

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

SUNRISE OPERATIONS, LLC,)	
)	<u>CONSOLIDATED</u>
Respondent,)	
)	Case No. 20-CA-219534
and)	Case No. 20-CA-227593
)	Case No. 20-CA-230861
INTERNATIONAL ORGANIZATION OF)	
MASTERS, MATES & PILOTS,)	
ILA/AFL-CIO,)	
)	
Charging Party.)	
)	

**RESPONDENT SUNRISE OPERATIONS, LLC’S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

Respondent Sunrise Operations, LLC (“Sunrise” or “the Company”), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.46, submits the following exceptions to the recommended decision and order of Administrative Law Judge Lisa D. Ross.

1. To the finding that “based upon the entire record, including the testimony of the witnesses, my observations, of their demeanor, and the parties’ brief, I conclude that Respondent violated the Act as alleged,” ALJD, p. 2, lines 17–18, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 73, 116–117, 159–165, 211–221, 226–228, 246–247, 275–289, 292–298, 301–307, 310–311, 317–318, 326, 357–358, 404–410, 440–465, 470–479, 491–499, 509–510, 552, 553; R–2; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; R–7; GC–1(a), (m); GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6; GC–13; GC–18; GC–19; GC–20; GC–23; GC–31; GC–32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019); 33 U.S.C. §2701 *et seq.*; 46 U.S.

Code Ch. 32; 33 C.F.R. Part 96; *see also* Case No. 20-CA-202809.)

2. To the finding that “[a]lthough I have included record citations to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific citations, but rather on my review and consideration of the entire record. The findings of fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. In assessing credibility, I have relied primarily on witness demeanor. I also have considered factors such as: the context of the witness’ testimony, the quality of the witness’s recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole,” ALJD, p. 3 n.7, as such finding is contrary to established precedent.

3. To finding that “[s]pecifically, it has represented Licensed Deck Officers (LDOs) on maritime vessels since approximately 1981 through a series of collective bargaining agreements (CBAs) with Respondent’s predecessor employers, Sealand and CSX,” ALJD, p. 3, lines 9–12, as such finding is contrary to the record evidence and established precedent. (Tr. 275–289; GC–2 at 194; GC–3 at 60; GC–6; GC–7; *see also* CSX CORPORATION, <https://www.csx.com/index.cfm/about-us/history-evolution/>; Daniel Machalaba, *CSX Will Divide Sea-Land Unit, Names Three to Head Operations*, WALL STREET JOURNAL (Mar. 17, 1999), <https://www.wsj.com/articles/SB921607771230024681>; News Release, Carlyle Investment Management LLC, *The Carlyle Group Announces Sale of Horizon Lines to Castle Harlan* (May 23, 2004), <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-announces-sale-horizon-lines-castle-harlan>.)

4. To the finding that “[i]t is undisputed that the following employees constitute a

unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: Licensed Deck Officers (except where specifically otherwise provided, the term “Licensed Deck Officers” whenever and wherever used in the Master Collective Bargaining Agreement also includes the Master) on U.S. Flag oceangoing vessels,” ALJD, p. 3, lines 15–20, as such finding is contrary to the record evidence and established precedent. (Tr. 110; 132–137, 139, 205, 228–229, 337, 352–358, 392–393, 404–414, 438–475, 478–481, 485–492, 509–510, 518, 522, 554; G–2 at 237–242; GC–33; R–5 at 40–42, 59, 62, 210–211, 310–317, 325–334; R–6.)

5. To the finding that “[i]t is undisputed that Pasha purchased Horizon’s Hawaii trade lane business – or more succinctly, the four vessels: Horizon Spirit, Enterprise, Pacific and Reliance,” ALJD, p. 3, lines 32–33 (emphasis added), as such finding is contrary to the record evidence. (Tr. 283–285, 301–302; R–2.)

6. To the finding that “[t]o purchase the four vessels, Pasha engaged in an elaborate corporate ownership structure to own these vessels,” ALJD, p. 3, lines 33–34, as such finding is contrary to the record evidence. (Tr. 283–28, 301–302; R–2.)

7. To the finding that “[t]hereafter, SR Holdings, a wholly owned subsidiary of Pasha, would purchase all of the interests in Respondent, including the four vessels, which at some point, Respondent would be acquired by Pasha, its parent company,” ALJD, p. 4, lines 7–9, as such finding is contrary to the record evidence. (Tr. 283–285, 301–302, 317–318; R–2.)

8. To the finding that “[t]he CAPA and the Disclosure Schedule specifically informed SR Holdings and Respondent that Horizon was a party to a CBA with the Union,” ALJD, p. 4, lines 12–14, as such finding is contrary to the record evidence. (Tr. 283–285, 301–302; R–2; GC–3 at 5.)

9. To the finding that “[p]rior to the sale, Respondent never requested a copy of the CBA from the Union,” ALJD, p. 4, lines 23–24, as such finding is contrary to the record evidence. (Tr. 305–311; GC–7.)

10. To the finding that Schedule A of the Assignment and Assumption Agreement “was supposed to be a copy of the CBA between Horizon and the Union with all 29 Memoranda of Understanding attached,” ALJD, p. 4, lines 31–32, as such finding is contrary to the record evidence. (Tr. 275–283, 305–307, 310–311; GC–7.)

11. To the failure to find that during the Assignment and Assumption Agreement’s due-diligence period, the Respondent repeatedly requested from Horizon Lines a copy of its full contractual obligations to the MM&P, as such finding is supported by the record evidence. (Tr. 281–283, 305–307.)

12. To the failure to find that during the Assignment and Assumption Agreement’s due-diligence period, the Respondent created a schedule for each union wherein Respondent listed every collective bargaining agreement that Horizon Lines had produced during the due diligence period, and that these schedules were then included within the Assignment and Assumption Agreement that Horizon Lines executed, as such findings are supported by the record evidence. (Tr. 280–283, 305–307, 310–311; GC–7.)

13. To the failure to find that it was Respondent’s understanding that the collective bargaining agreements that were being assigned to and assumed by Respondent were the documents listed on Schedule A of the Assignment and Assumption Agreement, as such finding is supported by the record evidence. (Tr. 282–283, 305–307; GC–7.)

14. To the failure to find that while Gabriel Terrasa, MM&P’s General Counsel, read the Assignment and Assumption Agreement, including Schedule A, which expressly identified the

specific MM&P MOUs and the 1981–1984 CBA that Sunrise was assuming, in 2015, Mr. Terrasa did not file an unfair labor practice charge or contract grievance, or initiate any other action to assert or defend MM&P’s rights as MM&P now alleges here, until September 2018, as such findings are supported by the record evidence. (Tr. 67, 116–17; 326.)

