longshoremen's Association is that the same Longshoremen who load and unload cargo at a port also handle that cargo in the warehouses surrounding the port. *See* Transcript pp. 158-159. Longshoremen operate in warehouses, yards, ships, and barges, and often they are the sole union at a facility. *See* Transcript pp. 158. In many ports, employees represented by the International Longshoremen's Association handle warehousing, offloading, loading, and all modes of transporting the cargo. *See* Transcript p. 152. Accordingly, this factor also weighs in favor of awarding the work in dispute to ILA Local 1982.

6. Relative skills and training.

ILA Local 1982 members are skilled in more areas and are capable of performing more jobs than Teamster Local 20 members. Teamsters Local 20 bargaining unit employees are only warehousemen and forklift operators. *See* Jt. Ex. 1. They cannot even operate cranes, which are essential to the operation of the port. *See* Transcript pp. 111; 133. In contrast, the ILA CBA gives bargaining unit employees work jurisdiction over all work as longshoremen, warehousemen, crane operators, power operators, checkers, signalmen, winchmen, linemen, line dispatchers, fork-lift operators, end-loader operators, material handlers, dock stewards, and hatch leaders. *See* Jt. Ex. 3, Section 1; ILA Ex. 1.

As a practical matter, Longshoremen are crane operators, frontend loader operators, backhoe operators, bull dozer operators, forklift operators, winch operators, signalers, and checkers. *See* Transcript pp. 143-144. They are qualified to perform warehouse duties as

well as load, unload, and transport cargo that arrives at the dock. *See* Transcript p. 144. They already perform these tasks every day. *See* Transcript p. 194.

The record is clear that ILA Local 1982 bargaining unit employees possess far more skills than the employees represented by the Teamsters. Even the Teamsters' own witnesses acknowledged that the employees in the Teamsters bargaining unit lack the skills necessary to perform certain work at the Employer's facility. *See* Transcript pp. 111; 133. For example, the employees in the Teamsters bargaining unit are not qualified to load and unload petroleum pep coke. *See* Transcript p. 134. Further, they are not qualified to operate cranes. *See* Transcript p. 133. Both of these jobs are essential to perform the work in dispute.

ILA Local 1982 bargaining unit members all carry credentials that permit them to work in all warehouses at the Port of Toledo, including LME certified warehouses. *See* Transcript pp. 175-176. These credentials are called transportation worker cards, also known as "TWIC" cards, which are issued by the federal government following a security check. *See* Transcript p. 158. ILA Local 1982 bargaining unit members have the appropriate security clearance to work anywhere at the Port of Toledo, and they are consummate professionals who excel at their jobs.

There is no comparison between the highly skilled, highly trained, and certified ILA Local 1982 bargaining unit and the Teamster warehousemen. Therefore, the factors of relative skills and training weigh in favor of awarding the work in dispute to employees represented by ILA Local 1982.

7. Economy and efficiency of operations.

The Employer raised cost as a factor. For years, the Employer has used a non-union trucking company to transport cargo on flatbed trucks from the dock across St.

Lawrence Drive. At one point during the hearing, the Employer claimed that it cost ten thousand three hundred dollars (\$10,300.00) alone to move the cargo unloaded from one ship, yet the Employer had no evidence to substantiate its claim and could not provide a cost breakdown. *See* Transcript p. 70. It is unclear precisely why or when this practice began, only that it is expensive and inefficient.

Are there inefficiencies of work? Yes. Are those inefficiencies due to the work in dispute? No. They are due to poor management – management that pays the bills without even looking at what they are for. *See* Transcript p.70. Management has ordered the double and triple handling that it now bemoans, and all the while it has a workforce in the ILA Local 1982 membership that is trained and capable of handling cargo once – unloading it from a ship and transporting it to its place of rest on site.

It would be more efficient to allow ILA Local 1982 bargaining unit employees to perform the work they are skilled at and that the Employer is contractually obligated to assign to them. *See* Transcript p. 194. ILA Local 1982 members include longshoremen, warehousemen, crane operators, power operators, checkers, signalmen, winchmen, linemen, line dispatchers, fork-lift operators, end-loader operators, material handlers, dock stewards, and hatch leaders. *See* Jt. Ex. 3, Section 1; ILA Ex. 1; Transcript pp. 143-144, 183, 192-193, 225. They can load and unload cargo from ships, rail cars, and trucks. *See* Transcript 144-145. They work in warehouses, in the field, and at the dock loading and unloading vessels. *See* Jt. Ex. 3, Section 5. In contrast, the Teamsters are forklift drivers and warehousemen. *See* Jt. Ex. 1. They simply do not have the skills that employees in ILA Local 1982's bargaining unit currently possess.

