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Sunrise Operations, LLC, a wholly owned subsidiary of The Pasha Group *and* International Organization of Masters, Mates & Pilots, ILA/AFL–CIO. Cases 20–CA–219534, 20–CA–227593, and 20–CA–230861

July 12, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL AND RING

On May 11, 2020, Administrative Law Judge Lisa D. Ross issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief. The Charging Party also filed a cross-exception and a supporting brief, to which the Respondent filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions, cross-exception, and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish and/or unreasonably delaying the production of necessary and relevant information requested by the Charging Party, International Organization of Masters, Mates & Pilots, ILA/AFL–CIO (the Union), and by failing and/or refusing to abide by a 1984 Memorandum of Understanding (MOU) that required the parties to meet for arbitration proceedings in Linthicum Heights, Maryland. The Respondent asserts, inter alia, that the Board lacks jurisdiction to enforce a bargaining obligation against it in this matter because the bargaining unit of licensed deck officers (LDOs) is comprised entirely of supervisors within the meaning of Section 2(11) of the Act. For the reasons stated below, we find that the Board lacks jurisdiction in this proceeding. Accordingly, we shall dismiss the complaint.

I.

The Respondent is a limited liability company and a wholly owned subsidiary of The Pasha Group (Pasha), which provides global logistics and transportation services. Pasha is the parent company of approximately 40 subsidiaries, including the Respondent.

The Respondent operates four large maritime vessels—the Spirit, Enterprise, Pacific, and Reliance—that transport goods along the Hawaii trade route to and from ports in Oakland, Los Angeles, and Honolulu.

The Respondent staffs each vessel with approximately 25 Coast Guard–licensed and unlicensed personnel. The licensed staff on each vessel consists of four or five LDOs: the master, the chief mate, the second mate, and one or two third mates.

The Union is a maritime labor organization consisting of four separate membership groups. The LDOs are part of the Union's offshore membership group, which consists of members who work primarily on large oceangoing vessels on the open seas. The offshore membership group is separate from the Union's other membership groups, whose members do not need Coast Guard licensure and primarily perform work on inland waterways.

In 1981, the Union negotiated a multiemployer collective-bargaining agreement on behalf of the LDOs in its offshore membership group, including those employed by the Respondent's predecessor, Sealand Service, Inc. (Sealand). Since then, the Union has continued to represent the LDOs on the four vessels at issue here under agreements with Sealand and the Respondent's other predecessors, CSX and Horizon Lines (Horizon).[2] Sealand, CSX, and Horizon all recognized the Union as the exclusive bargaining representative of the LDOs on the four vessels.

In 2015, Horizon sold its Hawaii trade-lane business—i.e., the Spirit, Enterprise, Pacific, and Reliance—to Pasha.[3] Before the sale closed, SR Holdings, a Pasha subsidiary, informed the Union of its upcoming acquisition of the four vessels and that the Respondent would be honoring the collective-bargaining agreement upon closing of the purchase. The Union received additional assurances from George Pasha, the president of Pasha, that the Respondent would assume and abide by the collective-bargaining agreement.

On May 29, 2015, Horizon transferred the Hawaii trade-lane business to the Respondent, which began operating the four vessels, transporting goods to and from ports in

[1] The Respondent subsequently filed a notice of supplemental authority, pursuant to Sec. 102.6 of the Board's Rules and Regulations, to direct the Board's attention to *STP Nuclear Operating Co. v. NLRB*, 975 F.3d 507 (5th Cir. 2020).

[2] In referring to Sealand, CSX, and Horizon as the Respondent's predecessors, we imply no findings under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

[3] As detailed in the judge's decision, Pasha utilized a complex corporate ownership structure to complete the purchase.

Oakland, Los Angeles, and Honolulu. The Respondent retained a majority of the union-represented LDOs and admits that it has recognized the Union as the exclusive collective-bargaining representative of the LDOs since the acquisition.

The 1981 collective-bargaining agreement (1981 CBA) covering the LDO unit, to which the LDOs on the four vessels belong, is still in force, although it has since been amended by numerous MOUs. Section XXI of the 1981 CBA, entitled, "Duties of Officers," states: "The Parties agree that the duties of the Licensed Deck Officers, including Master, shall be maintained as supervisory and professional." Section XXI further provides that LDOs "shall have the shipboard supervision of all hull maintenance, cargo gear maintenance, lifesaving equipment, firefighting and safety equipment, and all cargo activity," and "shall supervise the opening and closing of hatches, the spotting or trimming of cargo booms or any other type of cargo gear whatsoever."

