

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

TROPICAL SHIPPING USA, LLC,

Employer

and

Case 12-RC-187033

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1359,

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

International Longshoremen's Association, Local 1359 (Petitioner), seeks to represent a unit of all full-time and part-time employees employed in the shipside stevedoring department by Tropical Shipping USA, LLC (Employer) at the Port of Palm Beach, Florida (the Port).¹ The Employer maintains that the unit sought by the Petitioner is inappropriately fractured from a wall-to-wall unit consisting of all non-supervisory employees at both its Port facility and its warehouse and corporate office facility located a mile and a half away (the MLK warehouse and MLK office, respectively). The Employer contends that the employees it seeks to add to the petitioned-for unit share an overwhelming community of interest with the employees in the petitioned-for unit. There are approximately 60 employees in six job classifications comprising the unit sought by the Petitioner. The Employer asserts that the petitioned-for unit is inappropriate and that a "wall-to-wall" unit including approximately 226 additional employees in 73 additional job classifications who work at the Port and the MLK facility, or, in the alternative,

¹ The parties stipulated, and I so find, that the Employer, a Florida limited liability company with an office and place of business located in Riviera Beach, Florida, is engaged in the business of transportation of freight, that during the past 12 months, the Employer purchased and received goods valued in excess of \$50,000.00 directly from points located outside the State of Florida, and that the Employer is an employer within the meaning of Section 2(2),(6) and (7) of the National Labor Relations Act (the Act). The parties further stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

a unit of all of its employees who work at the Port, should be found to be the smallest appropriate unit.

On November 10, 14, and 15, 2016, a hearing officer of the Board held a hearing at the Region's Miami Office, and the parties orally argued their respective positions prior to the close of the hearing.² The parties also filed post-hearing briefs on November 28, 2016.

As explained below, I find that the petitioned-for unit is an appropriate unit because there is insufficient evidence to establish an overwhelming community of interest between the stevedoring department employees and the employees the Employer seeks to add to the unit.

I. Facts

A. The Employer's Operations at the Port of Palm Beach and its MLK Facilities

The Employer is a logistics and shipping company that provides cargo and container shipping services over sea, land, and rail. From the Port, the Employer receives and ships its customers' cargo to and from points in Canada, the United States, and the Caribbean. The Employer owns 11 seagoing vessels, and leases another six vessels from third-party owners. All vessels crews are employees of a third-party agency. The Employer also contracts with railroads to ship goods over long distances within the United States, where it then contracts with third-party freight truckers to deliver goods to their final destination. The Employer also directly employs some freight truckers, including many in the south Florida area.

The Employer leases 60 acres at the Port of Palm Beach, abutting the Atlantic Ocean. The Port property is hemmed in on the west by the President Barack Obama Highway and railroad tracks owned by the East Florida Railroad. Cutting almost directly through the middle

² Herein, references to Board exhibits are "BX [number]" and references to Employer exhibits are "ERX [number]." The Hearing Officer kept the record open at the close of the hearing for the Employer to submit a final exhibit consisting of the schedules of the employees it seeks to add to the petitioned for unit. That document was submitted by the Employer on November 22, 2016, and has been added to the record as ERX 21 in the absence of any objection from the Petitioner.

of the Employer's Port property from north to south is an overpass of U.S. Highway 1 (U.S. 1). Entrance to the Employer's Port facilities is gained through a gate at the end of Martin Luther King, Jr. Boulevard, in the northeast corner of the acreage (the Main Gate). A second gate, called the Tropical Gate, located just to the west of the U.S. 1 overpass, admits trucked-in cargo and personnel into various areas of the port where containers are staged for shipment, vessels berth for loading and unloading, and containers and some oversize goods such as construction equipment and automobiles are received by rail.

Between the Main Gate and the Tropical Gate there are several other areas of the Employer's Port facility. To the north inside the Main Gate, as one travels from west to east towards the U.S. 1 overpass, are the auto receiving staging area, where cars that have been cleared for export are loaded into containers for their ocean voyage; the auto receiving trailer, where auto receiving department employees are based; and a building containing the purchasing department, the marine engineering shop, and the container/chassis maintenance department. Immediately inside the Main Gate to the south is a staging area for empty refrigerated containers (reefers) and a building which houses both the reefer maintenance department and the automobile repair department. Between those areas and the Tropical Gate is a U.S. Customs (Customs) and U.S. Department of Agriculture (USDA) checking station. These agencies may place a hold on any inbound cargo, as well as any exports prior to their shipment, pending inspection.

Once inside the Tropical Gate, to the south, west of the U.S. 1 overpass, are the flatrack receiving department and a chassis storage area. A road traverses under the U.S. 1 overpass south of the Interchange Gate and north of the flatrack receiving department. A rail line also passes under the overpass in this vicinity, such that the first area one arrives at on the eastern side

of the overpass is the rail receiving/loading yard. The rail terminates 150 feet from a seawall at the short end of a “U,” while two ships may berth on the U’s long arms, perpendicular to the coastline. Additional shipping berths are available on a small thumb to the south and a larger peninsula to the north. In the center of the large peninsula is the staging area for so-called “dry” containers, which are not temperature-regulated like “reefers.”

Between the dry staging area and the overpass are the interchange staging area, where arriving containers await movement to their final staging area prior to shipment, or to the container/chassis or reefer maintenance areas for repair; the refrigerated container terminal, a staging area for outbound reefers; and a soon-to-be demolished building known as the Maritime Office Building (MOB), which housed office employees as recently as July or August 2016, most, if not all of whom have been transferred to the MLK building, discussed infra. Continuing north to the edge of the Employer’s Port property are, in order, the terminal office and break room, which houses the stevedore department lockers and a break room which the stevedore department employees share with at least some of the Employer’s mechanics; a building housing the Port maintenance department shop; and in the northeastern corner of the property, another office building called the Maritime Office Complex, which houses the vessel planning department, the administrators of the marine department, maintenance engineers and directors, and safety personnel for the Employer’s vessels.

The Employer’s corporate office is at a building referred to as the MLK building, located on Martin Luther King Jr. Boulevard, about a mile and a half west of the Main Gate at the Port. The vast majority of the Employer’s corporate and business functions are performed in the MLK building. However, the Employer also employs sales managers stationed on location throughout the Caribbean and in the Employer’s Miami, Florida office.

The Employer's MLK warehouse is an L-shaped building adjacent to the MLK building that houses the Employer's corporate headquarters. "LCL" (less than container load) cargo is trucked into the MLK warehouse by various means and then loaded by the Employer's BI operations department employees into shipping containers, which are then trucked to the Port to be loaded onto the vessels.

The record reflects that while the Employer handles both exports and imports, the majority of its business is transporting cargo to various locations in the Caribbean, each of which is referred to as an "outport." The Employer's accounting system allocates profits to each of its island outports, designated as profit centers, and allocates each of its costs to "cost centers," different parts of the operation which generate costs. Each profit center then receives a share of each cost center's costs, and the ratio of its profits to costs determines its profitability and whether the Employer will continue to operate that outport. All of the employees in the petitioned-for bargaining unit are in a single cost center, and no other non-supervisory employees are included in that cost center. Cost centers account for all of the budgetary items charged to the department, including wages, benefits, equipment, supplies, fuel, bonuses, maintenance, uniforms, radios, and depreciation.

B. Stevedoring Employees

The 60 employees in the stevedoring department are managed by Stevedoring Shipside Manager Claude Clevinger and Stevedoring Yard Manager Ed Shoemaker, who in turn report to Director of U.S. Terminal Operations Ed Severino. Severino reports to Assistant Vice President of U.S. Operations Doug Vogt, and Vogt reports to the Employer's President, Jeff Fiser.

Stevedoring Shipside Manager Clevinger directly supervises day shift stevedoring supervisor Paul Wall, night shift stevedoring supervisor Roderick Clayton, and the 11 lead

stevedores. The shipside stevedoring crews report to Wall and Clayton. The stevedoring department crew members' work schedule shows that eight senior stevedores, one stevedore I, five shipside inspectors (checkers), and four signal persons report to day shift stevedoring supervisor Wall; six senior stevedores, two stevedores I, two shipside inspectors (checkers), and two signal persons report to night shift stevedoring supervisor Clayton; six senior stevedores and two stevedores II report to Yard Manager Shoemaker; one stevedore II, six stevedores I, and one signal person report to Jockey Pool supervisor Merilee Gorman; and one senior stevedore and one stevedore II report to Interchange and Rail Supervisor Tommy Du. Gorman reports to Shoemaker. Du also reports to Shoemaker, but only with respect to the two stevedoring employees who report to him, who are assigned to assist with work in the rail yard.³ Clevinger, Wall, Clayton, Shoemaker and Gorman only have stevedoring employees reporting to them. There are a total of seven signal persons; seven shipside inspectors, 10 stevedores I, four stevedores II, 21 senior stevedores, and 11 lead stevedores.⁴

Employees move up through the stevedoring ranks by gaining the certifications required to operate the equipment at each level. The record does not contain comprehensive information specifying the promotions of individual stevedores within the stevedoring department. Although not directly asked for this information, in the course of testimony about employees who transferred into the stevedoring department, Director of U.S. Terminal Operations Severino mentioned stevedoring employees who had transferred into the department to pursue careers as equipment operators, and then "moved up" or "worked their way up" within the department. These include current lead stevedores Stanrick Toney, Joe Williams, Mark Campbell and Mark

³ Du also supervises checkers and a lead checker assigned to the Employer's interchange department. Du himself is charged to the Employer's interchange cost center, rather than its stevedoring cost center.

⁴ There is no contention that lead stevedores are supervisors within the meaning of Section 2(11) of the Act, and the record does not support a finding that lead stevedores or other persons with the word "lead" in their job titles, who the Employer seeks to include in the unit, are statutory supervisors.

Davis; current senior stevedores Rey Crawford and Rene Magras; and current stevedores I Hector Duber and Michael Hernandez. It is also evident from the record as a whole that many other stevedoring employees, including those who have spent their entire employment with the Employer in stevedoring and others who transferred to the department, have also received promotions within the stevedoring department.

