

LISA C. DEMIDOVICH (SBN 245836)
ldemidovich@bushgottlieb.com
BUSH GOTTLIEB
A Law Corporation
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260
Telephone: (818) 973-3200
Facsimile: (818) 973-3201

GABRIEL A. TERRASA
gterrasa@tslawmd.com
TERRASA & STAIR, P.A.
7472 Weather Worn Way
Columbia, Maryland 21046
Telephone: (410) 609-3953
Facsimile: (410) 609-3957

Attorneys for International Organization Of
Masters, Mates & Pilots

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

In the Matter of:

SUNRISE OPERATIONS, LLC, A
WHOLLY-OWNED SUBSIDIARY OF
THE PASHA GROUP,

and

INTERNATIONAL ORGANIZATION
OF MASTERS, MATES & PILOTS,
ILA/AFL-CIO.

**CASE NOS. 20-CA-219534
20-CA-227593
20-CA-230861**

**CHARGING PARTY'S BRIEF IN
SUPPORT OF CROSS-EXCEPTION
TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION AND ORDER**

I. Statement of the Case

On May 11, 2020, Administrative Law Judge Lisa D. Ross (“Judge Ross” or the “ALJ”) correctly found that Sunrise Operations, LLC, a wholly-owned subsidiary of The Pasha Group (“Sunrise” or “Respondent”) violated the National Labor Relations Act (the “Act” or “NLRA”) by refusing to provide and/or unreasonably delaying and furnishing necessary and relevant information to the International Organization of Masters, Mates & Pilots (“Union” or “MM&P”), and by failing/refusing to bargain in good faith with the Union when it refused to continue to meet for arbitration proceedings at the Union’s headquarters in Linthicum Heights, Maryland. The ALJ rejected Sunrise’s defense that the NLRB did not have jurisdiction because the unit at issue is made up of supervisors, holding that Second Mate and Third Mate positions in the unit are not supervisory.

The Union does not object to any of these findings, and agrees with the ALJ’s reasoning. The Union cross-expected to one discrete point mentioned in dicta in the supervisory analysis: “[I]t appears that that the General Counsel concedes that the master mate officer¹ is a supervisor[.]” (ALJD 17:25).² This is the Union’s only exception to an otherwise clear, thoughtful decision with legal conclusions well-grounded in the record.

In reaching her conclusion, made with no citations or references to the record, the

¹ It is unclear what position the ALJ intended “master mate officer” to refer to. It appears that the ALJ combined two distinct positions, that of Master, and that of Chief Mate. The Union’s position and the counsel for the General Counsel’s position is that none of the Licensed Deck Officers (LDOs) in the unit, include Masters and Chief Mates, are statutory supervisors.

² Citations to “ALJD ‘page:lines’” refers to specific page and lines in Judge Ross’s decision in the case at hand. Citations to “Tr. ‘page’” refers to the pages from the transcript of the hearing.

ALJ overlooked relevant facts and misconstrued the nature of Counsel for the General Counsel's arguments. The record makes clear that neither the Union nor General Counsel conceded or appeared to concede the supervisory status of any Licensed Deck Officers ("LDOs"), including Masters and Chief Mates. Therefore, for the reasons more fully described below, the Board should not adopt the lone above-mentioned factual finding.

II. Argument

"[I]t appears that that the General Counsel concedes that the master mate officer is a supervisor[.]"³ (ALJD 17:25). Counsel for the General Counsel, however, has not, in the course of this proceeding, ever conceded the issue of whether Masters and Chief Mates are statutory supervisors. Nor has it "appeared to concede" this issue. General Counsel's theory of the case is that the NLRB has jurisdiction even if there are some supervisors in the unit [Tr. 50]. Counsel for the General Counsel thus focused on the supervisory status of Second and Third Mates, while the Union focused on the argument that all unit members are not supervisors.

Counsel for the General Counsel has never stated or implied that the General Counsel's position is that other members of the unit, including Masters and Chief Mates, are supervisors. In fact, at hearing, the Counsel for the General Counsel expressly declined to stipulate that the Masters and Chief Mates are supervisors [Tr. 457]. If the

³ The Respondent has gone further, claiming that "[n]either the Counsel for the General Counsel *nor the Union* contest the supervisory status of the Captain and Chief Mate aboard the Sunrise Vessels. [Respondent's Brief in Support of Exceptions, p. 4 n. 4 (emphasis supplied)]. The Union devoted a substantial portion of its post-hearing brief to the explicit proposition that *all* the LDOs, including Masters and Chief Mates, are not supervisors, and continues to maintain this position.

General Counsel wished to concede the issue, it would have done so.

Further, Counsel for the General Counsel asked questions at hearing clearly relevant primarily to the issue. For example, while cross-examining one of Sunrise's witnesses on the issue of a Master's recommendation to terminate of a First Mate, Counsel for the General Counsel asked about the involvement of shore-side management in the termination process in an effort to show that the Master did not truly have supervisory authority in this area [Tr. 518-519]. Counsel for the General Counsel also asked if there had been any other instances of a Master terminating an employee, to which the witness responded that he was not aware of any [Tr. 519].

For these reasons, it cannot be said that the General Counsel even "appeared" to concede the issue of supervisory status with respect to any unit members.

DATED: June 29, 2020

LISA C. DEMIDOVICH
BUSH GOTTLIEB, A Law Corporation

By: /s/ Lisa C. Demidovich
LISA C. DEMIDOVICH
Attorneys for International Organization Of
Masters, Mates & Pilots