15. To the finding that “[w]hen the Union reviewed the AAA, it immediately notified Horizon that Schedule A of the AAA was incorrect, because it was missing several MOUs,” ALJD, p. 4, lines 34–35, as such finding is not supported by the record evidence. (Tr. 67, 116–17, 326.)

16. To the findings that “[i]t is also undisputed that Respondent retained a majority of the LDOs that were represented by the Union when the vessels were owned by Horizon. In fact, Respondent admits that it recognized the Union as the collective bargaining representative of the LDOs,” ALJD, p. 5, lines 3–6, as such findings are contrary to the record evidence and established precedent. (Tr. 110, 357–358, 404–410, 440–465, 470–479, 491–492, 509–510, 552; GC–2 at 240; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

17. To the finding that “Respondent is a successor to Horizon because it continued to operate Horizon’s Hawaii trade lane business in basically unchanged form, retained all of the LDOs employed by Horizon who were previously represented by the Union, and recognized the Union as the collective bargaining representative of the LDOs,” ALJD, p. 5, lines 8–11, as such finding is contrary to the record evidence and established precedent. (Tr. 275–289; R–2; GC–3.)

18. To the failure to find that, pursuant to the Contribution, Assumption and Purchase Agreement (“CAPA”), SR Holdings purchased only 30% of Horizon Lines’ assets and liabilities, as such finding is supported by the record evidence. (Tr. 285, 288; R–2; GC–3.)

19. To the failure to find that, pursuant to the CAPA, SR Holdings acquired less than 30% of Horizon Lines' employees, as such finding is supported by the record evidence. (Tr. 288; R-2.)

20. To the failure to find that Matson Navigation Company ("Matson") acquired 70% of Horizon Lines' assets and liabilities, including Horizon Line's intellectual property and corporate services for its trade lane businesses such as its finance, human resources, and information services, as such finding is supported by the record evidence. (Tr. 285-289; R-2; GC-3 at 60 (SO_002242).)

21. To the failure to find that Amy Sherburne-Manning, Vice President and General Counsel, was the only witness that had any involvement in the negotiations, due-diligence and execution of the CAPA, as such findings are supported by the record evidence. (Tr. 249-330.)

22. To the finding that "on May 30, 2015, Bill Peterson (Peterson), Vice President of Operations for a company called Pasha Hawaii, emailed the master officers of the Reliance, Pacific, Enterprise and the Spirit informing them that Pasha Hawaii, another subsidiary of Pasha had acquired their vessels and that it would be assuming the operations of the four container ships," ALJD, p. 5, lines 21-24, as such finding is contrary to the record evidence. (Tr. 295-298, 322-325.)

23. To the finding that "it is undisputed that, between March and May 2015, the Union had been told that SR Holdings, Sunrise Operations, and Pasha Hawaii would operate the four containerships that employs their LDO members," ALJD, p. 5, lines 29-31, as such finding is contrary to the record evidence. (Tr. 295-298, 322-325.)

24. To the finding that "the Union sought to determine exactly who was the employer of their LDO members on the four vessels? It is this ultimate question, given Respondent's series

of corporate ownership transfers, that forms the basis of the information requests at issue in this case,” ALJD, p.5, lines 32–35, as such findings are contrary to the record evidence. (Tr. 283–286, 295–299; R–2.)

25. To the finding that “[a]lthough the letters were mentioned in Respondent’s Petition to Revoke, and my Order Granting in Part and Denying in Part Respondent’s Petition, these letters were never produced as part of Respondent’s Petition nor introduced into evidence at trial,” ALJD, p. 6 n.10, as such finding is contrary to the record evidence. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

26. To the finding that “the fact remains that these letters were not actually introduced into the record,” ALJD, p. 6 n.10, as such finding is contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

27. To the finding to “decline to take after-the fact judicial notice of Exhibits A and B since these exhibits were never offered as part of the record, nor were they introduced into evidence at trial,” ALJD, p. 6 n.10, as such finding is contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

28. To the finding “grant[ing] General Counsel’s motion to strike as to Exhibits A and B and strike the references to them at the last sentence on page 57, the first sentence on page 58 and the second full sentence on page 59 in Respondent’s brief,” ALJD, p. 6 n. 10, as such finding

is contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

29. To the finding that “[t]he Union believed these entities were operating as one employer because: (1) Pasha and Respondent’s names were on the CAPA and the AAA as parties to the acquisition of Horizon’s four vessels; (2) Horizon previously informed the Union that Pasha and Respondent were parties to the sale; (3) a day after the acquisition, Pasha Hawaii informed the masters of the vessels that it would be operating the Spirit, Reliance, Enterprise, and Pacific; and (4) Pasha Hawaii advertised on its website the name on the side of each vessel as ‘Pasha,’” ALJD, p. 6, lines 3–9 (citations omitted), as such findings are contrary to the record evidence, which the ALJ failed to cite or even acknowledge.

30. To the finding that “[m]ost importantly, Union Vice President Jeremiah Turner (Turner) testified that, because there were so many entities claiming ownership of the vessels and/or that held primary responsibility for the LDOs on the ships, the Union requested documents in order to determine who the employer was,” ALJD, p. 6, lines 12–15, as such finding is contrary to the record evidence. (Tr. 283–286, 295–299; R–2; GC–7.)

31. To the finding that “Respondent defended that it did not respond to the Union’s first information request, because there was a pending ULP charge filed against it by the Union involving whether Respondent, Pasha and Pasha Hawaii were acting as a single employer,” ALJD, p. 7, lines 24–26, as such finding is contrary to the record evidence. (Tr. 159; *see also* Case No. 20-CA-202809.)

32. To the finding that “Turner testified that the Union sent Respondent the second request because Respondent had not responded to the Union’s September 19 request,” ALJD, p. 7,

36–37, as such finding is contrary to the record evidence, which the ALJ failed to cite or even acknowledge. (Tr. 211–212; GC–18.)

33. To the finding that “according to Turner, who I found credible, the Union needed these documents in order to resolve comments made by Respondent’s Senior Vice president of Vessel Operations Ed Washburn (Washburn) during negotiations that Pasha, not Respondent, would pick which Union would represent the LDOs on the four vessels,” ALJD, p. 7, line 43 to p. 8, line 2, as such finding is contrary to the record evidence. (Tr. 211–212; GC–18.)

34. To the finding that “[i]t is undisputed that Respondent objected to providing much of the information, particularly involving Pasha and Pasha Hawaii, and invited the Union to ‘meet and discuss’ the Union’s second request,” ALJD, p. 8, lines 4–6, as such finding is contrary to the record evidence. (Tr. 160–165; GC–20.)

35. To the failure to find that Sunrise produced relevant information in response to the Union’s March 2, 2018 information request, with the exception of the specific information that related exclusively to the Pasha Group and Pasha Hawaii, as such finding is supported by the evidence. (Tr. 160–165; GC–20.)

