



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
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CLEVELAND, OH 44199-2086

Agency Website: www.nlrb.gov
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November 13, 2019

William E Yockey, Trustee, Local 1982
International Longshoremen Association, Local #1982
2300 Ashland Ave, Ste 225
Toledo, OH 43620-1280

Re: Midwest Terminals of Toledo International, Inc.
Case 08-CA-204544

Dear Mr. Yockey:

We have carefully investigated and considered your charge that Freedom Employment Services, LLC and Midwest Terminals of Toledo International, Inc. have 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 in part that Midwest Terminals of Toledo International, Inc. (Employer) violated Section 8(a)(1) and (5) of the Act by unilaterally changing its hiring practices by: (1) failing to bargain over the 2017 Order of Call, and (2) hiring new employees directly without consulting with the Union.

Regarding the allegation that the Employer failed to bargain over the 2017 Order of Call, the investigation did not establish a failure to bargain within the six months of the filing of this allegation, which was amended into the existing charge on October 20, 2017. Rather, the investigation revealed that on April 9, 2017, the Employer responded to the Union's request to bargain and asked for additional information. The Union did not reply to this request and otherwise did not follow-up with the Employer. Thus, there is no evidence that that the Employer refused to bargain over the 2017 Order of Call within the Section 10(b) period.

Regarding the allegation that the Employer unilaterally changed its hiring practices by hiring new employees directly without consulting with the Union, the evidence did not support a violation of the Act. 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 expired collective bargaining agreement. To the extent that the Employer changed its hiring practices from those utilized in the past, those changes occurred outside the Section 10(b) period.

For the above reasons, I am refusing to issue complaint on the allegations that the Employer unilaterally changed its hiring practices by failing to bargain over the 2017 Order of Call and by hiring new employees directly without consulting with the Union.

The remaining portions of charge alleging that the Employer and Freedom Employment Services, Inc., as joint employers, violated Section 8(a)(1) and (5) of the Act by engaging in direct dealing with bargaining unit employees and unilaterally changing bargaining unit employees' terms and conditions of employment will be the subject of a complaint, absent settlement.

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 **November 27, 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 November 26, 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 November 27, 2019**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to

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(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 November 27, 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,

A handwritten signature in black ink, appearing to read 'Iva Y. Choe', with a long horizontal flourish extending to the right.

IVA Y. CHOE
Acting Regional Director

IYC:cj

Enclosure

cc: Monier Deeb
Freedom Employment Services, LLC
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