The Employer makes an effort to maintain steady shipside crews, each consisting of one lead stevedore, one senior stevedore, one shipside inspector, and one signal person.⁵ There are eight shipside crews. Nine of the senior stevedores and two of the stevedores II are assigned to the "yard" and two stevedores II and five stevedores I are assigned to the "jockey pool," discussed below, where they provide assistance to the stevedoring department and other departments within the Port, by transporting and staging shipping containers and flatracks. Flatracks are used to carry cargo that is not suitable for shipping in a container. The other departments assisted by the stevedores who are assigned to the yard and jockey pool include interchange, flatrack receiving, auto receiving, Customs, container/chassis maintenance, and reefer maintenance.⁶ Three of the lead stevedores, four of the senior stevedores and three of the stevedores I are "shipside floaters" who work on shipside crews. Two senior stevedores are "yard floaters."

The stevedores' schedules vary between four ten-hour days and five eight-hour days. Day shifts of shipside crew members start as early as 8:00 a.m. and their night shifts end as late as 1:30 a.m. Six of the eight shipside crews work days and the other two shipside crews work nights. The scheduled hours of the stevedores assigned to the jockey pool start as early as 7:00 a.m. and end as late as 9:00 p.m., and the scheduled hours of stevedores assigned to the yard start

⁵ Two stevedores I fill the shipside inspector and signal person roles on shipside crew 8.

⁶ Four of the five stevedores I assigned to the jockey pool are actually assigned to the jockey pool/shipside according to the stevedoring crew schedule.

as early as 4:00 a.m. and end as late as 4:00 a.m. Stevedores work on various staggered schedules, Monday through Saturday. The schedules of those assigned to the yard and jockey pool encompass (and exceed) the times when the interchange, auto receiving and flatrack receiving department employees are scheduled to work.

Signal persons are entry level stevedores. They are paired with more experienced shipside inspectors in order to learn how to inspect containers for damage. Their other duties include signaling crane operators (the lead stevedores) as necessary, placing locking pins on containers to hold them in place during the voyage, and performing preliminary cleaning of containers and the shipside area when there is no ship in port. They also do some checking work at shipside.

The shipside inspectors are responsible for operating forklifts and documenting each container that comes off of or goes onto the vessel in the Employer's terminal operating system, using tablet computers. The shipside inspectors check containers for damage, accuracy of seal numbers, and temperature, then flag containers for repair, if necessary, and for Customs or agricultural inspection, if appropriate. Shipperside inspectors and signal persons may also assist with the rigging and hooking of flatracks.

Stevedores I must become certified and obtain a commercial driver's license (CDL) in order to drive a "jockey" truck, a single-axle vehicle which may hook up to a chassis to transport a container from the staging area to the crane, or, on some "roll on, roll off" vessels, drive directly onto the ship with a container or flatrack cargo. Jockey trucks are also used to transport empty containers within the Port yard to areas where they are washed and cleaned by temporary laborers; or to a maintenance area as needed for repair; and to transport empty, cleaned and/or repaired containers to staging areas for transit out of the Port.

Stevedores II are certified to operate "reach stackers," large forklift-type vehicles which are used to stack containers up to five high. They also operate the jockey trucks. The stevedores II operating reach stackers typically work in the dry and reefer staging areas of the Port, stacking or unstacking containers as necessary.

Senior stevedores operate "straddle carriers," larger vehicles which roll over the top of a container that is on the ground or mounted to a chassis, and lift it upwards. The "strads," as they are known, can lift a container over two stacked containers. The stevedore sits in a glass-bottomed space at the top, 42 feet off the ground, so that he can see what is beneath him. Senior stevedores transport loaded non-refrigerated and refrigerated containers from staging areas to shipside throughout the process of loading of vessels by shipside stevedores.

Lead stevedores are certified to operate the mobile cranes which load and unload shipping containers and equipment onto and from the ships. Although the lead stevedores are certified to operate each of cranes owned by the Employer, each lead stevedore typically operates a particular crane in order to become familiar with it more easily.

The stevedores who transport containers, i.e. jockey pool drivers and straddle carrier operators, receive work orders on tablets inside their vehicles, notifying them when containers are ready to be moved and where to take the containers within the Port. The record does not clearly reflect whether the person who enters a work order to move a container into the vessel operating system, such as an interchange checker or vessel planner, assigns that job to a particular stevedore or to a pool of stevedores through the vehicle operating system, or whether an available operator simply accepts the next available job based on the work orders listed on his tablet. It appears that after moving a container, the operators enter the drop off location in the terminal operating system through their tablets.

C. Employees in Job Classifications the Employer Seeks to Include in the Unit

i. Checkers

Employees in three departments perform roughly the same function of inspecting and checking cargo upon arrival to the Port: interchange, flatrack receiving (flatrack), and auto receiving. At the MLK warehouse, employees in another department, BI operations, perform similar functions, along with their warehousing work.

There are 11 checkers and one lead checker in the interchange department, who inspect containers arriving at the Port by truck through the Tropical Gate, and by rail in the rail yard. As noted above, interchange department employees report to supervisor Tommy Du. Du, in turn, reports directly to Director of U.S. Terminal Operations Severino with respect to the interchange department employees who report to him. The interchange checkers are scheduled on staggered shifts to ensure coverage at the Tropical Gate continuously on weekdays, and until 6:00 p.m. on Saturdays. They may work weekly schedules consisting of five eight-hour days, four ten-hour days, or a four nine-hour days plus a one four-hour day.

Flatrack receiving employees report to Richard Slater, who reports to Director of U.S. Terminal Operations Severino, and only work during the Employer's "posted receiving hours," Monday through Friday, from 8:00 a.m. to 4:30 p.m. There are four flatrack receiving employees, three cargo inspectors and one crew leader, who receive non-containerized cargo that enters the Port by rail or truck on flatracks. The crew leader enters information about the cargo received on flatracks into the terminal operating system by tablet or computer. Cargo inspectors perform checking work on that cargo. Flatrack receiving employees operate a reach stacker

maintained by the flatrack receiving department within that work area.⁷ Stevedoring jockey drivers transport chassis to and from the flatrack receiving area. The flatrack employees inspect the cargo, make sure it is secure on the flatrack for shipping, and take steps to further secure the cargo for voyage, with extra lashing or chains. When heavy weather is expected during the voyage, flatrack employees apply extra lashing to the cargo in the flatrack receiving area or, according to Director of U.S. Terminal Operations Severino, "sometimes it's done shipside" and the captain or chief mate of the ship will look at the load, along with the flatrack receiving employees who secure the cargo and the stevedores who load the cargo, to make sure it is safe. Severino did not specify any particular instance when flatrack receiving employees secured cargo shipside, or how frequently they actually go shipside to perform such work.

The auto receiving employees are two cargo inspectors, one senior cargo inspector, a vehicle export coordinator, and a crew leader. They report to Dornsfeld "Don" Croal, who, in turn, reports to Severino. Like flatrack receiving, auto receiving employees are only scheduled to work during that department's posted receiving hours, Monday through Friday, from 8:00 a.m. to 4:30 p.m. The vehicle export coordinator tracks the documentation of the vehicles and provides it to Customs, which places a 72-hour hold on vehicles leaving the country, and works in the auto receiving building at the Port. The auto receiving department enlists the help of senior stevedore strad operators, via computerized work orders and verbal communications, to furnish them with empty shipping containers after Customs clears each vehicle for export. When auto receiving employees finish loading vehicles into containers, work orders are issued to strad operators (senior stevedores) to pick up the loaded containers and stage them for shipment.

⁷ However, according to the job descriptions of flatrack receiving employees, none of them must be certified to operate reach stackers, unlike the job descriptions for stevedores II, senior stevedores, and lead stevedores.

The stevedore II and senior stevedore who report to interchange supervisor Du load, unload, and transport containers in the rail yard area of the Port, as needed.⁸ To the extent that there may be other individuals involved in this process, it appears that they are interchange checkers.

The BI operations department at the MLK warehouse handles less than container load (LCL) cargo transported to the warehouse in tractor trailers and vans, sorts it according to the destination/customer, and, when enough cargo with the same destination/customer to fill a shipping container is present, loads it onto a container, to be sent to the Port. Unlike the Port receiving employees, the BI operations department employees are supervised by Norm Dunn, the General Manager of LCL and NVOCC.⁹ Unlike Severino, who reports to Assistant Vice President Vogt, Dunn reports to the Vice President of Marine, NVOCC, and New Market Development, a position which is currently vacant. The record does not contain evidence reflecting the hours of operation of the MLK warehouse. In addition, the record is not entirely clear as to the total number of employees who work at the MLK warehouse, but it appears that there are one cargo inspector, one cargo inspector/jockey driver, one freight coordinator, three cargo handling specialists, and three senior cargo handling specialists working at that location.

ii. Maintenance Mechanics

There are seven departments performing mechanical/technical work, which the Employer seeks to include in the bargaining unit: auto maintenance, reefer maintenance, container/chassis maintenance, port maintenance, outport maintenance, marine engineering, and buildings and grounds.

⁸ Severino testified that the rail yard employees were “the same people” as the flatrack receiving employees.

⁹ “NVOCC” stands for “non-vessel operating common carriers,” companies that receive cargo, build loads, and contract to carry containers to their final destination. NVOCC operations occur at the Employer’s Miami warehouse, and are no employees performing these functions who either the Petitioner, or the Employer seek to include in the unit.

The auto maintenance department consists of six mechanics who report to Auto/Miami Maintenance Manager Joe Steib, who reports to Assistant Vice President Vogt. The mechanics perform maintenance and repairs on small vehicles used by the Employer at the Port and/or in the area of the Port, including jockey trucks, forklifts, golf carts, pick-up trucks, and cars used by salespersons. They work from Monday through Friday in two shifts, a day shift which starts between 7:30 a.m. and 8:00 a.m., and an evening shift which starts at 3:30 p.m. As noted above, the auto maintenance department shares a building at the Port with the reefer maintenance department.