II.

Each of the parties takes a different position on the supervisory status of the LDOs. The Union argues that the individuals in all four LDO classifications—master, chief mate, second mate, and third mate—are employees under Section 2(3) of the Act and not statutory supervisors. The Respondent contends that the LDOs in all four classifications are supervisors. Citing *Beverly Manor Convalescent Centers,* 275 NLRB 943, 948 fn. 6 (1985), the Respondent also argues that even if second and third mates are not supervisors, the masters and chief mates are, and the Board cannot certify a "mixed" unit—i.e., a unit that includes both supervisors and Section 2(3) employees—or compel an employer to bargain with respect to supervisors. The General Counsel argues that the supervisory status of the masters and chief mates is irrelevant because the second and third mates are not supervisors, and where an employer has voluntarily consented to a bargaining unit that includes supervisors, it cannot later use the "mixed" nature of the unit as a jurisdictional defense to an unfair labor practice allegation.

Agreeing with the General Counsel, the judge found that it was unnecessary to determine whether the Respondent's masters and chief mates are statutory supervisors because the second and third mates are not supervisors.[4] More specifically, she found that the second and third mates perform duties that are merely routine in nature, and they do not perform any supervisory functions as set forth in Section 2(11) of the Act. Therefore, having found that the second and third mate LDOs are employees under the Act, the judge concluded that the Board retains jurisdiction over this matter.

III.

Although Section 2(3) of the Act excludes individuals employed as supervisors from coverage, the judge is correct that the Board may exercise jurisdiction over a unit containing supervisors in certain circumstances. In *E. G. & H. Inc. v. NLRB*, 949 F.2d 276 (9th Cir. 1991), enfg. sub nom. *Union Plaza Hotel & Casino*, 296 NLRB 918 (1989), the United States Court of Appeals for the Ninth Circuit enforced a Board order finding that the employer had violated Section 8(a)(5) by refusing to execute and give effect to a collective-bargaining agreement. The court rejected the employer's argument that the Board was precluded from taking any action in the case because some of the employees in the unit were supervisors. Id. at 279–280. The court observed that, under Section 14(a) of the Act, although an employer could not be compelled to recognize a union containing supervisors, "the employer certainly could do so voluntarily." Id. (citing *NLRB v. News Syndicate Co.,* 365 U.S. 695 (1961)); accord: *Gratiot Community Hospital*, 312 NLRB 1075, 1075 fn. 2 (1993), enfd. in relevant part 51 F.3d 1255 (6th Cir. 1995).

The Respondent cites the Board's decision in the same proceeding, *Union Plaza Hotel & Casino*, 296 NLRB at 924 fn. 4, and acknowledges that where an employer voluntarily recognizes a "mixed" unit, it cannot later use the fact that the unit is "mixed" as a defense to alleged violations under the Act. But the Respondent contends that the circumstances here are materially distinguishable from those in *Union Plaza Hotel* because the employer in that case "had voluntarily included supervisors in a unit with employees."[5]

The issue in cases such as this one, involving bargaining units containing some supervisors, is not whether the unit is appropriate or whether the Board could have initially certified the unit under the Act. *E. G. & H.*, 949 F.2d at 279. Rather, it is whether the employer voluntarily agreed to recognize such a "mixed" unit. As the Ninth Circuit held in *E. G. & H.*, "where an employer has consented to a bargaining unit that includes supervisors, the [Board]

[4] Although technically not passing on the supervisory status of masters and chief mates under Sec. 2(11) of the Act, the judge found that "the master mate officer" "recommends/issues discipline, hires/fires LDOs, can transfer/lay off/suspend, promote LDOs, schedule/recall/rehire/assign work to/grant time off and respond to leave requests [of] LDOs." While it is unclear whether the judge's designation of "master mate officer" refers to masters *and* chief mates or masters alone, the judge clearly found that masters, at least, possess multiple Sec. 2(11) indicia of supervisory status.

[5] This quotation from the Respondent's exceptions brief disproves the dissent's assertion that our decision relies on a rationale never argued by the Respondent, i.e., that the judge misapplied *Union Plaza Hotel* to the facts of this case.

properly may find the employer guilty of an unfair labor practice with respect to that bargaining unit." Id.

