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

INTERNATIONAL SHIPPING AGENCY, INC. d/b/a INTERSHIP, MARINE TERMINAL SERVICES, INC. (MTS), and TRUCK TECH SERVICES, INC. (TTS), a Single Employer	Cases	24-CA-091723, 24-CA-104185, 12-CA-129846, 12-CA-133042, 12-CA-135453, 12-CA-135704, 12-CA-136480, 12-CA-142493 12-CA-143597, 12-CA-144073
and		
UNION DE EMPLEADOS DE MUELLES (UDEM), INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1901, AFL-CIO		

GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Isis M. Ramos Meléndez
Manijée Ashrafi Negróni
Counsels for the General Counsel
National Labor Relations Board, Subregion 24
525 F.D. Roosevelt Avenue
La Torre de Plaza, Suite 1002
San Juan, PR 000918-1002
Tel. 787-766-5327
Fax. 787-766-5478
Email: Isis.Ramos-Melendez@nlrb.gov
Manijee.Ashrafi-Negróni@nlrb.gov

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Counsel for the General Counsel respectfully files the following exceptions to the Decision of Administrative Law Judge Robert A. Ringler issued on March 30, 2016 in the matter of International Shipping Agency, Inc. (Intership), Marine Terminal Services, Inc. (MTS), and Truck Tech Services, Inc. (TTS), a single employer (collectively, Respondent), Cases 24-CA-091723 et al.,[1] reported at JD-24-16.[2] The allegations in these cases are found in three separate complaints. The exceptions are briefly summarized in the following two paragraphs, and are formally listed and specified thereafter.

Regarding the allegations in the Consolidated Complaint in Cases 24-CA-091723 and 24-CA-104185 dated July 31, 2013 [GC 1(o)], the ALJ properly found that Respondent closed the MTS and TTS portions of its operations and discharged all of its MTS and TTS employees because of their activities on behalf of Union de Empleados de Muelles, International Longshoremen's Association, Local 1901, AFL-CIO (the Union), in violation of Section 8(a)(1) and (3) of the Act based on *Wright Line*[3] analyses. However, the ALJ erred by finding that Respondent did not also violate Section 8(a)(1) and (3) of the Act under the alternative theory based on *Textile Workers Union v. Darlington Mfg. Co.*, 380 US 263 (1965), that Respondent's closings of its MTS operations and later its TTS operations were each partial closings of Respondent's overall business, and that the partial closings and discharges were intended to discourage Respondent's remaining employees from engaging in union activities. With respect to the unilateral closing of MTS, subcontracting of the MTS work, and discharge of the MTS employees, although the ALJ properly found that Respondent violated

[1]Citations to the record evidence in support of General Counsel's exceptions are set forth in the accompanying brief in support of exceptions.
[2] The ALJ's Decision is identified herein by "JD" followed by the page numbers and/or the page and line numbers. "GC" refers to General Counsel's exhibits.
[3] 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Section 8(a)(1) and (5) of the Act, the General Counsel takes exception to his finding that Respondent did not violate Section 8(a)(1) and (5) of the Act based on the theory that the MTS subcontracting was unlawful under *Fibreboard Paper Products v.* NLRB, 379 U.S. 203 (1964). In this regard, the ALJ properly found that Respondent's economic defense to the closing of MTS was implausible and invalid, but erred by contradicting himself and finding that MTS was closed, in part, for economic reasons. In addition, although the ALJ properly found that Respondent violated Section 8(a)(1) and (3) [and (5)] of the Act by closing its MTS facility and discharging the MTS employees, he also erred by failing to find that, in view of the Section 8(a)(3) finding, there could be no legitimate refusal to bargain over the decision to layoff MTS employees under the analysis established in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). General Counsel also takes exception to the ALJ's failure to include certain recommended remedies, Order provisions, and Notice provisions with respect to his findings of violations of the Act, and to his finding that restoration remedies are not appropriate, as specified below.

Furthermore, the General Counsel takes exceptions with respect to ALJ's failure to find, as alleged in paragraphs 5(a) and 5(b) of the complaint issued in Case 12-CA-129846 dated August 29, 2015 [GC 1(gg)], that Respondent suspended its employee Efraín González because he joined and/or 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. General Counsel takes exceptions with respect to the ALJ's failure to find, as alleged in paragraphs 9(b), 9(c), 9(d) and 9(h) of the Second Order Further Consolidating Cases in Cases 12-CA-133042 et al. dated April 30, 2015 [GC 5(uu)], that Respondent violated Section 8(a)(1) and (5) of the Act by reducing work hours of maintenance employees and failing and refusing to pay a guarantee to employees designated as automobile checkers, without giving the Union

notice or an opportunity to bargain about this conduct or its effects, and without reaching an overall impasse in negotiations.