The reefer maintenance department employs seven reefer mechanics, one electrician technician, two lead reefer mechanics, one utility person, one equipment support specialist, one equipment operator, and one refrigerated container (reefer) monitor. These employees are supervised by Refrigerator Maintenance Manager Ray Dougherty, who reports to Vogt. The technicians and mechanics perform technical repairs on the reefers relating to their climate control systems. The equipment support specialist drives a fuel truck and fuels the generators, called "gensets," which power the reefers when not plugged into a central power supply. The utility person "pre-trips" empty reefers by washing and cleaning them in the staging area by the Main Gate. On the other side of the overpass, the reefer monitor plugs and unplugs reefers from the staging area electrical supply as necessary and otherwise monitors their proper functioning and temperature as they await shipment. The equipment operator is the reefer maintenance department's dedicated jockey truck driver. Employees in this department work eight-hour shifts from Monday through Friday. The day shift starts at 7:00 a.m. and the evening shift starts at 3:00 p.m. A lead mechanic is on call for emergencies after hours, and occasionally travels to outport locations in the Caribbean to perform necessary repairs.

Physical damage to containers, such as dents and holes, is repaired by the container/chassis maintenance department (c/c maintenance) employees. These employees also perform maintenance on chassis used to transport containers, and tire repairs on all Employer vehicles. Fifteen welder repairpersons, three tire repair technicians, two lead container repairpersons, and one lead chassis/tire mechanic work in this department from Monday through Friday, between the hours of 6:00 a.m. and either 4:30 p.m. or 6:00 p.m.¹⁰ Employees in the c/c maintenance department report to C/C Maintenance Manager Todd Welsh, who in turn reports to Vogt.

The port maintenance department maintains the heavy equipment used to transport freight in the Port and on and off of vessels, consisting of reach stackers, strads, and cranes. The heavy equipment mechanics (HEMs) and lead HEMs also perform daily pre-checks on the equipment as required by OSHA, necessitating five HEMs and two lead HEMs to start their shifts at 4:00 a.m. or 4:30 a.m. Three more HEMs arrive at 8:00 a.m.¹¹ Port maintenance department shifts are only on Mondays through Fridays. Port Maintenance Manager Craig Drys supervises the department and reports to Assistant Vice President Vogt. Mechanics are assisted by one fabricator welder, one lead fabricator welder, and one equipment support specialist (fueler). The lead fabricator/welder is sometimes required to travel to outport locations to assist with the repair and maintenance of equipment in the Caribbean, and maintains the Port shop expense inventory.

An engineer HEM/instructor and an operations maintenance expeditor also work in the port maintenance department. The engineer HEM/instructor is functionally a lead HEM, but is

¹⁰ Despite testimony that the c/c maintenance department has staggered shifts providing daily coverage from 6:00 a.m. to 6:00 p.m., ERX 21 shows that no c/c maintenance employees are scheduled to work later than 4:30 p.m.

¹¹ Despite testimony that the port maintenance department has three shifts, day, afternoon, and evening, providing daily coverage from 4:00 a.m. to 2:00 a.m., ERX 21 shows that no port maintenance mechanics are scheduled to work later than 4:30 p.m. A single port maintenance fueler works from 11:30 p.m. to 7:00 a.m.

also responsible for keeping abreast of the latest technologies, updates, service bulletins, and procedures from the manufacturers of heavy equipment, assessing each mechanic's knowledge and abilities, and building training modules to advance them to the next level of competency. The operations maintenance expeditor purchases parts and materials for equipment maintenance, administers the department's inventory and allocation of parts to mechanics; and negotiates with other companies to remove scrap metal from the Port.

The outpost maintenance department's island maintenance coordinator performs and coordinates maintenance work on heavy equipment located throughout the Caribbean at other ports where the Employer operates. The record indicates that this individual spends some time at the Port of Palm Beach, but the record does not reflect how much. Richard Borrmann, Outpost Maintenance Manager, supervises this employee, and reports to Vogt.

The marine engineering department is responsible for maintaining and building vessels for the Employer's owned fleet. The Employer seeks to include ten individuals in the following job classifications under this department in the bargaining unit: four senior marine mechanics, one marine electrician, one utility person, one marine welder, one marine fabricator/welder, and two maintenance trainees. These employees work on the vessels when they are berthed in the Port, performing repairs and other preventative maintenance as necessary. They have a workshop in the same building as the c/c maintenance shop. They report to supervisors Charlie Smitt, Fred McNeal, and James Flannery, who report to Marine Engineering Director Cliff Wilt. Another supervisor, Russell Smith, and Wilt, report directly to Erwin Holder, the General Manager of Marine Operations. Holder normally reports to the VP of Marine, NVOCC and New Market Development, the position which is currently vacant. Marine engineering employees'

scheduled work is limited to Monday through Friday. The record is not clear on their specific start or end times.

Finally, the buildings and grounds department (B&G) employees, comprised of three general facilities maintenance mechanics and one lead facilities maintenance mechanic, perform maintenance work on the Employer's buildings, trailers, and grounds at the Port and MLK facilities. B&G shares space in the building housing the purchasing department, c/c maintenance department, and the marine engineering workshop. Tony Zerante, the Facilities and Maintenance Manager, reports to Director of Security, Facilities, and Compliance Chad Nelson, who reports to Vice President of Business Operations Mark Chapman. The record contains no evidence about the days and hours worked by B&G employees.

iii. Truck Drivers

The Employer currently directly employs ten truck drivers within its trucking department. Truck drivers are based out of the MLK warehouse. They carry full containers from the MLK warehouse to the Port to be staged for shipping, carry empty containers from the Port to the warehouse to be loaded by the BI operations department employees, and deliver both empty and full containers locally to customers. The remainder of the trucking work in the Port and South Florida area is performed by third-party companies and individual truck owner-operators. Most of the truck drivers work from 7:00 a.m. to 4:00 p.m. A night shift from 6:00 p.m. to 3:00 or 4:00 a.m. was recently added. Dennis Theis, who supervises the truck drivers, reports to Inland Transportation Director Dave Hearl. Hearl reports to Vice President of Customer Service and Inland Transportation Van Kent, who reports to VP Chapman.

iv. Customs Exam Station Freight Coordinator

The Employer's custom exam station (CES) freight coordinator acts as a liaison between the Customs and USDA inspectors and the rest of the Port crew, in order to ensure the efficiency of cargo's movement through the Customs process. He is stationed in the CES building by the Tropical Gate, works when the Customs inspectors work: Monday through Friday, from 7:00 a.m. to 3:30 p.m., and is supervised by Don Croal, who also supervises the auto receiving department employees. Customs requires a 72-hour hold on all vehicle exports, and the CES freight coordinator works with the vehicle export coordinator in auto receiving to ensure that vehicles are cleared by Customs as quickly as possible after the mandatory hold period ends.

v. Office Employees¹²

Employees in many job classifications that the Employer seeks to include in the bargaining unit work in offices, either at the Port's Maritime Office Complex or, more frequently, at the office in the MLK building. Many of these positions are clerical, administrative, professional, and/or salaried. They include employees in the marine operations, vessel planning, and information technology (IT) departments, customer service employees, and others.

Marine Operations

First, the Employer seeks to include a single maintenance coordinator in the marine engineering department, who works in the Maritime Office Complex overlooking the vessel berthing area. The maintenance coordinator, who reports directly to Marine Operations Manager Holder, is "working on putting a new maintenance system in." According to the position's job description, this individual is an administrative assistant who performs general office and clerical

¹² As is the case with respect to certain other employees discussed above, no office employees' work schedules are included in ERX 21.

tasks such as preparing correspondence and reports, answering phones, and managing files. The record is not clear as to the specific hours this individual works, but the record shows that the marine engineering department hours are 6:00 a.m. to 6:00 p.m., Monday through Friday.

The Employer also seeks to include two ships agents who work in its marine administration department, within the Maritime Office Complex. According to their job descriptions, these employees perform such duties as ensuring that documents are prepared for vessel entrance and clearance, scheduling and attending the boarding of vessels with government officials, ordering and coordinating fuel deliveries to vessels, and reviewing invoices. They are supervised by an individual named Carlos Saldiaz. The record does not reflect to whom Saldiaz reports, or the hours of work of the ship agents.

Vessel Planning

The Employer's vessel planning department, consisting of three operations controllers, two vessel planners, one vessel schedule analyst, and one service coordinator, is also based at the Maritime Office Complex. These employees report to Director of Vessel Planning Ken Johnson, who reports to Assistant Vice President Vogt. They work a set schedule, mostly during the daytime, Monday to Friday, although the vessel planners and operations controllers work rotating Saturdays.

The vessel planning employees determine the sequence for the loading and unloading of vessels to maximize the use of space and organization of containers and flatracks, and to balance the vessel safely for the shipside and vessel crews. They also coordinate planning to ensure the proper communication and management of booking modifications, and resolve issues regarding containers arriving to the Port with discrepancies that have been discovered by checkers. According to Assistant Vice President Vogt, the vessel planners set all sailing schedules, make

the load lists, and make the decisions about how cargo will be stowed, while the operations controllers issue work orders to the stevedoring shipside and yard groups to make sure they know what to load when and where to put it. The lone vessel schedule analyst makes sure that the schedules created by the Vessel Planners interface properly with the terminal operating system, which tracks the containers and thereby links them to a scheduled vessel.

Imports

The imports department is in the MLK building, and its employees are scheduled for daytime hours, Monday through Friday. The imports department creates an imports list which is used to segregate certain containers during the unloading process that have been requested for inspection by Customs. Four import specialists and one import vessel special accounts coordinator report to Traffic Director Annette Brophy, who reports to VP Kent, who in turn reports to VP Chapman. Import specialists are responsible for notifying consignees and brokers of the arrival of goods in the U.S.; answering customer service calls relating to quotes, vessel arrival information, clearance requirements, bonded services, tariff rules, and other import service-related questions; and ensuring Customs requirements are completed prior to releasing cargo from the Port. The import vessel special accounts coordinator coordinates with dispatch, interchange, flatrack, auto receiving, intermodal, and the "Pump Out Station" for full load special accounts; ensures Customs and USDA compliance; and completes vessel reconciliations in the computer system and communicates vessel activities to the import specialists.