It is undisputed that the Respondent voluntarily recognized the Union as the exclusive bargaining representative of the LDOs on the four vessels. As mentioned, the 1981 collective-bargaining agreement (as modified by successive MOUs) remained in force when the Respondent acquired the vessels, and George Pasha assured the Union that the Respondent would assume and abide by the collective-bargaining agreement.

IV.

The judge, however, failed to address the threshold question of what type of unit the Respondent voluntarily recognized. In *Virginia Mason Hospital*, 357 NLRB 564 (2011), the Board clarified that while it retains jurisdiction over a proceeding where the employer consents to a "mixed" unit that includes supervisors along with statutory employees, that principle does not apply where the unit consists "*entirely* of supervisors or managerial employees excluded from coverage under the Act." Id. at 564 fn. 2 (emphasis added). Accordingly, if the Board has jurisdiction in this case, it is based on the Respondent having consented to a "mixed" unit containing supervisors and statutory employees.[6] And a finding that the Respondent consented to a "mixed" unit necessarily implies that it *understood* the LDO unit to be a "mixed" unit when it voluntarily recognized the Union as the unit's bargaining representative.

The Respondent had no such understanding. To the contrary, we find that the Respondent voluntarily recognized a unit that was understood—by the Union and the Respondent alike—to consist solely of supervisors. As stated, the Respondent informed the Union that it would assume and abide by the collective-bargaining agreement. That agreement provides that "the duties of the Licensed Deck Officers, including Master, *shall be maintained as supervisory* and professional," and that LDOs "*shall have the shipboard supervision* of all hull maintenance, cargo gear maintenance, lifesaving equipment, firefighting and safety equipment, and all cargo activity," and "*shall supervise* the opening and closing of hatches, the spotting or trimming of cargo booms or any other type of cargo gear whatsoever" (emphasis added). Accordingly, we find that the Respondent assumed a collective-bargaining agreement that treats all of the LDOs as supervisors.

The collective-bargaining relationship between the Union and the several owners of the vessels that ply the trade lanes between Hawaii and California has been carried on for decades outside the aegis of the Act. For at least 40 years, the Union has accepted recognition from and bargained with the owners of these vessels as the representative of the unit of LDOs without (until now) invoking the Act or involving the Board. The Union has never filed a petition under Section 9 of the Act for an election to become the certified representative of the unit of LDOs, nor has it ever requested voluntary recognition as the 9(a) representative of the unit. To the contrary, the Union has represented to the Board that its offshore division—the same membership division to which the LDOs in this case belong—is not a "labor organization" under the Act because it confines its membership to individuals who are supervisors. *International Organization of Masters, Mates & Pilots*, 220 NLRB 164, 165 (1975).[7]

The practicalities of operating large vessels on the open seas—particularly the strict separation of licensed officers and unlicensed crew—further support our finding that the Respondent consented to a supervisory unit. The living quarters of unlicensed crew members on the Respondent's vessels are markedly different from the LDOs' quarters. Furthermore, the collective-bargaining agreement requires that the LDOs have exclusive dining rooms, washroom and toilet facilities, and recreational rooms on the vessels, none of which may be used by the unlicensed crewmembers. These distinctions are maintained between unlicensed crewmembers and the LDOs as a group, not between some LDO classifications (e.g., second and third mates) and other LDO classifications (e.g., masters and chief mates).

As mentioned, if the Board has jurisdiction in this case, it would be based on the Respondent having voluntarily consented to a "mixed" unit consisting of supervisors and

[6] The dissent suggests that our finding in this regard is inconsistent with the Supreme Court's decision in *NLRB v. News Syndicate Co.,* 365 U.S. 695 (1961). But the issue before the Court in that case was whether contract provisions requiring that foremen be union members and do the hiring were illegal on their face—not, as here, whether the Board had jurisdiction over the case because the unit consisted entirely of supervisors.