36. To the finding that “[t]he Union sought this information based on a provision in the parties’ CBA (Section 1, Subsection 9(g) – Vessel Listings of the Master CBA) which entitled the Union to discover which LDOs were permanently assigned to job positions on each vessel and whether there were any ‘open’ unassigned positions,” ALJD, p. 8, lines 18–21, as such finding is contrary to the record evidence. (GC–2 at 201, § 2, sub. 9(g).)

37. To the failure to find that on September 27, 2018 – the same day Mr. Turner sent a letter to Mr. Washburn requesting an “updated Fleet Roster showing who [was] assigned permanent [sic] to each vessel and any ‘open’ unassigned billets” – Mr. Washburn emailed

Sunrise’s Senior Port Engineer, Joseph Walla, and asked him for the updated roster, as such finding is supported by the record evidence. (Tr. 494; GC–21.)

38. To the failure to find that Mr. Walla sent Mr. Washburn two versions of the roster on October 1, 2018, as such finding is supported by the record evidence. (R–3.)

39. To the failure to find that while Mr. Turner was present at the October 30, 2018 meeting, Mr. Turner did not inform Respondent that the Union had not yet received the roster, as such finding is supported by the record evidence. (Tr. 226; R–7.)

40. To the finding that “[it] is undisputed that Respondent’s only explanation for the two-month delay was that Washburn forgot to send the roster to the Union in October 2018,” ALJD, p. 8, lines 34–36, as such finding is contrary to the record evidence. (Tr. 214–216, 226, 494–495; R–3; R–7; GC–21.)

41. To the failure to find that Mr. Washburn did not intentionally delay in sending the roster to Turner, as such finding is supported by the record evidence. (Tr. 495.)

42. To the failure to find that Mr. Turner knew that there were “errors” on the roster because he already had some of the information he was requesting, as such finding is supported by the record evidence. (Tr. 214–216; R–7.)

43. To the failure to find that Mr. Turner had not taken issue with any allegedly “incomplete” rosters Respondent had sent the Union in the past, as such finding is supported by the record evidence. (Tr. 214–216; R–3; GC–21.)

44. To the failure to find that, prior to June 1, 2018, Marine Transport Management, Inc., a third party and an affiliate of Crowley Maritime Corporation, managed the vessels, including payroll, for Respondent, as such finding is supported by the record evidence. (Tr. 73, 222–226, 309, 497–499, 553.)

45. To the failure to find that Marine Transport Management, Inc.'s prior management of Respondent's payroll complicated the requested wage arrears calculations, as such finding is supported by the record evidence. (Tr. 73, 222–226, 309, 497–499, 553; GC–23.)

46. To the failure to find that Mr. Turner could only identify one MM&P member, out of the seventy-seven MM&P members who worked aboard the Sunrise vessels during the 17 month time-period relevant to the MM&P's October 11, 2018 information request, who had a "small outstanding issue" with the pay and/or contributions purportedly owed to him, as such finding is supported by the record evidence. (Tr. 225–226; GC–23.)

47. To the finding that, "Turner testified that it was important for the Union to understand what corporate entity would construct these containerships, because: (1) the Union saw press releases from Pasha Hawaii that it was constructing new containership vessels, (2) the Union saw Pasha, Pasha Hawaii and Respondent as one employer, (3) these new vessels would be added to the Hawaii trade lane that Respondent Sunrise/Pasha Hawaii operated, as such, (4) the Union believed its LDO members would likely work on the new vessels, and (5) a provision in the parties' CBA required that the Union ensure that any new vessel construction complied with certain standards and requirements," ALJD, p. 9, lines 12–19, as such finding is entirely unsupported by the record evidence.

48. To the finding that, "[b]ecause of this confusion communicated by representatives of Respondent, Pasha and Pasha Hawaii, the Union did not know which entity was responsible for the four containerships and/or which entity served as the parent company of Respondent Sunrise. As a result, the Union reasonably believed that, ultimately, these two new containerships would be vessels that its LDO members would be employed on," ALJD, p. 9, lines 31–35, as such finding is contrary to the record evidence. (Tr. 246–247, 295–298; GC–32;

R-2; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

49. To the failure to find, that on October 30, 2018, in response to a demand by MM&P, Mr. Washburn met with Mr. Turner and MM&P officer, Jeremy Hope, in San Francisco to share a basic rough sketch of the new vessel that Keppel AmFELS LLC ("Keppel") is constructing, as such finding is supported by the record evidence. (Tr. 226-228; R-7; GC-31; GC-32.)

50. To the failure to find that during this meeting, Mr. Turner and Mr. Hope were permitted to review a PDF of a sketch of the Keppel vessel on Mr. Washburn's laptop for several hours, as such finding is supported by the record evidence. (Tr. 226-228; R-7; GC-31; GC-32.)

51. To the failure to find that Keppel owned the new vessels, as such finding is supported by the record evidence. (GC-32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

52. To the failure to find that any blueprints of the new vessels are Keppel's proprietary property, as such finding is supported by the record evidence. (GC-32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

53. To the failure to find that neither Respondent, nor any other Pasha entity, owned the new vessels, as such finding is supported by the record evidence. (GC-32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

54. To the failure to find that Respondent responded to the MM&P's November 7, 2018 information request with the little information it knew about the technical details, dimensions, and various and sundry items concerning the furnishing of the officers' quarters, as such finding is supported by the record evidence. (Tr. 227–228; GC–31; GC–32; Case 20-CA-219534, Decision to Partially Dismiss (Dec. No. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

55. To the failure to find that the Union did not respond to Respondent's December 10, 2018 correspondence regarding the Union's November 7, 2018 information request, as such finding is supported by the record evidence. (GC–32.)

56. To the failure to take judicial notice of the Region's December 31, 2018 decision dismissing MM&P's allegations that Respondent "has unlawfully failed or refused to provide the Union with responses to its requests for: (1) blueprints or access to the blueprints of the vessels being constructed by the Employer; (2) access to the blueprints/specifications/sketches of the vessels in Ed Washburn's computer; and (3) the name of the entity or persons that will own the vessels," because "[t]he ships that the Union claims will be replacement vessels are in early stages of construction and will not be completed until 2020. Thus, the Union's allegations are not ripe for review," as such finding is supported by the record evidence. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

57. To the failure to take judicial notice of the General Counsel's July 3, 2019 denial of the MM&P's appeal of the Region's December 31, 2018 decision, as such finding is supported by the record evidence and established precedent. (Case No. 20-CA-219534, Appeal

Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Ex. B (Dec. 20, 2019).)

58. To the finding that there was a “[r]epudiation of the 1984 MOU Grievance Arbitration Provision,” ALJD, p. 10, line 10, as such finding is contrary to the record evidence and established precedent. (Tr. 130, 307, 310–311; GC–2 at 256; GC–7; GC–12.)