Trucking and Intermodal

The three trucking department dispatchers, one senior dispatcher, one trucking accounts coordinator, and one logistics specialist coordinate with the intermodal department, which includes seven intermodal inland operations coordinators. These employees work in the MLK

office. The intermodal department is responsible for coordinating the delivery of freight that has been imported at the Port, by rail and by truck. The dispatchers and senior dispatcher direct truck drivers to pick up and deliver cargo or empty containers to and from the Port. Most of them work daytime shifts, although at least one dispatcher works at night. The trucking accounts coordinator and logistics specialist work Monday through Friday, from 8:00 a.m. to 5:00 p.m. The intermodal inland operations coordinators have staggered start times Monday through Friday. They start work as early as 6:00 a.m., and work as late as 8:00 p.m. One also works on Saturdays. The dispatchers, senior dispatcher, trucking accounts coordinator, and logistics specialist report directly to Inland Transportation Director Hearl. The intermodal inland operations coordinators report to supervisor Bob McHugh, who reports to Hearl.

Dispatchers and senior dispatchers schedule, monitor, and prioritize trucking activities. They also distribute work schedules to owner-operator truck drivers, validate vendor transportation fees, reconcile overdue equipment reports, and ensure regulatory compliance and permitting. The logistics specialist manages rail cargo activity and directs Port employees¹³ as to freight to be loaded on rail; communicates with customers, drivers and vendors to confirm dispatch activities and out-of-town work assignments; and performs clerical duties relating to truck driver payroll. The trucking accounts coordinator facilitates payments to owner-operator trucker drivers and third-party trucking vendors, including maintaining IRS form 1099 files. Finally, the intermodal inland operations coordinators perform duties such as ensuring that inland transportation to customers by motor carriers is in compliance with shipper and motor carrier requirements and documenting and resolving inland shipping billing charges and discrepancies.

¹³ The method of direction and the specific group employees who are directed are not identified in the record.

Documentation and Customer Care

BI traffic department account coordinators, documentation coordinators a documentation leader, customer care department account representatives, client services representatives, lead client services representatives, and a service issue resolutions coordinator are responsible for documentation and customer service to the Employer's shipper (exporting) clients. All are based at the MLK office. Employees in these job classifications provide logistical assistance to customers, give quotes to potential shippers, answer questions about the shipping process, sell and book services, respond to customer inquiries, ensure that documentation is scanned for the completion of paperwork and billing, and assist customers with "service failures" such as delayed delivery or pickup, shipment to the wrong customer, and damages.

The account coordinators report to Traffic Director Brophy; the documentation coordinators and lead report directly to Inland Transportation Director Hearl. All customer care employees are supervised by Don Abrams, except the service issue resolutions coordinator. Abrams, Brophy, Hearl, and the service issue resolutions coordinator report directly to VP Kent, who, in turn, reports to VP Chapman. All documentation and customer care employees work Monday through Friday, from 8:00 a.m. to 5:00 p.m.

Data Management

The employees in nine IT-related job classifications, computer operator, PC support specialist, help desk coordinator, voice communication analyst, client/server network administrator, client/server senior network administrator, business analyst II, senior applications system analyst, and senior financial systems analyst, are supervised by the General Manager of Information Technology, Rick Hall, who reports to VP Chapman. All are based in the MLK

office and they mostly work weekdays, but are on call at other times. However, the IT Help Desk is staffed 24 hours a day, seven days a week.

These employees perform a variety of information technology duties, including monitoring and inventory of computer supplies, performing server backups, setting up and maintaining the Employer's computer servers and network, including the wireless network in the offices and at the Port, resolving employees' problems with electronic tablets, laptops, desktop computers, communication radios, and cell phones. The business analysts II get feedback from employee users for improvements and development of new applications, and the senior system analysts use that feedback to modify and program applications for the Employer.

Maintenance Management System Administrator

The maintenance management system administrator is a single employee who works under Ray Dougherty, the Refrigeration Maintenance Manager, but who is based in the building housing purchasing, c/c maintenance, and marine engineering. Director of U.S. Terminal Operations Severino testified that this person handles the Employer's "fleet wave maintenance system," tracking all equipment, including logging deficiencies and repairs, by gathering information from the technicians doing the inspections and repairs. Severino does not supervise or work in the same building as this employee, and his testimony did not establish the nature of such gathering of information. The job description for the maintenance management system administrator states that this individual is responsible quality assurance of data and processes, and that the position requires knowledge of databases and SQL, a programming language. The reports generated by this individual are used to ensure compliance with DOT regulations when the Employer's equipment is being used by third-party truckers.

Equipment Management

Two MLK office employees, the equipment utilization specialist and equipment coordinator, who work Monday through Friday, starting at about 7:00 a.m., are responsible for ensuring that the Employer's computer systems contain accurate information about the current location of all equipment in the Employer's possession. They send daily lists of equipment to the stevedoring department in order to ensure that empty containers owned by other entities are segregated when they are off-loaded, so that they do not get stacked with the Employer's equipment. These employees also "direct" on-site Equipment Management supervisor Benny Feola to assign washout/cleanout (WOCO) crews to pre-trip certain empty dry containers.¹⁴ These employees report to Equipment Manager Oliver Crooks, who reports to Assistant Vice President Vogt.

D. Supervision

As noted above, all stevedoring employees report directly to a stevedoring department supervisor (Clevinger, Wall, Clayton, Shoemaker or Gorman) except for the one senior stevedore and one stevedore II who report to Interchange and Rail Yard Supervisor Tommy Du. As also noted above, Du also supervises 11 checkers and one lead checker in the interchange department. As further noted above, with respect to the two stevedores who report to him supervisor Du reports to Yard Manager Shoemaker, a stevedoring department manager, whereas with respect to the checkers who report to him, Du reports directly to Director of U.S. Terminal Operations Severino.

¹⁴ A "WOCO crew" is comprised of a senior stevedore operating a reach stacker, a c/c maintenance light damage repairperson, and temporary laborers who wash and clean the containers. The stevedore brings containers to and from the WOCO area. The record does not show what, if any, interaction occurs between the stevedore and the others on the "WOCO crew" with respect to this apparently routine task.

The Employer presented generalized testimony from managers that employees are required to take direction from any manager or supervisor at any time their assistance is required to get the freight to the customer on time. However, the record contains very little evidence of specific instances when this has occurred, or how such “direction” is imparted. There is testimony that a senior stevedore who reports to Stevedoring Yard Manager Shoemaker and operates a reach stacker in the c/c maintenance area is given daily instruction by the C/C Maintenance Manager, Todd Welsh. However, it appears that the stevedoring department has assigned the stevedore to transport containers and chassis to and from the c/c maintenance area, and Welsh simply provides the stevedore with routine information when containers are ready to be moved. There is no evidence that Welsh instructs the stevedore as to how to perform his job, or watches over the stevedore to make sure he performs the work.

Similarly, Assistant Vice President Vogt testified that stevedoring jockey pool drivers receive daily instructions from supervisors in different departments: after dropping off a container, they are instructed to take another container somewhere else on their way back to the yard. However, it is the stevedoring department managers and supervisors who assign jockey pool drivers to work in particular areas of the Port and the claimed instructions from supervisors in other departments to perform specific tasks appear to be routine requests. With respect to work orders to move containers that are entered in the terminal operating system and received by stevedores on their tablets, the record does not show how particular stevedores are chosen for a particular assignment. In any event, it appears that such tablet assignments do not involve direct interaction between non-stevedoring supervisors and stevedores, and the record shows that work orders to perform individual tasks are often input in the terminal operating system by non-supervisory employees.

Vogt also testified that a stevedoring department supervisor may tell a mechanic to drop what he is doing and fix a broken machine to ensure as much continuity of the stevedoring operation as possible, but as in the case of the aforementioned instructions from non-stevedoring supervisors to stevedores, there is no evidence of any specific instance when this has occurred or evidence as to the method by which a stevedoring supervisor communicates with mechanics, i.e. directly by radio or in person, or indirectly through the mechanic's supervisor or through the terminal operating system.

A supervisor may not discipline employees who report to another supervisor. Instead, in such a situation the supervisor is only authorized to report an incident or problem to the employee's immediate supervisor, and it is the immediate supervisor of the employee who is responsible for deciding whether to coach the employee or to recommend to the Employer's human resources department that the employee receive formal discipline or be discharged.

Similarly, performance evaluations are only issued by an employee's immediate supervisor, based on input from the immediate supervisor and other supervisors in the same department who work with the employee. The example given by Director of U.S. Terminal Operations Severino was that lead stevedores are annually evaluated by Stevedoring Manager Clevinger with input from the day shift and night shift stevedoring supervisors, Wall and Clayton. These evaluations are used to determine eligibility for wage increases and bonuses.

E. Day-to-Day Interchange

The stevedoring department supervisors hold daily pre-shift meetings, either in the break room or in Stevedoring Manager Clevinger's office, with all of the stevedores on each shift.¹⁵

¹⁵ The morning pre-shift meeting follows an 8:30 a.m. daily "marine meeting" attended by managers. There is no evidence that other departments hold pre-shift meetings with employees. Severino speculated that mechanics may have a pre-shift meeting, but testified that he did not know whether this was the case. Assistant Vice President

The offices in the stevedoring trailer are only for Stevedoring Shiptside Manager Clevinger, Stevedoring Yard Manager Shoemaker, and stevedoring supervisors Wall and Clayton. At the stevedoring pre-shift meetings the managers and supervisors review the "expectations for the day," including safety issues, the vessel schedule, which clients' cargo is being shipped, and "if there is anything out of the ordinary happening" or employees need to work on a stevedoring crew that is not their regular stevedoring crew due to vacations. Thus, it appears that stevedores fill in for each other as needed.