[7] Indeed, numerous federal courts have either found union-represented LDOs working aboard large ocean-going vessels to be statutory supervisors or treated them as such. See, e.g., *International Organization of Masters, Mates and Pilots, AFL–CIO v. NLRB*, 575 F.2d 896, 904 (D.C. Cir. 1978) (finding that "[l]icensed deck officers are 'supervisors' within the meaning of 29 U.S.C. § 152(11) (1970)," citing the union's brief); *International Organization of Masters, Mates & Pilots, ILA, v. NLRB*, 539 F.2d 554, 556 (5th Cir. 1976) ("Petitioner MM&P is the principal labor union representing the licensed deck officers who serve in the United States Merchant Marine. Licensed deck officers on large merchant vessels . . . are 'supervisors' within the meaning of the Act."), rehearing denied 547 F.2d 574 (5th Cir. 1977), cert. denied 434 U.S. 828 (1977); *Marine Transport Lines, Inc. v. International Organization of Masters, Mates & Pilots*, 636 F.Supp. 384, 386 (S.D.N.Y. 1986) ("The master collective bargaining agreement . . . was negotiated by the defendant Union and 109 operators of U.S.-flag oceangoing vessels, and established the terms and conditions of employment of defendant's members, who as licensed deck officers are considered supervisory personnel under the National Labor Relations Act.").

statutory employees. We find that the Respondent did not voluntarily agree to such a unit. Neither the General Counsel nor the Union points to anything in the record that shows that the Respondent consented to a "mixed" unit. Rather, for the reasons stated above, we find that the Respondent voluntarily recognized a supervisory unit. In making this finding, we do not pass on the question of whether some or all of the LDOs on the Respondent's vessels are statutory supervisors, and therefore we need not engage in an analysis of whether individuals in the several LDO classifications possess any of the supervisory indicia enumerated in Section 2(11) of the Act.

The dissent attempts to paint a very different picture of this case. According to our colleague, the Respondent consented to what it knew or should have known was a mixed unit and now is attempting to avoid Board jurisdiction by claiming the unit is comprised of supervisors only. This, our colleague asserts, is at odds with the Act's goal of promoting stable bargaining relationships and contrary to basic considerations of fairness. But these are not the facts of this case, and it is the Union, not the Respondent, that is attempting to upend a decades-long bargaining relationship by unfairly changing its position on the nature of the unit.

The facts of this case, as we have shown above, are that the Respondent is in the maritime industry and, as the successor to a bargaining relationship established through multiemployer bargaining over the course of more than 40 years, consented to recognize the Union as the representative of a supervisor-only unit. This is undisputed. Throughout that time, the parties to this bargaining relationship have treated LDOs on ocean-going ships as supervisors not subject to the Act or the Board's jurisdiction. Indeed, the Union has historically taken the position *before the Board* that the membership of its offshore division consists exclusively of supervisors. Nothing in the 1981 collective-bargaining agreement suggests otherwise; to the contrary, that agreement confirms and continues the historical understanding.[8]

Moreover, contrary to our colleague's portrayal, this case is not about an employer changing its position to terminate a longstanding duty to bargain under the Act. Rather, it is about a union changing *its* position to impose such a duty. The Respondent would maintain the status quo of a decades-long bargaining history during which all parties agreed that the LDO unit is comprised solely of supervisors. It is the Union that wants to change the historical bargaining relationship. In this regard, the dissent's suggestion that the Respondent is somehow attempting to avoid its bargaining obligation by belatedly asserting a mistaken belief about the composition of the unit misses the mark. To the contrary, the Respondent seeks to continue the parties' bargaining relationship as it has existed for 40-plus years—outside the Board's jurisdiction, as is common in maritime-industry labor relations.

In short, the dissent would turn "voluntary consent" upside down. In her view, an employer's voluntary consent to a supervisory unit is subject to involuntary amendment. That is, if an employer consents to recognize a union as the representative of a unit the union itself treats as a supervisor-only unit, and the union decides to change its position, the employer's initial voluntary consent can be involuntarily converted from consent to a supervisory unit to consent to a mixed unit. In our opinion, this would drain the concept of voluntary consent of all meaning.

V.

For the foregoing reasons, we conclude that the Respondent did not voluntarily recognize the Union as the representative of a "mixed" unit consisting of supervisors and employees. Rather, it consented to a unit consisting entirely of supervisors excluded from coverage under the Act. We shall therefore dismiss the complaint. We find it unnecessary to pass on the merits of the unfair labor practice allegations of the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 12, 2021

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] Contrary to the dissent, we do not claim that provisions in the parties' collective-bargaining agreement, the Union's prior conduct, federal court cases involving union-represented LDOs, or the practices of the maritime industry *establish* that the LDOs in this proceeding are statutory supervisors. Rather, we find that, taken together, these facts show that union-represented LDOs are understood to be supervisors by all concerned and that the Union has held them out as such.