59. To the finding that the testimony of Union General Counsel Gabriel Terrasa was credible, ALJD, p. 10, lines 13–14, as such finding is contrary to the record evidence. (Tr. 67–69, 110, 112–113, 131–132, 142–144, 209–210; *see also* CSX CORPORATION, <https://www.csx.com/index.cfm/about-us/history-evolution/>; Daniel Machalaba, *CSX Will Divide Sea-Land Unit, Names Three to Head Operations*, WALL STREET JOURNAL (Mar. 17, 1999), <https://www.wsj.com/articles/SB921607771230024681>; News Release, Carlyle Investment Management LLC, *The Carlyle Group Announces Sale of Horizon Lines to Castle Harlan* (May 23, 2004), <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-announces-sale-horizon-lines-castle-harlan>.)

60. To the finding that “on June 16, 1984, Section 36 was amended in an MOU to read ‘unless some other place is mutually agreed upon, the grievance proceedings shall be held at the Union Headquarters in Linthicum Heights, Maryland,’” ALJD, p. 10, lines 20–22, as such finding is contrary to the record evidence. (Tr. 130, 307; 310–311; GC–2 at 256; GC–7; GC–12.)

61. To the failure to find that the 1984 MOU that the Union relies upon is unsigned and does not identify the name of the company purportedly bound to the MOU, as such finding is supported by the record evidence. (Tr. 201–202; GC–2 at 182–186.)

62. To the finding that “allowing Respondent’s statements to stand would be giving Respondent the ability to introduce facts not in evidence then argue its position therefrom,

denying General Counsel (and the Charging Party Union) due process under Section 102.45(b) of the Board's Rules and Regulations," ALJD, p. 10 n.12, as such finding is contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

63. To the finding that "Respondent's reliance on *Cintas* is misplaced," ALJD, p. 10 n.12, as such finding is contrary to established precedent.

64. To the finding that "in this case, Respondent never elicited testimony or introduced evidence *in the record* that 'Sunrise repeated[ly] assur[ed]...the Union that it did not have any technical drawings..., that 'Sunrise produced a letter from Keppel expressly rejecting Sunrise's request to see the blueprint drawings of the new vessels...' or that 'Sunrise d[id] not have access to the technical vessel drawings,' and/or 'attempted to gain access...from the third party who owned the drawings,'" ALJD, p. 10 n.12, as such finding is contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

65. To the findings that "Respondent cannot draw conclusions from these facts as legal argument when the aforementioned facts were never introduced into evidence. Accordingly, I agree with the General Counsel that the aforementioned sentences in Respondent's brief must be struck," ALJD, p. 10 n.12, as such findings are contrary to the record evidence and established precedent. (Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

66. To the finding that “at the April 26, 2018 arbitration, Respondent admitted into evidence as a joint exhibit the CBA which included the 1984 MOU,” ALJD, p. 11, lines 6–7, as such finding is contrary to the record evidence. (GC–2; GC–10.)

67. To the finding that “I found Terrasa’s testimony credible on this point as record evidence corroborated his testimony,” ALJD, p. 11, lines 8–9, as such finding is contrary to the record evidence. (Tr. 67–69, 110, 112–113, 131–132, 142–144, 209–210.)

68. To the finding that “Respondent based its argument on Section 36 of the parties’ original 1981 CBA,” ALJD, p. 11, lines 13–14, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

69. To the finding that, “[a]ccording to Washburn, since respondent never signed the 1984 MOU formally agreeing to the location change, the parties’ 1981 CBA was the applicable CBA governing the issue,” ALJD, p. 11, lines 18–20, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

70. To the finding that “I do not find Washburn’s testimony credible on this point,” ALJD, p. 11, line 24, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

71. To the finding that “on cross examination by counsel for the Charging Party, Washburn could not explain why, despite Respondent not having, seeing or recognizing the 1984 MOU, Respondent admittedly implemented all of the pay procedures and the 401(k) provisions contained therein,” ALJD, p. 11, lines 25–27, as such finding is contrary to the record evidence. (Tr. 544–550.)

72. To the finding that “Washburn stammered and evaded answering Charging Party counsel’s question until, ultimately, he admitted that the pay procedures and the 401(k)

provisions from the parties' 1984 MOU were implemented," ALJD, p. 11, lines 28–30, as such finding is contrary to the record evidence, which the ALJ failed to cite or even acknowledge. (Tr. 544–550.)

73. To the finding that "Terrasa testified that, immediately prior to the acquisition, he personally told Respondent's General Counsel Amy Jacob (Jacob) about the missing MOUs," ALJD, p. 11, lines 32–33, as such finding is contrary to the record evidence. (Tr. 89, 249, 253–254, 275–276, 305–320, 326; GC–7; GC–9.)

74. To the finding that "Respondent never objected to any of the provisions in the CBA during these negotiations," ALJD, p. 11, line 36, as such finding is contrary to record evidence.

75. To the finding that "on cross examination by counsel for the General Counsel, and especially with counsel for the Union, [Washburn's] answers were short, direct, extremely vague, one-to-two word answers," ALJD, p. 11 n.13, as such finding is contrary to the record evidence. (Tr. 507–555.)

76. To the finding that "Washburn's testimony was so vague, counsel for the Union had to continually restate and rephrase her questions in order to pull answers from Mr. Washburn," ALJD, p. 11 n.13, as such finding is contrary to the record evidence. (Tr. 507–555.)

77. To the finding that "I also found Washburn's testimony disingenuous at best. Specifically, when I asked him whether he was employed by Pasha, he remarked 'he didn't know.' I find it incredible that the Vice President of Operations (or anyone for that matter) would not know by whom he is employed. Overall, Washburn's appearance left me with the impression that he was committed to sharing as little information as possible unless it benefited Respondent, and accordingly, except where noted in this decision, I found Washburn's entire

testimony less than fully credible,” ALJD, p. 11 n.13, as such finding is contrary to the record evidence. (Tr. 429–555.)

78. To the finding that “the location of arbitration proceedings was/is governed by the parties’ 1984 MOU,” ALJD, p. 12, lines 5–6, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

79. To the finding that “Respondent demonstrated its awareness of the 1984 MOU and its knowledge of location of arbitration proceedings by previously meeting with the Union for arbitration proceedings in Linthicum Heights, MD and by complying/implementing the pay procedures and financial provisions contained within the 1984 MOU,” ALJD, p. 12, lines 8–11, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

80. To the finding that “according to the parties [sic] 1984 MOU, I find that all arbitrations, including the September 2018 arbitration, are to be held at the Union’s headquarters in Linthicum Heights, MD,” ALJD, p. 12, lines 13–14, as such finding is contrary to the record evidence. (Tr. 280–283, 305–307, 310–311; GC–2 at 182–186; GC–7; GC–12.)