Assistant Vice President of Human Resources Beitler testified that the Employer maintains no records of day-to-day interchange or short term transfers of employees. Director of U.S. Terminal Operations Severino, who manages the stevedoring, auto receiving, flatrack receiving, interchange, and Customs exam station departments, testified concerning a recent event when auto receiving employees worked unloading two ships returning to Florida with power trucks "from the hurricane," apparently referring to Hurricane Matthew. He testified:

So rather than have the stevedores stop doing what they were doing, the team from the auto group actually came down and unloaded the ship of all of the trucks and staged them, because they were a hot item and the power company wanted these things released as soon as possible.

Severino explained that on this occasion, after the vessel's crew unlashd the vehicles the auto receiving employees validated the VIN numbers, and communicated with a stevedoring supervisor who informed the control center to enter the information into the Employer's system. He also testified that in the past on Thanksgiving Day he has had cargo inspectors from auto, flatrack, and CES [customs exam station] form an extra crew to work with a stevedore operating a crane so that employees can get home "on time."

Beitler testified that departments hold monthly staff meetings. The Employer holds non-mandatory quarterly meetings that are open to all employees, where senior managers provide business updates.

Severino testified that he has also sent employees from the stevedoring department into receiving areas when they are short-staffed due to unexpected vacancies. The only such occasion he cited was the assignment of a single stevedoring employee to work in flatrack receiving for two weeks. The record does not reflect how long ago this occurred.

According to Severino, approximately three to five times a year, when a container is damaged or a refrigerated container is not operating properly at night, the Employer has assembled "a stevedoring team, the reefer mechanics, or the port heavy equipment mechanics,¹⁶ anybody that's on duty in the evenings" to unload the cargo from the faulty container and transfer it (presumably to an intact container) so it can be shipped that night. Severino did not testify as to the approximate dates of any such events, or how often such assembled teams actually have included stevedoring employees. According to Severino, this type of work is assigned to cargo inspectors if such an occasion occurs during the daytime.

According to Severino, reefer mechanics, who may board a vessel to plug in refrigerated containers, "can signal the crane operator. when necessary." Severino further testified that "a lot of times" the Employer uses local truck drivers to unload cargo from a "roll on, roll off" ship that is too heavy for unloading by a jockey truck or single-axle truck operated by a stevedoring employee, but he did not quantify what he meant by "a lot of times" or specify any particular occurrences or dates of such events.

Finally, there is some evidence that stevedores perform "light maintenance" on containers by sealing small holes with tape to make them watertight for the voyage, but such work does not require any mechanical ability, and a signal person testified that to his knowledge this has never occurred during his three months of working for the Employer.

¹⁶ Contrary to Severino's testimony about such events, the evidence shows that no port heavy equipment mechanics or other employees in the port maintenance department are scheduled to work later than 4:30 p.m.

F. Permanent Transfers

The Employer presented a summary document showing that five employees transferred into the stevedoring department from other departments, and nine employees transferred from the stevedoring department to other departments during the period of approximately 3 years and 10 months between January 1, 2013 and the hearing in mid-November 2016. It appears that all of these transfers were voluntary. Regarding the transfers into stevedoring, an interchange checker and a cargo inspector transferred to positions of stevedoring signal persons in 2014; a refrigeration mechanic transferred to a position as a senior stevedore in 2014; a cargo inspector from flatrack receiving, who had originally been a signal person in stevedoring and had transferred to flatrack receiving in 2014, transferred back to stevedoring in 2015, and is now a stevedore II; and a senior cargo handling specialist at the MLK warehouse transferred to the position of shipside inspector in 2016. Two of these five employees no longer work in stevedoring, and apparently no longer work for the Employer. The employees transferring out of stevedoring jobs have transferred to positions as truck drivers and interchange department checkers.

Although the Employer provided evidence that it documents permanent transfers, it relied only on the testimony of Director of U.S. Terminal Operations Severino to establish that additional current stevedoring employees transferred to stevedoring from other positions. No dates of these transfers were provided, and the record does not contain the dates of hire or length of stevedoring service of the employees who Severino testified were transferred before 2013. They include five lead stevedores, nine senior stevedores, a stevedore II, and three stevedores I, in addition to the three remaining employees who transferred to stevedoring after January 1,

2013.¹⁷ Based on Severino's testimony, 21 current stevedoring employees previously worked for the Employer in another department, and the other 39 current stevedoring employees were hired into the stevedoring department.¹⁸

G. Functional Integration and Interdepartmental Contact

As discussed above, there is functional integration throughout the Employer's operations, and stevedoring employees assigned to the yard and jockey pool have substantial contact with employees in other departments, especially interchange, flatrack, auto receiving, and the Customs exam station, the departments under the overall management of Director of U.S. Terminal Operations Severino. Assistant Vice President Vogt testified that the stevedoring employees who operate yard vehicles have much more interaction with other departments than the stevedores assigned to shipside crews, and that the jockey pool has daily interaction with "most every department within the Port." Vogt estimated that in general, senior stevedores (straddle carrier operators) and stevedores II (reach stacker operators) have weekly interaction with other departments. Vogt and Severino testified that lead stevedores, i.e. crane operators, are occasionally asked to make a lift for a maintenance project, typically by the marine engineering department, which repairs the vessels in Port.

Severino testified about occasional projects that require coordination between multiple departments, such as shipping a piece of equipment to an outport location, involving a joint effort by stevedores, port maintenance, and marine engineering employees; assembling new port

¹⁷ The 21 transferred employees include two who transferred from locations of the Employer other than Palm Beach, which the Employer does not contend should be added to the unit. Senior stevedore Rene Magras transferred from a job as a warehouse employee in St. Thomas, U.S. Virgin Islands. The record is not entirely clear, but it appears that lead stevedore Joe Williams transferred from a job as a cargo inspector with the Employer in either St. Thomas or Miami. The 21 transferred employees also include stevedore I Darryl Johnson, who was transferred from a temporary job cleaning containers, but whose only regular employment has been in stevedoring.

¹⁸ Severino testified that lead stevedore Jose Johnson and stevedore I Omar Brown were owner-operator truck drivers doing business with the Employer at the time they were hired into the stevedoring department. It appears that the Employer treated these individuals as independent contractors, rather than employees when they were owner-operators, so they have not been counted as transferred employees.

equipment and disassembling retired equipment, involving stevedores and port maintenance employees, with the assistance of the equipment vendor; and the building of a wall by B&G department employees with some stevedore assistance. In addition, marine mechanics assist stevedores when the locking pins which secure containers to the vessel's guide rail become jammed, or the guide rail itself is damaged to the extent that it hinders the loading or unloading process. Before the shipside crews arrive at work in the morning, Port maintenance mechanics perform daily pre-checks on cranes and other heavy equipment used by the stevedores, and position the cranes according to the daily work plan.¹⁹

Severino also testified about an emergency situation that occurred when a truck rolled over on the highway at night and on-duty stevedores, port maintenance heavy equipment mechanics, reefer mechanics, and at least one person from the safety department went to the accident site to retrieve the truck's cargo, load it into the new container, and transport it to the Port. Severino testified that such emergencies have happened at least two or three times in the last four or five years.

As noted above, the terminal operating system through which work orders are transmitted electronically appears to be one of the primary means of contact between departments relative to the actual work of transporting cargo. It is the application which allows organization and coordination of employees performing myriad discrete functions in the freight handling process.

Verbal communication frequently happens by radio, with separate channels for employees in different departments to use so that they are not talking over each other. Severino testified that the stevedoring department has "probably three" dedicated shipside channels and one that they use while in the interchange area; that the marine department has its own channel

¹⁹ However, the mechanics never use the cranes to load or unload vessels. Only the lead stevedores perform that work.

and the ability to monitor the stevedoring department channels; and that there is a channel which mechanics use to communicate with other employees about maintenance issues.

H. Hiring, Orientation and Training

The Employer's hiring activities are coordinated by its human resources department. Department managers determine hiring needs. All job openings are posted both internally and externally. Panel interviews are sometimes used if an applicant has applied for multiple positions.

Approximately once per month the Employer conducts a one-day orientation at the MLK building for employees from all departments who have been hired and started working since the most recent orientation. Various senior managers introduce themselves to the new employees and give an overview of the Employer's operations and its history. The employees also tour the Port facilities on that day.

Upon starting work for the Employer, entry level employees are typically assigned to a more senior employee who will introduce them to their job duties. For example, signal persons in the stevedoring department partner with shipside inspectors to learn how to signal cranes and secure cargo, and begin learning how to evaluate containers for damage. Once the requisite skills are mastered, the entry-level employee is promoted. Such training continues as the employee rises up, supplemented with the certification training required by OSHA for certain equipment or job functions.

A signal person with three months on the job testified that all of the training he has received has been specific to the stevedoring department, and has consisted of on-the-job training from others in the department, and a required rigging class conducted at the MLK building on November 7, 2016, by a person from an outside company called Crane Tech, which he attended

with eight other stevedoring employees, including stevedores I, shipside inspectors and other signal persons. No other employees attended that training session.

The Employer encourages, but does not require, cross-training of its employees between or even within departments. Job openings are posted around the company, and employees who express interest in moving to another department may receive counseling on how to get the desired position. The Employer acknowledges that during the past several years it has not done “as much” cross-training as it had done at some unspecified time in the past.

The Employer’s safety department issues monthly safety briefings, which are reviewed at departmental pre-shift meetings, or at “a staff meeting.” The safety department also conducts specific trainings, on topics such as hazmat, confined space, and forklift certification. Some certification training is contracted out to a third-party instructor. Supervisors and managers in various departments identify employees who should attend such individual trainings and coordinate through the safety department, which then schedules a class for those employees to attend.

I. Job Skills and Requirements

The following information about job requirements and certifications is primarily based on job descriptions submitted in evidence by the Employer. Stevedores in the classifications of shipside inspector, stevedore I, stevedore II, senior stevedore, and lead stevedore are required to have a forklift certification. In addition, stevedores I, stevedores II, senior stevedores, and lead stevedores are required to obtain a commercial driver’s license (CDL); stevedores II, senior stevedores, and lead stevedores are required to be certified to operate a reach stacker; senior stevedores and lead stevedores are required to be certified to operate a straddle carrier, and lead stevedores are required to be certified to operate the Employer’s cranes. No other groups of

employees are required to have certifications to operate cranes or straddle carriers, except a few heavy maintenance employees who repair and test cranes and who may drive straddle carriers in and out of the shop for repair, but who never perform the work of stevedores who regularly operate those pieces of equipment. A welder repairperson is required to have certification to operate a reach stacker; cargo handling specialists and senior cargo handling specialists in BI operations, the crew leader in flatrack and auto receiving, and the equipment operator/jockey driver in reefer maintenance are required to have forklift certifications; and employees in various non-stevedoring job classifications are required to have a CDL. As noted above there is evidence that flatrack receiving employees operate a reach stacker.