The citations to record evidence, argument and citation of authorities in support of the exceptions are set forth in the accompanying brief. General Counsel takes exceptions as follows to the Decision of the ALJ:

1. Although the ALJ properly found that Respondent violated Section 8(a)(1) and (3) of the Act by closing the MTS and TTS portions of its operation, subcontracting the work of MTS and TTS employees, and discharging the MTS and TTS employees because of their union activities, the ALJ erred by finding that Respondent did not violate Section 8(a)(3) of the Act by that same conduct under the theory set forth in *Textile Workers Union v. Darlington Manufacturing Co.*, 380 US 263 (1965). (JD 22).

2. Although the ALJ properly found that Respondent violated Section 8(a)(1) and (5) of the Act by closing the MTS portion of its operations, subcontracting the work of the bargaining unit, and discharging the MTS unit employees without giving the Union notice or an opportunity to bargain, the ALJ erred by finding that the same conduct should not also be viewed as unlawful under *Fibreboard Paper Products v. NLRB*, 379 U.S. 203 (1964) and related Board case authority. (JD 19:7-25).

3. The ALJ erred by finding that MTS closed, in part, because it was "deeply unprofitable and could not continue without Intership's financial aid," contradicting the ALJ's correct finding that Respondent's contention that it subcontracted MTS' work for financial reasons is unpersuasive, invalid and implausible. (JD 19:21-22, contradicted by JD 23:24-36).

4. Although the ALJ properly found that Respondent violated Section 8(a)(1) and (5) of the Act by closing the MTS portion of its operations, subcontracting the work of the bargaining unit, and discharging the MTS unit employees without giving the Union notice or an opportunity

to bargain, the ALJ erred by failing to also find that in view of Respondent's Section 8(a)(3) violation as to the discharge (layoff) of the MTS employees, there could not be a legitimate refusal to bargain with the Union about the decision to layoff MTS employees based on *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). (JD 20:19-27).

5. The ALJ erred by failing to find that Respondent violated Section 8(a)(1) and (3) of the Act by suspending shop steward Efrain Gonzalez and failing to provide make whole and expungement remedies for this unfair labor practice. (JD. 20:30 to 21:33).

6. The ALJ erred by applying a *Wright Line*[4] analysis to the suspension of Efrain Gonzalez, by finding that Respondent lawfully suspended Gonzalez because he breached a rule prohibiting client interactions, and by finding that such discipline served legitimate business interests and would have occurred absent Gonzalez's shop steward status. (JD. 20:30 to 21:33).

7. The ALJ erred by failing to analyze the suspension of Efrain Gonzalez under *Atlantic Steel*, 245 NLRB 814 (1979). (JD. 20:30 to 21:33).

8. The ALJ erred by failing to find that Respondent violated Section 8(a)(1) and (5) of the Act by reducing the hours and days of work of its maintenance employees from July to November 2014, without giving the Union notice or an opportunity to bargain about this conduct or its effects, and by failing to provide a make whole remedy for the affected employees. (JD 10:3-33; 17:18-24).

9. The ALJ erred by finding that the General Counsel failed to show that Respondent Intership unilaterally changed the hours and days of work of its maintenance employees in a material or substantial way and that Respondent's maintenance employees never consistently worked 40 hours per week. (JD 10:15-33; 17:18-24)

[4] 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

10. The ALJ erred by finding that the General Counsel solely offered generalized and conclusory evidence regarding Intership maintenance employees' hours of work and failed to produce sufficient work and pay records to prove that they consistently worked 40 hours per week, notwithstanding Respondent's admission, through General Manager Rosa, that there were maintenance employees who previously worked a fixed schedule of 40 hours per week, and notwithstanding the testimony of employees Rivera, Delgado and Duran. (JD 10:28-33; 17:18-24).

11. The ALJ erred by failing to find that Respondent violated Section 8(a)(1) and (5) of the Act by eliminating guaranteed pay to its auto checkers working at the Intership terminal in December 2014, without prior notice to the Union and without bargaining with the Union, and by failing to provide make whole and restoration remedies for this unfair labor practice. (JD 10:35 to 11:17; 17:26-30).

12. The ALJ erred by crediting Respondent Vice President of Terminal Operations Garcia's denial that Intership paid the eight hour guarantee to auto checkers, and by crediting Garcia's claim that an exhibit to the contrary was an isolated error limited to one checker. (JD 10:35 to 11:17; 17:26-30).

13. The ALJ erred by failing to recommend, subject to the right to fully litigate that issue in a compliance proceeding, that Respondent be required to restore its MTS operations as they existed before the closure of those operations on or about October 19, 2012, and restore its TTS operations as they existed before the closure of those operations on or about April 26, 2013, in view of the finding that Respondent violated Section 8(a)(1) and (3) of the Act by closing those portions of its operations, and also violated Section 8(a)(5) by closing the MTS portion of its operations. (JD 26:20-32).