81. To the finding that “Respondent violated Sections 8(a)(5) and (1) of the Act when it failed/refused to furnish and/or unreasonably delayed in furnishing necessary and relevant information requested by the Union,” ALJD, p. 12, lines 20–22, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 73, 116–17, 154–165, 211–228, 280–286, 295–299, 305–307, 310–311, 479–499, 553; R–2; R–3; R–7; GC–2 at 182–186; GC–7; GC–12; GC–13; GC–18; GC–20; GC–21; GC–23; GC–31; GC–32; Case 20-CA-219534, Decision to Partially Dismiss (Dec. No. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke,

Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019); *see also* Case No. 20-CA-202809.)

82. To the finding that the Union “has satisfied its burden of relevance” with respect to Requests 3–7 and 11–5 of the Union’s September 19, 2017 and March 2, 2018 information requests, ALJD, p. 13, lines 23–25, as such finding is contrary to the record evidence and established precedent. (Tr. 154–155, 159–165, 211–212, 283–286, 295–299; R–2; GC–7; GC–13; GC–18; GC–19; GC–20.)

83. To the finding that “the Union requested these documents, because it was told, by Horizon that SR Holdings and Respondent would own the four vessels and thus have direct responsibility over the LDOs that the Union represented,” ALJD, p. 13, lines 27–29, as such finding is contrary to the record evidence. (Tr. 283–286, 295–299, 301–302, 317–318; R–2; GC–7.)

84. To the finding that “the Union received the acquisition documents, which revealed that Horizon’s trade lane business would be bought by SR Holdings, who then would transfer ownership to Respondent, who was a subsidiary of Pasha,” ALJD, p. 13, lines 29–31, as such finding is contrary to the record evidence. (Tr. 283–286, 295–299, 301–302, 317–318; R–2; GC–7.)

85. To the finding that “after the acquisition, Pasha Hawaii’s Vice President of Operations informed the Union that it would have primary ownership responsibility of the four vessels, and as such, would be the primary employer for the LDOs that the Union represented,” ALJD, p. 13, lines 31–34, as such finding is contrary to the record evidence. (Tr. 283–286, 295–299, 301–302, 317–318; R–2; GC–7.)

86. To the finding that “the acquisition documents, Pasha and Pasha Hawaii themselves provided the Union with its belief that any of these entities could be the employer for the LDOs that the Union represented,” ALJD, p. 13, lines 36–38, as such finding is contrary to the record evidence. (Tr. 283–286, 295–299, 301–302, 317–318; R–2; GC–7.)

87. To the finding that “the Union’s request for the aforementioned documents was relevant to determine who was the employer for the LDOs on the four vessels the Union represented,” ALJD, p. 13, lines 38–40, as such finding is contrary to the record evidence and established precedent. (Tr. 283–286, 295–299, 301–302, 317–318; R–2; GC–7.)

88. To the findings that “Respondent had an obligation to provide this information to determine whether Pasha and/or Pasha Hawaii were the employer to the LDOs (since it created the confusion regarding who owned the four vessels), and its failure to furnish these documents violated Sections 8(a)(5) and (1) of the Act,” ALJD, p. 13, lines 40–43, as such findings are contrary to the record evidence and established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20; *see also* Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

89. To the finding that “these documents are relevant because the Union was informed by Horizon, SR Holdings, Pasha and Pasha Hawaii themselves that SR Holdings, Respondent, Pasha and Pasha Hawaii may all be the owners of the four vessels and/or may be the employer to the LDOs on the vessels,” ALJD, p. 13, line 46, to p. 14, lines 1–3, as such finding is contrary to the record evidence and established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20; Case

No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019.)

90. To the finding that “[t]he Union was entitled to know the employer to the LDOs they represented, and therefore, had a reasonable belief based on objective factual evidence for requesting documents to determine exactly who would be the employer obligated to the parties’ CBA,” ALJD, p. 14, lines 3–6, as such finding is contrary to the record evidence and established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20; *see also* Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

91. To the finding that “Respondent’s failure to provide these documents as to it, Pasha and Pasha Hawaii violated the Act as alleged,” ALJD, p. 14, lines 6–7, as such finding is contrary to the record evidence and established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

92. To the finding that “[t]he six-month period for issuing a complaint on this charge began on December 2, 2017,” ALJD, p. 14, lines 14–15, as such finding is contrary to the record evidence and established precedent. (GC–1(a), (m); *see also* Case 20-CA-219534.)

93. To the finding that “the 10(b) period does not start when the Union first issued its information request,” ALJD, p. 14, lines 16–17, as such finding is contrary to the record evidence and established precedent. (GC–1(a), (m); *see also* Case 20-CA-219534.)

94. To the finding that “Respondent cannot show that the March 2, 2018 information request, which is practically identical to the September 19, 2017 information request, was untimely,” ALJD, p. 14, lines 26–29, as such finding is contrary to the record evidence and established precedent. (GC–1(a), (m); *see also* Case 20-CA-219534.)

95. To the failure to find that the allegations in the Second Consolidated Complaint pertaining to the Union’s September 19, 2017 information request should be dismissed on timeliness grounds due to the Union’s failure to file the underlying Charge for nearly eight months, as such finding is supported by the record evidence. (GC–1(a), (m); Case 20-CA-219534.)

96. To the finding that “the Union’s March 2, 2018 request falls well within the 10(b) period for the ULP charge that was filed on May 2, 2018,” ALJD, p. 14, lines 29–30, as such finding is contrary to the record evidence and established precedent. (GC–1(a), (m); Case 20-CA-219534.)

97. To the finding that “Respondent’s untimeliness argument has no merit,” ALJD, p. 14, lines 30–31, as such finding is contrary to the record evidence and established precedent. (GC–1(a), (m); Case 20-CA-219534.)

98. To the finding that “the Board has rejected Respondent’s argument on this point,” ALJD p. 14, line 41, as such finding is contrary to established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss

(Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

99. To the findings that “[a]s such, despite that Respondent and the Union were involved in an ULP matter concerning the same information the Union requested be turned over, Respondent was nevertheless required to timely furnish the documents. It did not. Accordingly, Respondent violated the Act as to the Union’s September 19, 2017 and March 2, 2018 information requests,” ALJD, p. 15, lines 1–7, as such findings are contrary to the record evidence and established precedent. (Tr. 159–165, 211–212, 283–286, 295–299, 301–302, 317–318; R–2; GC–1(a), (m); GC–7; GC–13; GC–18; GC–20; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

100. To the finding that “the Board has held that a two-month delay in furnishing relevant information violates Section 8(a)(5) of the Act,” ALJD, p. 15 lines 21–23, as such finding is contrary to established precedent, which requires consideration of additional factors. (Tr. 226–228, 494–495; R–3; R–7; GC–21; GC–22.)

101. To the finding that “Respondent’s reason for the two-month delay, Washburn forgot to turn the document over, failed to justify the delay,” ALJD, p. 15, lines 28–29, as such finding is contrary to the record evidence and established precedent. (Tr. 226–228, 494–495; R–3; R–7; GC–21; GC–22.)