Certain non-stevedoring employees are required to have certifications and skills that are not required of stevedores. For example, truck drivers must have Department of Transportation and Interstate Commerce Commission certifications; truck drivers, and heavy equipment mechanics, and various other mechanics must have a CDL with hazmat and tanker endorsements; welders must have a welding certification; port maintenance heavy equipment mechanics must have hydraulics, pneumatics, electrical and mechanical, and equipment maintenance and repair certifications; and reefer mechanics must have certificates in electrical, refrigeration and diesel mechanics skills. Some reefer mechanics are qualified to operate reach stackers and use them to move reefers in and around the reefer maintenance shop.

Neither stevedores, nor employees in most of the jobs the Employer seeks to add to the petitioned-for unit, are required to have a higher education degree. Job-related Associate's degrees are required for certain customer care, information technology, and administration positions, and job-related Bachelor's degrees are required for the Engineer HEM/instructor and certain information technology positions.

Finally, a number of employees the Employer seeks to add to the unit, including employees in various mechanic and maintenance positions, are required to have passports, presumably because they spend at least part of their work time outside the United States at the Employer's outport locations.

J. Wages and Overtime

The Employer presented its wage scale for non-exempt employees in the United States, showing the hourly rates of all but three of the job classifications sought by the Employer for the bargaining unit.²⁰ According to that wage scale, the difference in wage midpoint²¹ within the stevedoring department is \$10.32, between the entry-level \$14.90 midpoint for signal persons and the \$25.22 midpoint for lead stevedores. The lowest midpoint of any position on the wage scale is that of utility persons who wash containers and vessels, at \$11.48, while the highest midpoint is \$41.54 for the systems analysts who program the Employer's computer applications, a difference of \$30.06.

The Employer maintains different wage scales for different kinds of employees. Stevedores are in the "USH" scale along with interchange checkers and cargo inspectors, BI operations employees, documentation and customer care employees, truck drivers, and a few other single-employee classifications supporting maintenance departments. Technicians from trainees to senior and lead mechanics are in the "T" scale; salaried data management employees

²⁰ The vessel planning department's operations controller, vessel planner, and vessel schedule analyst positions are not included in the Employer's exhibits showing wage scales, job descriptions, overtime, or work schedules.

²¹ The Employer uses industry data to review and revise its wage chart every three years. It appears that the midpoint on the document submitted into evidence, ERX 11, is the midpoint of the full wage chart, which was not introduced, rather than the average wage of the employees in each wage grade.

are in the "DP" scale; and dispatchers, senior dispatchers, the operations maintenance expeditor and the maintenance management system analyst are in the salaried "USP" scale.²²

The Employer's hourly employees are paid weekly, whereas salaried employees are paid biweekly. Hourly employees punch a time clock, whereas salaried employees fill out an electronic time card at the end of a week, accounting for any absences that occurred with paid time off or other types of leave. The time clocks used by the hourly employees are not centrally located. The stevedoring department time clocks are in the stevedoring trailer, where the stevedoring employees' break room and locker room are located. Maintenance employees use time clocks in their respective workshop areas. Hourly employees are eligible for shift differential pay for night, weekend, and "staggered" shifts, i.e. when the employee's start times on any two days in a pay period vary by more than five hours, and only hourly employees receive on-call pay minimums of three hours.

The Employer presented evidence concerning overtime hours worked by employees in the various job classifications. The average weekly overtime hours of stevedoring employees in 2015 was 3.22 hours per week. Shiplside stevedoring crews averaged the most overtime hours within the department, while the stevedores I and II, working in the Port terminal yard and jockey pool, and the signal persons averaged slightly less overtime. No department had more overtime than stevedoring in 2015, except for the lone outport maintenance department employee - the island maintenance coordinator, who apparently most frequently works at

²² Employees in the following job classifications are salaried: business analyst II, client/server network administrator, client/server senior network administrator, help desk coordinator, PC support specialist, senior applications system analyst, senior financial systems analyst, trucking dispatcher, trucking senior dispatcher, and voice communication analyst. Additionally, based on their omission from the Employer's wage scale and job description exhibits, as well as testimony describing their job duties and other working conditions, it appears likely that the vessel planning department employees are salaried.

locations other than the Port of Palm Beach, who averaged 4.75 overtime hours per week.²³ During the same period, employees in the various departments the Employer seeks to add to the unit, other than the island maintenance coordinator, averaged from 0.45 to 2.5 hours of overtime weekly. For example, trucking employees averaged 2.5 hours of overtime weekly; reefer, port, c/c and auto maintenance employees averaged 2.45, 2.17 2.12, and 1.3 hours of overtime weekly, respectively; and interchange, auto receiving, and flatrack receiving employees averaged 2.05, 1.33, and 0.98 hours of overtime weekly, respectively.

The Employer's managers testified that overtime is often an operational necessity, based on when the vessels are in port and how urgently customers need their cargo delivered. Although driven by operational needs, decisions as to when operational needs require overtime work appear to be made by management.²⁴ Thus, a stevedoring employee testified that his supervisor determines whether or not stevedoring employees should work overtime to complete the unloading and then loading of a vessel, and that stevedoring supervisors discuss this at daily pre-shift meetings. At times, notwithstanding their schedules, stevedoring employees are required to work until the vessel is fully loaded and ready to ship out.

K. Benefits and Working Conditions

All employees, supervisors and managers of the Employer are eligible for the same benefits plans, including the same choices for health insurance, vision and dental insurance,

²³ This determination is based on multiplying the average of the Employer's 2015 weekly overtime average for each of the persons in the same job classifications, as shown on ERX 17, by the number of employees working in that classification in each department currently, as shown on BX 3, Attachment C to the Statement of Position submitted by the Employer. The resulting total estimated weekly overtime hours for each job classification are then summed on a department-by-department basis and divided by the total number of employees in that department. Of course, salaried exempt positions the Employer seeks to include in the unit are not paid for overtime. Assistant Vice President of Human Resources Beitler testified that some salaried positions are non-exempt and eligible for overtime pay, but he did not know which salaried positions are non-exempt.

²⁴ This Employer's written overtime policy states that all overtime worked must have prior approval of the supervisor, and that except in a clear emergency situation, the employee will be subject to corrective action for failure to obtain advanced approval.

short-term and long-term disability insurance, education/tuition assistance, and the same paid time off (PTO) schedule. The Employer maintains a company-wide “Annual Incentive Plan,” which establishes performance goals based on on-time deliveries. All employees either earn this bonus together, or not at all, based on whether the company meets those goals in a given year.

However, additional performance bonuses may be paid to individual employees in the form of a lump sum or base wage increase on a discretionary basis. Each year on their employment anniversary, employees are given a performance review by their direct supervisor. In April each year, employees rated satisfactory or higher in their most recent evaluations receive a raise in the percentage budgeted by the human resources department, and employees meriting a performance bonus receive it at that time.

The Employer endeavors to have the stevedores schedule their vacations for the entire year in January, and organizes these requests by job classification so that there are not too many stevedores who perform the same function absent at one time. The department supervisors confer, then write all of the approved requests on a large calendar in the stevedoring department trailer. Stevedoring employees may make additional vacation requests throughout the year on a first-come, first-served basis, to their immediate supervisor. Although it is not clear, the record evidence suggests that other departments do not follow the same vacation scheduling procedure.²⁵

The record contains evidence that the stevedoring department breaks – one unpaid half hour lunch break and two scheduled, paid 15 minute breaks – are taken by employees around the same time on a given day, since the shipside crews function as a unit. Severino testified that the

²⁵ In referring to the vacation scheduling procedure for the stevedoring department, Assistant Vice President of Human Resources Beitler said, “Down there, because there’s so many people. . .”

stevedores' practice has been to combine the first 15-minute break with the lunch break, and take the second 15-minute break separately later in their shift.

In the stevedoring trailer there is a break room, which doubles as a locker room, including showers, used by stevedoring employees. Port maintenance employees also use the break room in the stevedoring trailer. The Employer contends that this is by design, so that the port maintenance mechanics can talk with stevedores about their equipment at the beginning and end of the day, as well as on their breaks. However, the record reflects that the shift starting and ending times of most stevedoring employees differ from those of the port maintenance mechanics, nor are there any port maintenance mechanics on the night shift, and there is no evidence to show that the break times of stevedores and port maintenance mechanics are scheduled to coincide. Moreover, there is no evidence about actual discussions between port maintenance mechanics and stevedores in the stevedoring trailer. In addition to attending daily pre-shift meetings and taking their breaks in the trailer, stevedoring employees punch in for work in the stevedoring trailer, and obtain supplies such as work gloves and rigging materials from a supply locker in the stevedoring trailer. Port maintenance employees punch in for work at the separate port maintenance facility, located about 200 feet from the stevedoring trailer.

Director of U.S. Terminal Operations Severino and Assistant Vice President of Human Resources Beitler testified that any individuals entering the operational area of the Port are required to wear high-visibility vests or shirts. The employees who work in these areas regularly have uniform shirts, including the stevedoring employees and mechanics, as do the MLK warehouse employees. Employees coming from offices or other areas put on vests as needed. Further testimony elicited from the sole rank and file employee to testify, a stevedoring department signal person, clarified that the stevedores' uniform shirts are "highlighter yellow"

with the words "Tropical Shipping" on them; whereas the mechanics wear "highlighter orange" shirts that are flame retardant.²⁶ The stevedores are supplied with a pair of steel-toed boots each year. The record does not indicate whether other employees are provided with steel-toed boots. Employees wear hardhats when they are in the vessel berthing area, where the cranes are located, and the shipside crews work, and anywhere else where objects may fall from above.²⁷ As discussed above, the stevedores, interchange and flatrack and auto receiving employees work outdoors. Maintenance employees work outdoors or in workshops. As described above, employees in many of the other job classifications the Employer seeks to include in the unit work in offices.