14. The ALJ erred by failing to find that neither of Respondent's current financial ability to restore its MTS and TTS operations, nor the restoration issue as a whole, was fully litigated, and further erred by finding that the restoration of the MTS and TTS portions of Respondent's operations would cause an undue hardship to Respondent. (JD 26:20-32).

15. The ALJ erred by failing to specify in the conclusions of law, recommended remedy, Order and Notice, that MTS discriminatees including Jesus Fernandez, Hugo Adames Soto, Angel M. Rivera, Jose M. Velazquez, Jose R. Marrero, Leonardo Morales, Raul Pineda, Ramon Lopez, Jose Nater, Socrates Escotto, Bryan Alvarado, Mario Galan, Dionisio Garcia, Carmen Morales, Jorge Mercado, Lydia E. Lopez, Jason Marrero, Manuel Figueroa, Rafael Rodriguez, Angel Garcia Pabon, Angel Garcia Garcia, and Luis Allende be offered reinstatement and made whole, and that TTS discriminatees including Yamil Colon, John Alexis Rosa, Miguel Ortiz, Elvin Jovany Moran, Elliot Santiago, Edgar Alejandro Diaz, be offered reinstatement and made whole, and that Respondent remove references to their discharges from its files and so notify each of them in writing. (JD 24-30 and Appendix).

16. The ALJ erred by failing to award search-for-work and work-related expenses as part of the make whole remedy regardless of whether these amounts exceed interim earnings.

17. The ALJ erred by failing to include in the recommended Order and Notice to Employees, the requirement that Respondent rescind the changes it made to the **vacation check distribution system** [rather than the vacation scheduling procedure as improperly stated in paragraph 2(g) of the recommended Order] for Intership unit employees at its Intership work site at the piers in San Juan, Puerto Rico, by finding that there is no evidence that employees suffered any monetary loss, and by failing to require that Respondent compensate employees for any travel expenses incurred because they had to travel to Bayamon, Puerto Rico to get their vacation

checks instead of picking them up at their work place at the San Juan piers. (JD 9:38 to 10:1; 27:36-39; 27 at fn. 66; 29:13-14).

18. The ALJ erred by failing to recommend that the remedy, recommended Order and Notice to Employees require that Respondent's representative in the presence of a Board Agent, or in the alternative a Board Agent with Respondent's representative present, read the Notice to Employees in Spanish to its employees during the employees' working time at a meeting or meetings scheduled to ensure the widest possible attendance by the employees. (JD 26:15 to 30 and Appendix).

19. The ALJ erred in paragraph 2(h) of the recommended Order that the Notice to Employees be printed in the English and Spanish languages. (JD 30:16-30).

DATED at San Juan, Puerto Rico, this 27th day of May, 2016.

Respectfully submitted,

s/Isis M. Ramos Meléndez
s/Manijée Ashrafi Negroni

Isis M. Ramos Meléndez
Manijée Ashrafi Negróni
Counsels for the General Counsel
National Labor Relations Board, Subregion 24
525 FD Roosevelt Avenue
La Torre de Plaza, Suite 1002
San Juan, PR 000918-1002
Tel. 787-766-5327
Fax. 787-766-5478
Email: Isis.Ramos-Melendez@nlrb.gov
Manijee.Ashrafi-Negróni@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, General Counsel's Exceptions to the Administrative Law Judge's Decision in the matter of International Shipping Agency, Inc., Marine Terminal Services, Inc. (MTS), and Truck Tech Services, Inc. (TTS), a single employer, Cases 24-CA-091723 et al., was electronically filed with the National Labor Relations Board and served by electronic mail upon the below-listed parties on this 27th day of May 2016.

By electronic filing:

Hon. Gary W. Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

By electronic mail:

Henry P. Gonzalez, Esq.
Gonzalez del Valle Law
1250 Connecticut Ave., N.W., Suite 200
Washington, DC 20036
gonzalez@gdvlegal.com
www.gdvlegal.com

Antonio Cuevas Delgado, Esq.
Cuevas, Kuinlam, Marquez & O'Neill
416 Ave. Escorial
Urb. Caparra Hts
San Juan, PR 00920-3514
acuevas@ckblawpr.com

Elizabeth A. Alexander, Esq.
Marrinan and Mazzola Marnan, P.C.
26 Broadway, 17th Floor
New York, NY 10004
ealexander@mmmpc.com

s/Isis M. Ramos Meléndez
s/Manijée Ashrafi Negroni

Isis M. Ramos Meléndez
Manijée Ashrafi Negróni
Counsels for the General Counsel
National Labor Relations Board, Subregion 24
525 FD Roosevelt Avenue
La Torre de Plaza, Suite 1002
San Juan, PR 000918-1002
Tel. 787-766-5327
Fax. 787-766-5478
Email: Isis.Ramos-Melendez@nlrb.gov
Manijee.Ashrafi-Negróni@nlrb.gov