102. To the finding that “Respondent violated the Act regarding the Union’s September 27, 2018 request,” ALJD, p. 15, lines 36–37, as such finding is contrary to the record evidence and established precedent. (Tr. 226–228, 494–495; R–3; R–7; GC–21; GC–22.)

103. To the finding that “Respondent’s two-month delay in furnishing this information violates the Act unless there is evidence justifying the delay,” ALJD, p. 15, lines 48–49, as such finding is contrary to the record evidence and established precedent. (Tr. 73, 225–226, 309, 497–498, 553; GC–23.)

104. To the findings that “Respondent defends the delay by arguing that Washburn ‘had been traveling almost non-stop and [Respondent] had...a host of competing priorities.’ However, other than Respondent’s statement, Respondent provided no evidence to support its rationale regarding the delay,” ALJD, p. 16, lines 1–5, as such finding is contrary to the record evidence. (Tr. 73, 225–226, 309, 497–498, 553; GC–23.)

105. To the finding that “[m]oreover, even assuming Respondent’s delay was justifiable, which I do not find, it failed to immediately inform the Union, at the time of the request, that there would be a delay or communicate to the Union the reasons therefor. Rather, Respondent simply delayed for two months in providing the Union with the requested information and its reasons for the delay,” ALJD, p. 16, lines 5–8, as such finding is contrary to the record evidence. (Tr. 73, 225–226, 309, 497–498, 553; GC–23.)

106. To the finding that “the Board has rejected these types of delayed justifications,” ALJD, p. 16, line 10, as such finding is contrary to established precedent.

107. To the finding that “Respondent violated the Act as to the Union’s October 11, 2018 request,” ALJD, p. 16, lines 18–19, as such finding is contrary to the record evidence and established precedent. (Tr. 73, 225–226, 309, 497–498, 553; GC–23.)

108. To the finding that “the Union’s request for this information from Respondent [is] directly relevant as a term/condition of employment, because the parties’ CBA entitled the Union to this information,” ALJD, p. 16, lines 25–27, as the CBA imposes no such obligation in this

case and such finding is therefore contrary to the record evidence. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

109. To the finding that “the Union had a reasonable belief based on objective factual evidence for seeking these documents from Pasha Hawaii,” ALJD, p. 16, lines 31–32, as such finding is contrary to the record evidence and established precedent. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

110. To the finding that “[s]pecifically, the record reveals that: (1) the Union was first told by *Respondent* at reopener negotiations about the new containerships, (2) the four containerships that the LDO members were employed on and the new containerships being built would have *Pasha’s* name on the sides of the ships, (3) all of the containerships, including the new vessels, were listed on *Pasha Hawaii’s* website; (4) *Pasha Hawaii’s* Vice President of Operations previously told the Union that it maintained ownership over the four vessels (Spirit, Enterprise, Pacific and Reliance) in the Hawaii trade lane and would be primarily responsible for employing the LDOs, and (5) all the press releases issued by *Pasha Hawaii* stated that new containerships would be added to its Hawaii trade-lane,” ALJD, p. 16, lines 34–42, as such finding is contrary to the record evidence. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534,

Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

111. To the findings that, “the Union had a reasonable objective factual basis, based on the differing information told to it by representatives of Respondent, Pasha, and Pasha Hawaii, to inquire which employer entity would operate the two new containerships. Moreover, since Pasha Hawaii, through its own press releases, notified the Union that the new containerships would be added to the Hawaii trade lane business, the Union had an objective factual basis on which to conclude its LDOs would man the new vessels,” ALJD, p. 16, lines 42–47, as such findings are contrary to the record evidence and established precedent. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

112. To the finding that “since the new containerships would be built under the banner of either Respondent, Pasha, or Pasha Hawaii, I find the Union’s November 7, 2018 request for information concerning the sizing of the LDOs’ quarters on the new containerships relevant and necessary,” ALJD, p. 17, lines 1–3, as such finding is contrary to the record evidence and established precedent. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019).)

113. To the finding that “Respondent was obliged to furnish this information to the Union, and when it did not as to itself, Pasha and Pasha Hawaii, Respondent violated Section

8(a)(5) and (1) of the Act,” ALJD, p. 17, lines 4–5, as such finding is contrary to the record evidence and established precedent. (Tr. 226–228, 283–286, 295–299, 301–302, 317–318; R–2; GC–7; GC–26; GC–31; GC–32; Case No. 20-CA-202809; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019).)

114. To the finding that “[i]n addition to its arguments that were specific to the information requests, Respondent asserted several other affirmative defenses to this complaint. However, as detailed below, all of these defenses are meritless,” ALJD, p. 17, lines 9–11, as such finding is contrary to the record evidence and established precedent. (Tr. 110, 140, 275–289, 357–358, 404–410, 440–465, 470–479, 491–492, 509–510, 552; R–5 at 31, 39–42, 210–211, 312, 329–334; R–2; R–6; R–7 at 001523–1528; GC–2 at 240; GC–3 at 60; GC–6; GC–7; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

115. To the finding that “the Board dismissed this argument to successorship in *Bronx Health Plan*, 325 NLRB at 812, and as such I have determined that Respondent is a successor employer to Horizon,” ALJD, p. 17, lines 13–15, as such finding is contrary to the record evidence and established precedent. (Tr. 275–289; R–2.)

116. To the finding that “Respondent, for the first time in this case, challenges the appropriateness of the LDOs as a bargaining unit,” ALJD, p. 17, lines 17–18, as such finding is contrary to the record evidence. (Tr. 49–62; GC–1(cc); GC–1(o); GC–(x).)

117. To the finding that “[i]ndividuals are statutory supervisors under Section 2(11) of the Act if: (1) they hold the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, responsibly direct them, adjust grievances or effectively recommend such action; (2) their ‘exercise of such authority is not...merely

routine or clerical nature, but requires the use of independent judgment;’ and (3) their authority is held ‘in the interest of the employer,’” ALJD, p. 17, lines 28–32, as such finding is contrary to established precedent.