II. Prior Representation Cases Involving the Employer and Union

The Employer has never recognized a union as the collective-bargaining representative of any of the employees in the petitioned-for unit, or, the record implies, of any employees at all. Thus, there is no bargaining history involving the Employer. The International Longshoremen's Association (ILA), the Petitioner's parent organization, petitioned to represent certain employees of the Employer, then known as Birdsall, Inc., on two previous occasions.²⁸

On October 27, 1983, in Case 12-RC-6269, the Board directed an election for the following bargaining unit:

All full-time and regular part-time employees of the Employer in the following operational divisions: receiving and handling (outbound), receiving and handling (inbound), stevedoring, equipment control, reefer control, container repair, Shop I, Shop II, marine, and maintenance at its Riviera Beach, Florida, facilities, excluding all traffic employees, data processing employees, insurance employees,

²⁶ The record does not reflect whether any other employees wear the same "highlighter yellow" shirts that stevedoring employees wear.

²⁷ The record did not make clear what other areas these might be. The cranes used to load and unload the ships are mobile, but cannot fit under the U.S. 1 overpass. The cranes are only used in the ship berthing area.

²⁸ Although the Employer's name has since changed, the "BI" (Birdsall, Inc.) nomenclature is still used in the names of the BI operations and BI traffic departments at the MLK facilities.

administrative office employees, office clerical employees, guards, and supervisors as defined in the Act.

Birdsall, Inc., 268 NLRB 186 (1983). The Board applied the standard set forth in the 1962 decision, *Kalamazoo Paper Box Corp.*

In determining the appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function. Because the scope of the unit is basic to and permeates the whole of the collective-bargaining relationship, each unit determination, in order to further effective expression of statutory purposes, must have a direct relevancy to the circumstances within which collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

136 NLRB 134, 137. The Board noted that the Employer's business, "transporting and transshipment of consignments of freight," is "highly integrated and adaptive" and "cannot be artificially characterized as, or divided into, warehousing and nonwarehousing functions." *Birdsall*, 268 NLRB at 190.

In 1994, in Case 12-RC-7716, the ILA sought to represent a unit of the Employer's stevedoring employees, and the Employer again sought a wall-to-wall unit, as it had with partial success in Case 12-RC-6269. The parties stipulated that the unit sought by the Employer, as set forth below, was an appropriate unit:

All employees of the Employer in the following operational departments: BI/LCL receiving & handling, cargo claims, rail/yard/TL receiving & handling, import services receiving & handling, stevedoring, equipment management, interchange, trucking, intermodal, refrigerator container maintenance, container maintenance, chassis maintenance, equipment maintenance, marine, building & grounds maintenance, and information services at its Riviera Beach, Florida facilities, excluding all corporate traffic employees, general and administrative employees, office clerical employees, stevedoring supervisor, cargo loss prevention manager, booking agent, guards, and supervisors as defined in the Act.

A hearing was conducted pursuant to the petition in Case 12-RC-7716, and the Regional Director at the time issued a Decision and Direction of Election on August 5, 1994, finding that the petitioned-for unit was not appropriate, and directing an election in the unit urged by the Employer which the parties had stipulated was appropriate.

The evidence relied on by the Regional Director in Case 12-RC-7716 showed that the stevedoring employees received direction and instruction from supervisors and managers of other operational departments, and that these supervisors and managers had "the authority to countermand directions of the stevedoring supervisor and manager based upon customer needs." At that time, 22 years ago, the Employer's stevedoring, trucking, and dispatch departments operated 24 hours a day, seven days a week. Stevedoring employees spent approximately 50% of their time involved in the shipside operation. When not performing duties shipside, straddle operators and jockey drivers would:

[R]outinely provide operational support to the trucking, equipment management, and interchange departments, as well as to all receiving and handling departments by physically picking up and moving both empty and filled containers and relocating them to designated areas as customer needs dictate. In so doing, the stevedoring straddle operators and jockey drivers interact with and receive instructions on a daily basis from interchange employees, dispatch employees, trucking employees, and container repair employees.

The Regional Director also noted that the stevedore equipment operators maintained radio contact with maintenance employees to report "emergency repair needs" and completed daily maintenance reports on their vehicles for the mechanics; that reefer mechanics interacted with jockey drivers when unplugging reefers for the jockey drivers to transport; that an equal number of jockey drivers were employed outside the stevedoring department as in it, and that the stevedoring jockey drivers filled in for the others when on vacation, traveling to the MLK warehouse to do so, and as the workload dictated.

In detailing the uniformity of working conditions in Case 12-RC-7716, the Regional Director noted that a single personnel office serviced all of the employees and that the same broad orientation and job posting practices remained in place. She also found that the pay grades of stevedoring employees, including signal persons, jockey drivers, shipside inspectors, loadmasters, strad operators, and crane operators, were shared with employees in multiple other job classifications; that the stevedoring, interchange, and dispatch departments averaged similar numbers of hours of monthly overtime; that in the year from March 1993 to March 1994, at least 19 employees permanently transferred from one department to another within the wall-to-wall unit, six of whom were transferred to or from the stevedoring department. The record showed that at that time, there were also some temporary transfers lasting three months or more that occurred “with some frequency.”

In light of these facts in Case 12-RC-7716, the Regional Director adopted the Board’s analysis in *Birdsall* and directed an election for the stipulated wall-to-wall unit. The Union withdrew its petition and no election was held.

II. Analysis

A. Current Board Law

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in an appropriate unit. *Overnite Transportation*, 322 NLRB 723 (1996). Moreover, in the years since the *Birdsall* cases, both Board law and the Employer’s operations have evolved.

As set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, 941 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), procedurally the Board first examines the petitioned-for unit to determine whether it is

readily identifiable as an appropriate unit by applying traditional community of interest principles. If the unit sought by a petitioner is readily identifiable and the employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the smallest appropriate unit contains additional employees and is therefore larger than the petitioned-for unit, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. *Specialty Healthcare*, 357 NLRB at 945-946.

In determining whether the job classifications sought by petitioner are readily identifiable as a group and share a community of interest, the Board has made clear that it will not approve fractured units; i.e. where the distinctions between the petitioned-for unit and the larger unit, with respect to the traditional community of interest factors, are “too slight or too insignificant to provide a rational basis for a unit’s boundaries.” *Specialty Healthcare*, 357 NLRB at 944-946; *Odwalla, Inc.*, 357 NLRB 1608, 1611 (2011). All relevant factors must be weighed in determining community of interest, including whether the employees sought by the petitioner: (1) are organized into a separate department or administrative grouping; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the Employer's other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *Specialty Healthcare*, 357 NLRB at 942, citing *United Operations, Inc.*, 338 NLRB 123 (2002). No single factor is dispositive.

Additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees

from" the larger unit because the traditional community-of-interest factors 'overlap almost completely.'" *Specialty Healthcare*, 357 NLRB at 944-946, and fn.28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). The burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017, fn. 8 (2011).

Finally, as the Board stated in *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 4 (2015), quoting *Specialty Healthcare* (footnote omitted):

In any particular workplace, there may be a number of ways in which the employees could be appropriately grouped for collective bargaining. See *Overnite Transportation Co.*, 322 NLRB 723 (1996). Therefore, "demonstrating that another unit containing the employees in the proposed unit plus others is appropriate, or even that it is more appropriate, is not sufficient to demonstrate that the proposed [smaller] unit is inappropriate."

B. Stevedoring Department Employees are Readily Identifiable as Group and Share a Community of Interest.

I find that the stevedoring employees in the petitioned-for unit are "readily identifiable as a group." They work in the same location, the Employer's Port terminal, and the Employer has organized them into their own department and cost center. Many of the stevedores perform their work in shipside crews composed exclusively of stevedores, and all of them perform the function of staging, loading, and unloading cargo for vessels and inland transport. Employees working in interchange and other receiving areas perform work that is similar to some of the work performed by some of the stevedores (shipping inspectors), but only stevedores regularly transport cargo from Port receiving areas to shipside, stage export cargo for voyage, stage import cargo for inspection and inland transport by truck and rail, unload and load vessels, and transport containers and flatracks between various locations in the Port, as needed.

The stevedores use a unique variety of equipment in performing this work. At each level of progression within the stevedoring job classifications, the stevedores are required to obtain an additional certification to operate increasingly complicated types of equipment, requiring increasing skill levels, while maintaining all certifications they previously obtained.

The immediate supervisors of 58 of the 60 stevedoring department employees exclusively supervise stevedoring employees, and managers Clevinger and Shoemaker have overall responsibility for all stevedoring employees, including the two who report to Interchange and Rail Supervisor Du. Stevedoring supervisors are responsible for the day-to-day supervision of the department's employees. They determine the hours of work, crew assignments, and work area assignments. The stevedoring supervisors evaluate job performance of stevedoring employees, which is used to determine whether the employees are eligible for wage increases and bonuses, and determine whether to initiate formal disciplinary action or the discharge of stevedoring employees.

There is only sporadic day-to-day interchange between stevedoring employees and employees in other departments. To the extent that such interchange occurs it is limited in nature. One reason for this is that senior stevedores and lead stevedores, comprising 32 of the 60 stevedoring employees, are the only employees who operate straddle carriers and cranes, respectively, for the purpose of moving cargo. The skills to operate these machines are obtained by working in the stevedoring department.