Until approximately 2007, ILA Local 1982 bargaining unit employees were assigned work that included unloading a vessel, checking and sorting the cargo, and then

transporting the cargo by fork-lift, end-loader, etc. to various parts of the Employer's facility (including the field and various warehouses). *See* Transcript p.185-186. The Longshoremen are also skilled in moving heavy equipment and machinery with cranes, which the Teamsters employees cannot do. After unloading and transporting the cargo to a storage place on the Employer's facility, the Longshoremen would then load the cargo on to rail cars or trucks for the customer. To this day, Longshoremen store aluminum in A1 warehouse, load it onto a flatbed truck, and record the transaction. *See* Transcript 188. Handling cargo in this manner is far more efficient than using a separate trucking company for the sole purpose of driving a flatbed truck from the dock across St. Lawrence Drive, and ILA Local 1982 bargaining unit members are already trained to perform these jobs.

Awarding the work in dispute to the Longshoremen, employees who possess skill at handling and transporting a wide array of cargo, would enhance the efficiency of the Employer's operations, reduce wait times, and eliminate costs. Therefore, this factor also weighs in favor of awarding the work to employees represented by ILA Local 1982.

8. Job loss.

The NLRB will consider job loss when making an award of the work in dispute. *See, e.g., Bakery Workers Local 6 (Bachman Co.)*, 337 NLRB 407, 410 [169 LRRM 1289] (2002); *Iron Workers Local 40 (Unique Rigging)*, 317 NLRB 231, 233 [150 LRRM 1192] (1995).

ILA Local 1982 presented un-rebutted and undisputed testimony that its members will suffer job loss—and have suffered job loss—since the Employer began awarding ILA work to Teamsters Local 20 employees. Specifically, man hours for ILA Local 1982 bargaining unit members have decreased dramatically from approximately fifty thousand (50,000) man hours in 2008 to approximately 25,000 man hours in 2012. *See* Transcript p.

152. In the same time period, the number of ILA Local 1982 bargaining unit employees regularly working at the Employer's facility has decreased from fifteen (15) to eleven (11) and membership has dwindled from more than a hundred (100) men to less than eighty (80).¹¹ See Transcript pp. 99, 195. Awarding the work in dispute to the Teamsters will harm ILA Local 1982 and contribute to further job loss. See Transcript p. 195.

The Teamsters presented no evidence regarding job loss, erroneously arguing that it is not a factor that the NLRB will consider.

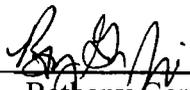
Because awarding the work in dispute to the Teamsters has and will result in job loss for the Longshoremen, the NLRB must award the work in dispute to ILA Local 1982.

CONCLUSION

For all of the foregoing reasons, the NLRB lacks jurisdiction to hear and decide this matter. If the NLRB does decide the work jurisdiction issue, the NLRB must hold that the work in dispute is properly performed by employees in the bargaining unit represented by ILA Local 1982.

Respectfully submitted,

KALNIZ, IORIO & FELDSTEIN CO., LPA

By  _____
Bethany German Ziviski (0077656)

¹¹ As ILA witnesses testified at hearing, there is no fixed number of ILA Local 1982 employees working for the Employer. The number of employees working each day depends upon many factors, including whether or not a ship is coming in port.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served this 13th day of November 2012 via regular U.S. mail upon the following:

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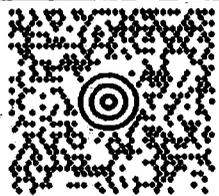
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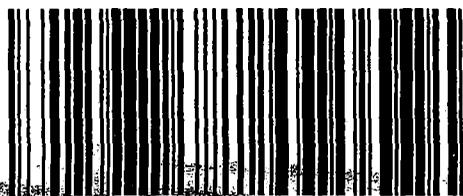
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