118. To the finding that “Respondent’s second and third mate LDOs are not supervisors within Section 2(11) as the evidence reveals they have no authority to hire/fire, discipline or recommend discipline, transfer, lay off, promote or suspend, schedule, reschedule, recall or assign any LDOs,” ALJD, p. 17, lines 41–44, as such finding is contrary to the record evidence and established precedent. (Tr. 110, 357–358, 404–410, 440–465, 470–479, 491–492, 509–510, 552; GC–2 at 240; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

119. To the finding that “the Board, in *Chevron Shipping Co.*, 317 NLRB 379, 380 (1995), determined that LDOs are not supervisors when serving as OWWs,” ALJD, p. 17, line 47 to p. 18, line 1, as such finding is contrary to established precedent. (Tr. 346–347, 352–358, 373, 404–410, 414, 440–478, 492, 509–514, 522; R–5 at 40–41, 210–211, 312; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

120. To the finding that “OWW duties are more of a routine versus supervisory nature since ‘the duties of the crewmembers, both licensed and unlicensed, are delineated in great detail in the Regulations; thus, the officers and crew generally know what functions they are responsible for performing and how to accomplish such tasks,’” ALJD, p. 18, lines 10–13, as such finding is contrary to the record evidence and established precedent. (Tr. 346–347, 352–358, 373, 404–410, 414, 440–478, 492, 509–514, 522; R–5 at 40–41, 210–211, 312; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

121. To the finding that “Respondent failed to proffer any examples in the record that *their* second and third mate LDOs perform these functions,” ALJD, p. 18, lines 17–18, as such finding is contrary to the record evidence. (Tr. 346–347, 352–358, 373, 404–410, 414, 440–478, 492, 509–514, 522; R–5 at 40–41, 210–211, 312; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

122. To the finding that “even if Respondent had offered such evidence, it would not turn second and third mate LDOs into supervisors since the determination that a fellow officer is incompetent and/or insubordinate on duty would be so obvious and egregious that ‘little [supervisory] independent judgment is needed,’” ALJD, p. 18, lines 18–21, as such finding is contrary to the record evidence and established precedent. (Tr. 346–347, 352–358, 373, 404–410, 414, 440–478, 492, 509–514, 522; R–5 at 40–41, 210–211, 312; R–6; R–7 at 001523–1528; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

123. To the finding that “[w]hile Respondent offered an instance where a Master fired a Chief Mate, the record reveals that the Master consulted with his superiors before issuing discipline,” ALJD, p. 18, lines 25–27, as such finding is contrary to the record evidence. (Tr. 517–519.)

124. To the findings that “Respondent’s argument that its LDOs are supervisors is further undermined by its own Safety Management Administration policies which dictate that the Master evaluates the Second and Third Mates, while the Chief Mate is responsible for personnel supervisor. Neither of these job duties are listed under the second and third mates’ job responsibilities,” ALJD, p. 18, lines 29–34, as such findings are contrary to the record evidence and established precedent. (Tr. 346–347, 352–358, 373, 404–410, 414, 440–478, 492, 509–514,

522; R-5 at 40-41, 210-211, 312; R-6; R-7 at 001523-1528 *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

125. To the finding that “the evidence reveals that none of these tasks require independent judgment since the LDOs either must: 1) follow the Master’s established orders or seek clarification from the superior on duty on handling any particular situation, or (2) adhere to the established protocols found in Respondent’s Safety Management Administration policies,” ALJD, p. 18, lines 41-44, as such finding is contrary to the record evidence and established precedent. (Tr. 110, 357-358, 404-410, 440-465, 470-479, 491-492, 509-510, 552; GC-2 at 240; R-5 at 31, 39-42, 210-211, 312, 329-334; R-6; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

126. To the findings that “I accord Washburn’s testimony very little weight since it constitutes mainly opinion evidence. In fact, Washburn has no independent or expert knowledge regarding the supervisory status of Respondent’s LDOs much less Section 2(11)’s standards for evaluating one’s supervisory status,” ALJD, p. 19, lines 6-9, as such findings are contrary to the record evidence and established precedent. (Tr. 432-437.)

127. To the finding that “Respondent has failed to show that its LDOs are supervisors under the Act,” ALJD p. 19, lines 9-10, as such finding is contrary to the record evidence and established precedent. (Tr. 110, 357-358, 404-410, 440-465, 470-479, 491-492, 509-510, 552; GC-2 at 240; R-5 at 31, 39-42, 210-211, 312, 329-334; R-6; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

128. To the finding that “the evidence clearly shows that Respondent’s second and third mate officers perform duties that are routine in nature and do not perform any supervisory functions as set forth in Section 2(11) of the Act,” ALJD, p. 19, lines 12-14, as such finding is

contrary to the record evidence and established precedent. (Tr. 110, 357–358, 404–410, 440–465, 470–479, 491–492, 509–510, 552; GC–2 at 240; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

129. To the finding that “the Board retains jurisdiction over this matter as Respondent’s second and third LDOs are employees under the Act and form an appropriate bargaining unit,” ALJD, p. 19, lines 14–16, as such finding is contrary to the record evidence and established precedent. (Tr. 110, 357–358, 404–410, 440–465, 470–479, 491–492, 509–510, 552; GC–2 at 240; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; *see also* 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

130. To the finding that “the evidence overwhelmingly demonstrates that the Union was the exclusive bargaining representative for the LDOs,” ALJD, p. 19, lines 29–30, as such finding is contrary to the record evidence and established precedent. (Tr. 140.)

131. To the finding that “the link referencing another containership is irrelevant to the matters of this case,” ALJD, p. 19 n.14, as such finding is contrary to the record evidence and established precedent. (Tr. 356, 404–409, 440–447, 450–473, 509, 522; R–5 at 41, 210, 312; 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

132. To the finding that “the link to the newspaper article and the article itself is struck,” ALJD, p. 19 n.14, as such finding is contrary to the record evidence and established precedent. (Tr. 356, 404–409, 440–447, 450–473, 509, 522; R–5 at 41, 210, 312; 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96.)

133. To the findings that “the record reveals that the Union had a series of CBAs with Respondent’s predecessor employer CSX, Sealand and Horizon. Each of Respondent’s predecessors recognized the Union as the exclusive bargaining representative for the LDOs,”

ALJD, p. 19, line 30 to p. 20, line 2, as such finding is contrary to the record evidence and established precedent. (Tr. 140, 275–289; R–2; GC–3 at 60; GC–6; GC–7; *see also* CSX CORPORATION, <https://www.csx.com/index.cfm/about-us/history-evolution/>; Daniel Machalaba, *CSX Will Divide Sea-Land Unit, Names Three to Head Operations*, WALL STREET JOURNAL (Mar. 17, 1999), <https://www.wsj.com/articles/SB921607771230024681>; News Release, Carlyle Investment Management LLC, *The Carlyle Group Announces Sale of Horizon Lines to Castle Harlan* (May 23, 2004), <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-announces-sale-horizon-lines-castle-harlan.>)

134. To the finding that “Respondent itself admitted that it recognized the Union as the exclusive collective bargaining representative for the LDOs and it never gave any indication to the Union that it believed the Union lost the majority support of its membership,” ALJD, p. 20, lines 4–6, as such finding is contrary to the record evidence. (Tr. 140, 275–289; R–2; GC–3 at 60; GC–6; GC–7.)