The evidence concerning the daily pre-shift stevedoring meetings, the vacation scheduling procedure for stevedores, and the presence of a number of floaters within the stevedoring department, establishes that when a day-to-day replacement for a stevedore is needed, the Employer assigns another stevedore, rather than an employee from a different

department. Although a number of stevedoring employees permanently transferred into stevedoring jobs from other departments, most stevedoring employees have worked exclusively in the stevedoring department. In addition, all such transfers have been voluntary, and in recent years there have been only a handful of transfers into stevedoring from other departments. Moreover, the evidence demonstrates that employees who have transferred to stevedoring have been motivated by promotional opportunities within the stevedoring department, and have risen within the ranks of the stevedoring department. The promotional progression within the stevedoring department from signal operator to shipside inspector to stevedore I to stevedore II to senior stevedore to lead stevedore supports finding that stevedoring department employees are a readily identifiable separate group and share a community of interest.

Stevedores work longer hours than the vast majority of employees in other departments the Employer seeks to add to the petitioned-for unit, starting as early as 4:00 a.m. and ending as late as 4:00 a.m. Also, the stevedoring employees' actual work hours are often extended and unpredictable because of shipping needs, resulting in the higher number of overtime hours as compared with employees in the other departments the Employer seeks to include in the unit. Although the stevedoring trailer is also used by port maintenance employees for breaks, it is primarily used by stevedores and contains their break room/locker room, showers, punch-in area, supplies, and managers' offices. In addition, the stevedoring employees are readily identifiable in the Port by their bright yellow uniform shirts.

For the above reasons, contrary to the Employer's argument that the petitioned-for unit is a "fractured" unit, I conclude that the stevedoring employees are a readily identifiable separate group and share a community of interest, and that the petitioned-for unit is appropriate for the

purposes of collective bargaining, absent evidence of an overwhelming community of interest with the employees the Employer seeks to add to the unit.

C. The Employees the Employer Seeks to Add to the Petitioned-for Unit Do Not Share an Overwhelming Community of Interest with the Stevedoring Department Employees. The Stevedoring Department Employees Constitute an Appropriate Unit.

Having determined that the petitioned-for unit of all employees in the stevedoring department is an appropriate bargaining unit, under *Specialty Healthcare*, the burden of proof now shifts to the Employer to demonstrate that the additional 226 employees it seeks to include in the unit share such an overwhelming community of interest with the stevedores that the community of interest factors overlap almost completely.

As stated above, stevedoring employees are organized into a separate department and cost center by the Employer, and as discussed below with respect to skills and training, stevedoring employees have distinct job functions, and perform distinct work from the functions and work of other employees the Employer seeks to add to the unit.

There are some common skills between stevedoring employees and other employees. Most significantly, the checking duties performed by interchange, flatrack receiving and auto receiving employees appear to be similar to the checking duties performed by shipside inspectors in the stevedoring department. The crew leaders in flatrack receiving and auto receiving, BI operations cargo handling employees, and a reefer maintenance employee are required to be certified in the operation of forklifts, as are all stevedoring employees at the levels of shipside inspector and higher. The skills of stevedoring employees who drive jockey trucks are similar to those of employees in various classifications who drive both single- and double-axle trucks. The skills of stevedoring reach stacker operators appear to be the same as those of flatrack receiving employees and some reefer maintenance employees who operate reach stackers. On the other

hand, the skills of stevedoring employees are significantly different from both the mechanical skills possessed by the Employer's employees in the various maintenance departments (including port maintenance, c/c maintenance, reefer maintenance, and auto maintenance), and the skills possessed by the marine engineering, buildings and grounds, and office employees.

However, other skills of stevedoring employees are distinct from the skills of any other employees. In particular, the skills of senior stevedores and lead stevedores with respect to the operation of cranes and straddle carriers are unique to the stevedoring department, and are possessed by 32 of the 60 employees in the stevedoring department.

The Employer has a common, generalized, one-day employee orientation for all employees, and certain types of safety and training, such as forklift training, may be conducted for employees in multiple departments on a centralized basis. However, it appears that most of the training of stevedoring employees is done on the job, as testified to by a signal person, and the record shows that only stevedoring employees received a recent training about rigging.

The Employer's operations are functionally integrated. There is also regular contact between some of the stevedoring employees, i.e. those assigned to the yard and jockey pool, and some of the employees the Employer seeks to include in the unit, but much of that "contact" is impersonal, via computer work orders input in the terminal operating system, and there is no evidence that stevedoring employees know who enters the work orders they receive on their tablets. Although there is some evidence of verbal communication to stevedoring yard and jockey pool employees from employees in the interchange, receiving, and maintenance areas of the Port, there is virtually no evidence of regular, job-related verbal communication between stevedoring employees and any employees who work at the MLK office or warehouse, truck drivers, or employees who work in the Maritime Office Complex at the Port.

With respect to the extent of interchange between stevedoring employees and other employees, as stated above, the stevedoring department schedules and assigns jobs to the stevedoring employees as needed to ensure coverage in the department, rather than having non-stevedoring employees substitute for absent stevedores. The scant evidence of day-to-day interchange between stevedoring employees and employees from other departments is insignificant. Day-to-day interchange is limited to rare occasions, such as short staffing due to the Thanksgiving holiday or the return of power trucks from hurricane duty. Although there is evidence that there have been a number of permanent transfers between other departments and stevedoring, only five employees transferred into the stevedoring department within the past three years and 10 months, suggesting that employment is rather stable within the department. As previously stated, the record fails to establish the dates of the earlier transfers about which Director of U.S. Terminal Operations Severino testified, and it appears that all of the transfers have been voluntary and that employees have chosen to transfer to the stevedoring department in order to pursue the promotional opportunities that uniquely exist within the stevedoring department.

With respect to terms and conditions of employment, the Employer has a centralized human resources department and common benefits for all employees. Like employees in various other departments at the Port, but unlike the Employer's office employees or warehouse employees at the MLK facility, stevedoring employees work outdoors. Stevedoring employees have comparable wages to employees on the same "USH" wage scale, but the difference of \$10.32 per hour between the midpoint wage rates of the lowest and highest classifications of stevedoring employees is much narrower than the \$30.06 gap between the midpoint wage rates of the lowest and highest hourly wage rates of employees the Employer seeks to include in the

unit. As detailed above, the work hours of stevedoring department employees are more extensive and unpredictable than the work hours of employees in other departments. Stevedoring employees regularly work nights and Saturdays, whereas employees in many other departments, such as flatrack and auto receiving employees, only work Monday through Friday on a single shift along with all other employees in their respective departments. In addition, stevedoring employees have a distinct trailer with a break room that is shared only with a much smaller group of port maintenance employee; the stevedoring department appears to be the only department that holds daily pre-shift meetings; and the stevedoring employees have uniquely colored uniform shirts and steel-toed boots supplied by the Employer.

As described in greater detail above, direct supervision and lower level management of the 60 stevedoring employees is carried out by stevedoring department supervisors and managers Clevinger, Wall, Clayton, Shoemaker and Gorman, with the exception of the direct supervision of two stevedores by Interchange and Rail Supervisor Du. Although stevedoring employees assigned to the yard and jockey pool may receive work orders to perform specific tasks from supervisors or employees in other departments, these orders are often communicated via computer, the evidence does not show that the orders are directed to a particular stevedore, and the orders are routine in nature. The record as a whole shows that stevedores know how to perform their jobs and fails to establish that non-stevedoring supervisors provide responsible direction to stevedoring employees or assign work to stevedoring employees that requires the exercise of independent judgment and is not routine or clerical in nature.

Above the managerial level of Stevedoring Shipline Manager Clevinger and Stevedoring Yard Manager Shoemaker, Director of U.S. Terminal Operations Severino directs the stevedoring, auto receiving, flatrack receiving, interchange, and the Customs exam station

departments. Severino is not responsible for any other groups of employees. At the level about Severino, U.S. Operations Assistant Vice President Vogt is in charge of all operations at the Port, except for Building and Grounds (B&G) and Marine Engineering.

Employees in a number of positions the Employer seeks to add to the unit do not share common management with stevedoring employees, even at the elevated level of U.S. Operations Assistant Vice President Vogt. Instead of reporting to Vogt, the manager of the BI operations employees, Norm Dunn, reports to the now-vacant Vice President of Marine, NVOCC and New Market Development position; the marine engineering department is also reports to that Vice President. The manager of trucking employees, Van Kent, and the B&G department both report to Vice President of Business Operations Mark Chapman.

In summary, although there is some community of interest between the stevedoring employees and other employees the Employer seeks to add to the petitioned-for unit, there is not significant day-to-day interchange between stevedoring employees and other employees, and the stevedoring employees have distinct work functions and job skills, are separately organized in their own department, and are separately supervised on a day-to-day basis. I find that the Employer has failed to meet its burden of establishing the existence of an overwhelming community of interest between stevedoring department employees and any of the other employees who the Employer argues must be included in the smallest appropriate unit. Accordingly, based on the record as a whole, I find that the petitioned-for unit is appropriate.

D. Conclusions and Findings

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

C. Petitioner is a labor organization within the meaning of the Act.

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

All full-time and regular part-time stevedoring department employees employed by the Employer at the Port of Palm Beach, Riviera Beach, Florida; excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined by the Act.

E. No collective-bargaining agreement covers the employees in the above-described unit, and no other bar exists to conducting an election.

F. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.

III. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Longshoremen's Association, Local 1359.

A. Election Details

The election will be conducted by manual ballot on January 5, 2017, from 9:00 a.m. to 11:00 a.m. and from 4:00 p.m. to 6:00 p.m. at the Employer's Maritime Office Building lobby,

5 E. 11th Street, Riviera Beach, Florida.²⁹ The ballots will be counted immediately following the close of the poll by the Board agent.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending December 18, 2016, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

²⁹ The building, presently slated for demolition according to the hearing testimony, is currently vacant. The Employer took the position after the hearing that there should only be a single voting period, from 4:00 p.m. to 6:30 p.m. However, at the hearing the Employer took the position that two voting periods were necessary to ensure that employees on different shift schedules have the opportunity to vote, and that the Union agreed. The Union has objected to the Employer's change of position as being untimely. I find that the best way to effectuate the purposes of the Act, in view of the staggered work shifts of the unit employees, is to maintain the voting times that the parties agreed to at the hearing.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **December 22, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: December 20, 2016.



David Cohen, Acting Regional Director
National Labor Relations Board, Region 12
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