



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Agency Website: www.nlr.gov
Telephone: (216)522-3715
Fax: (216)522-2418

September 30, 2019

[REDACTED]
International Longshoremens Association, AFL-CIO, Local 1982
2300 Ashland Ave Ste 225
Toledo, OH 43620-1280

Re: Midwest Terminals of Toledo International,
Inc.
Case 08-CA-152052

Dear Mr. [REDACTED]:

We have carefully investigated and considered your charge that MIDWEST TERMINALS OF TOLEDO INTERNATIONAL, INC. has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that Midwest Terminals of Toledo International, Inc. (Employer) violated Section 8(a)(1), (3) and (5) of the Act by various conduct. Specifically, you allege that the Employer violated Section 8(a)(3) by disparately applying its pre-hire procedures and failing to hire [REDACTED], [REDACTED] along with other unnamed individuals. You also allege that the Employer violated Section 8(a)(5) by failing to adhere to the hiring procedures set forth in Article 5 of the parties' collective bargaining agreement and failing to negotiate the casual/ new hire list for the 2015 Order of Call.

There was insufficient evidence to support the allegations. Regarding the Section 8(a)(3) allegations, the investigation revealed that since at least 2013, and certainly outside the statute of limitations, the Employer changed it pre-hire procedure such that potential hires could no longer obtain employment by appearing at shape-up. Rather, before being eligible for hire, potential hires were required to schedule a time to complete paperwork, take and pass a drug test, and receive training. There was no evidence to establish that the Employer disparately applied this procedure once it was in place.

Concerning the allegations that [REDACTED] [REDACTED] were discriminatorily denied employment, the investigation revealed minimal evidence that the Employer was aware of any of the named individuals' union sympathies at the time they appeared at the gate seeking employment. More importantly, none of the named individuals followed the procedure in place in 2015 to obtain employment with the Employer. Rather, they all attempted to be hired without contacting or following up with

management to apply for a position before appearing for work. You did not present evidence regarding any other individuals who were denied employment.

Regarding the Section 8(a)(5) allegations, you allege that the Employer failed to bargain over the casual/ new hire list on the 2015 Order of Call. While the investigation revealed that the parties had a past practice of discussing certain aspects of the Order of Call, such as the number of hours that employees had accumulated, there was no evidence that the parties negotiated over the new hire/ casual list. Nor did the establish that you requested such bargaining in 2015. You assert that the Employer historically relied on the Union for referrals and that the Employer was required to come to the Union before seeking employees from other sources. However, the investigation revealed that since at least 2012, the Employer accepted referrals from a variety of sources. While Union members would often refer their friends or acquaintances, the evidence did not support that the Union had ever operated an exclusive hiring hall. Given this, the investigation did not reveal that the Employer acted outside the scope of the hiring provisions of the collective bargaining agreement, which was expired at the time of the events in this charge. To the extent that the Employer changed its hiring practices from those utilized in the past, as detailed above, those changes occurred outside the statute of limitations.

For the above reasons, I am declining to issue complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 15, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a

Midwest Terminals of Toledo International, - 3 - September 30, 2019
Inc.
Case 08-CA-152052

delivery service no later than October 14, 2019. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 15, 2019.** The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 15, 2019, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



IVA Y. CHOE
Acting Regional Director

IYC:cj

Enclosure

cc:

[REDACTED]
Midwest Terminals of Toledo
International, Inc.
3518 Saint Lawrence Dr
Toledo, OH 43605-1079

[REDACTED]
Mason Law Firm Co., L.P.A.
P.O. Box 398
Dublin, OH 43017-5357

[REDACTED]
Mason Law Firm Co., L.P.A.
PO Box 398
Dublin, OH 43017-0398

[REDACTED]
International Longshoremen's
Association, Local 1982
2300 Ashland Ave, Ste 225
Toledo, OH 43620-1280