135. To the finding that “Respondent cannot now claim that the Union is not the Section 9(a) representative of the LDOs simply because the Union never sought certification when it had already been recognized by numerous employers, Respondent included,” ALJD, p. 20, lines 7–9, as such finding is contrary to the record evidence and established precedent. (Tr. 140, 275–289; R–2; GC–3 at 60; GC–6; GC–7.)

136. To the finding that “Respondent’s argument on this point is without merit and that the Board has jurisdiction over this matter,” ALJD, p. 20, lines 10–11, as such finding is contrary to the record evidence and established precedent. (Tr. 140, 275–289; R–2; GC–3 at 60; GC–6; GC–7.)

137. To the finding that “Respondent violated Sections 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union when, since September 14, 2018, it refused to continue to meet for arbitration proceedings at the Union’s headquarters in Linthicum Heights, Maryland as stated in the parties’ Memorandum of Understanding dated June 16, 1984,” ALJD, p. 20, lines 13–17, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 116–117, 275–289, 301–307, 310–311, 317–318, 326; R–2; GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6.)

138. To the finding that “Complaint paragraphs 10(a) – (c) charge that, since September 14, 2018, Respondent stopped meeting, and failed to continue to meet, for all arbitration proceedings at the Union’s headquarters in Linthicum Heights, MD as set forth in Section 36 of the parties’ 1984 MOU. I agree,” ALJD, p. 20, lines 28–31, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 116–117, 275–289, 301–307, 310–311, 317–318, 326; R–2; GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6.)

139. To the findings that “[t]he record clearly demonstrates that the parties’ 1984 MOU, which amended the parties’ CBA, governed where arbitration proceedings would be held: Linthicum Heights, MD. Although Respondent argued that the 1984 MOU was inapplicable because it did not agree to it when it acquired Horizon’s Hawaii trade lane business, the evidence shows otherwise,” ALJD, p. 20, lines 33–36, as such findings are contrary to the record evidence. (Tr. 67, 116–117, 275–289, 301–307, 310–311, 317–318, 326; R–2; GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6.)

140. To the findings that “Respondent knew about the parties’ 1984 MOU and was aware that arbitration proceedings were to be held at the Union’s headquarters in Linthicum

Heights, MD, because the evidence shows Respondent received a copy of the 1984 MOU after it acquired Horizon's Hawaii trade lane business," ALJD, p. 20, lines 38–41, as such findings are contrary to the record evidence. (Tr. 140, 275–289, 326; R–2; GC–3 at 60; GC–6; GC–7.)

141. To the findings that "Respondent knew all along that arbitrations were to be held at the Union's headquarters in Linthicum Heights, MD; and as such, when it failed to continue meeting and conferring with the Union there, it failed to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act," ALJD, p. 20, line 47 to p. 21, line 2, as such findings are contrary to the record evidence and established precedent. (Tr. 67, 116–117, 275–289, 301–307, 310–311, 317–318, 326; R–2; GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6.)

142. To the finding that "[b]y refusing to provide and/or unreasonably delaying in furnishing necessary and relevant information to the Union, Respondent violated Sections 8(a)(5) and (1) of the Act," ALJD, p. 21, lines 9–10, as such finding is contrary to the record evidence and established precedent. (Tr. 73, 159–165, 211–216, 222–228, 246–247, 283–286, 292–298, 301–302, 317, 494–499, 553; R–2; R–3; R–7; GC–1(a), (m); GC–7; GC–13; GC–18; GC–19; GC–20, GC–21; GC–23; GC–31; GC–32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr'g Br., Exs. A & B (Dec. 20, 2019); *see also* Case No. 20-CA-202809.)

143. To the finding that "Respondent also violated Sections 8(a)(5) and (1) of the Act when it failed/refused to bargain in good faith with the Union by refusing to continue to meet for arbitration proceedings at the Union's headquarters in Linthicum Heights, Maryland as stated in the parties' Memorandum of Understanding dated June 16, 1984," ALJD, p. 21, lines 12–15, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 116–117,

275–289, 301–307, 310–311, 317–318, 326; R–2; GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6.)

144. To the finding that “[t]he unfair labor practices committed by Respondent affect commerce within the meaning of Sections 2(6) and (7) of the Act,” ALJD, p. 21, lines 17–18, as such finding is contrary to the record evidence and established precedent. (Tr. 67, 73, 116–117, 159–165, 211–221, 226–228, 246–247, 275–289, 292–298, 301–307, 310–311, 317–318, 326, 357–358, 404–410, 440–465, 470–479, 491–499, 509–510, 552, 553; R–2; R–5 at 31, 39–42, 210–211, 312, 329–334; R–6; R–7; GC–1(a), (m); GC–2 at 192–186, 256; GC–3 at 60; GC–6; GC–7 at 5; GC–12 at 1–6; GC–13; GC–18; GC–19; GC–20; GC–23; GC–31; GC–32; Case No. 20-CA-219534, Decision to Partially Dismiss (Dec. 31, 2018), Appeal Denial Letter (July 3, 2019), R. Pet. to Revoke, Ex. B (Oct. 29, 2019); R. Post-Hr’g Br., Exs. A & B (Dec. 20, 2019); 33 U.S.C. §2701 *et seq.*; 46 U.S. Code Ch. 32; 33 C.F.R. Part 96; *see also* Case No. 20-CA-202809.)

145. To the finding that orders certain remedies, ALJD, p. 21, lines 22–38, as such finding is contrary to the record evidence cited above and established precedent.

146. To the recommended cease and desist order and appendix, ALJD, p. 21, line 40 to p. 23, line 8, and Appendix, as such recommended cease and desist order and Appendix are contrary to the record evidence cited above and applicable precedent.

Dated: June 15, 2020

SUNRISE OPERATIONS, LLC

By: /s/ William G. Miozzi
One of its Attorneys

William G. Miossi
Kara E. Cooper
WINSTON & STRAWN LLP
1901 L Street NW
Washington, D.C. 20036
(202) 282-5000
wmiossi@winston.com
kecooper@winston.com

CERTIFICATE OF E-FILING AND SERVICE

Kara E. Cooper, one of the attorneys for Sunrise, certifies that on June 15, 2020, she caused the foregoing Respondent Sunrise Operations, LLC's Exceptions to the Administrative Law Judge's Recommended Decision and Order to be filed electronically through the National Labor Relations Board's electronic filing system and served by email upon:

Yasmin Macariola
Field Attorney
Counsel for the General Counsel
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738
jill.coffman@nlrb.gov

Gabriel A. Terrasa
International Organization of Masters,
Mates & Pilots ILA/AFL-CIO
700 Maritime Blvd., Ste. B
Linthicum, MD 21090-1953
gterrasa@tslawmd.com

Lisa Demidovich
Bush Gottlieb A Law Corporation
801 N. Brand Blvd., Ste. 950
Glendale, CA 91203-1260
ldemidovich@bushgottlieb.com

/s/ Kara E. Cooper
Kara E. Cooper