



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
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September 30, 2019

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

Re: MIDWEST TERMINALS OF TOLEDO
INTERNATIONAL, INC.
Case 08-CA-178669

Dear [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.

You allege that Midwest Terminals of Toledo International, Inc. (the Employer) violated Section 8(a)(1) and (5) of the Act by, since April 5, 2016, failing to bargain with the Union over the casual/ new hire list for the 2016 Order of Call and unilaterally changing the procedure for determining seniority. In addition, you allege that the Employer violated Section 8(a)(1), (3), and (4) of the Act by changing [REDACTED] seniority in retaliation for his Section 7 activities and/or because he filed charges with the Board and gave testimony under the Act.

There was insufficient evidence to support the allegations. While the investigation revealed that the parties had a past practice of bargaining over certain aspects of the Order of Call, the evidence did not support that the parties had engaged in such bargaining over the new hire/ casual list. In addition, while you allege that the Union requested such bargaining, you were unable to substantiate these claims.

In making the claim that the Employer failed to bargain over the casual/ new hire list, you assert that the Employer historically relied on the Union for referrals and that the Employer was required to contact the Union for referrals before seeking employees from other sources. However, the investigation revealed that the Employer accepted referrals from a variety of sources since at least 2012. While Union members would often refer their friends or acquaintances, the evidence did not establish that the Union ever operated an exclusive hiring hall. To the extent that the Employer changed its hiring practices from those utilized in the past, those changes occurred outside the statute of limitations. Regarding the allegations that in 2016 the Employer changed its procedures for determining seniority, the evidence did not support that any such change was made.

Regarding the Section 8(a)(3) and (4) allegations that the Employer unlawfully changed its method of calculating seniority for ██████████ and discriminated against ██████████ by changing his seniority, you assert that the Employer was not entitled to hire individuals who appeared on the Order of Call ahead of ██████████ in seniority. However, as detailed above, the evidence did not support that the Union had an exclusive hiring hall or that the Employer was otherwise not entitled to hire employees referred from sources other than the Union. Further, the Union admitted that the Employer was entitled to hire the two employees at issue because the Union was unable to provide qualified crane operators. There was no evidence that the hours used to place ██████████ on the Order of Call were incorrect or were calculated in a manner inconsistent with past practice. Thus, the evidence did not establish that the Employer discriminated against ██████████ by changing his seniority in retaliation for his Section 7 activities and/or filing Board charges and giving testimony under the Act.

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 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.

I truly yours,



IVA Y. CHOE
Acting Regional Director

IYC:cj

Enclosure

cc:

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