We likewise disagree with the dissent's contention that the Respondent is estopped from arguing that the unit is supervisory because it recognized and bargained with the Union. As explained above, we find that the unit was understood by *both* parties to consist solely of supervisors. This is not a case of one side being misled by the actions of the other.

CHAIRMAN MCFERRAN, dissenting.

This should be a straightforward case under well-established precedent and principles. The Respondent Employer, Sunrise Operations, voluntary recognized the Union as the collective-bargaining representative of its licensed desk officers (LDOs): masters, chief mates, second mates, and third mates. The Board has held, with the approval of the United States Court of Appeals for the Ninth Circuit, that after *voluntarily* recognizing a union as the representative of employees in a "mixed" bargaining unit that includes both statutory employees and statutory supervisors—i.e., a unit that the Board would not *compel*—the employer may not invoke the mixed nature of the unit as a defense to an unfair labor practice allegation.[1] The administrative law judge correctly found that the bargaining unit was at most mixed—the second mates and third mates are statutory employees—and so rejected Sunrise's defense that it had no duty to bargain because the unit consisted entirely of supervisors. The judge in turn found that Sunrise violated its duty to bargain under Section 8(a)(5) by refusing to provide the Union with requested relevant information and by failing to abide by an agreement requiring the parties to continue to meet for arbitration proceedings.

The majority now takes this uncomplicated case and steers it far off course. My colleagues do not deny that Sunrise voluntarily recognized the Union years ago. Nor do they overturn the judge's findings as to the employee status of the second mates and third mates. Instead, my colleagues insist that because Sunrise always *believed* that the unit consisted only of statutory supervisors—regardless of whether this belief was actually correct or was ever clearly communicated to the Union—Sunrise has no duty to recognize and bargain with the Union. Puzzlingly, the majority frames the issue here as a matter of the Board's jurisdiction.

As I explain below, the majority's novel rationale has no support in the Act or its policies, in Board or judicial precedent, or in the record in this case. Today's decision permits a statutory employer to terminate a longstanding bargaining relationship subject to the Act, without any plausible legal justification.

I.

The administrative law judge correctly found that Sunrise violated Section 8(a)(5) and (1) of the Act by failing to provide requested information to the Union and failing to abide by a 1984 agreement (the MOU) requiring the parties to continue to meet for arbitration proceedings in Linthicum Heights, Maryland.

At the outset, the judge made certain jurisdictional findings, concluding that Sunrise is an employer within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within Section 2(5) of the Act. Sunrise did not except to these findings. The judge therefore correctly found the Board has jurisdiction over this unfair labor practice case, which involves an employer covered by the Act, a union covered by the Act, and allegations that the employer committed unfair labor practices under the Act.[2]

Having found jurisdiction, the judge properly analyzed the facts surrounding the information requests and bargaining obligations, finding the information necessary and relevant. Likewise, she found that the record clearly showed that the 1984 MOU to the collective-bargaining agreement governed where arbitration proceedings would be held and that Sunrise knew of this obligation when it adopted the collective-bargaining agreement. On this basis, the judge correctly concluded that Sunrise violated Section 8(a)(5) and (1) of the Act.

Both before the judge and now before the Board, Sunrise has offered two arguments for concluding that it had no statutory duty to recognize and bargain with the Union as the representative of the LDO bargaining unit. First, it claims that all of the LDOs are supervisors under Section 2(11) of the Act and thus that the bargaining unit is inappropriate. Second, it asserts that the Board lacks jurisdiction because the Union was not certified by the Board, following an election, as the Section 9(a) representative of the unit employees. The judge properly considered and rejected both these defenses.

The judge was correct to find that the second and third mates were statutory employees and thus that the bargaining unit did not comprise only statutory supervisors. The judge found no evidence to support Sunrise's claim that the second and third mates have the supervisory authority to hire/fire, recommend discipline, transfer, lay off, promote or suspend, schedule, recall, or assign—let alone that they exercise such authority using independent judgment.[3] The judge also considered and rejected Sunrise's argument that LDOs are supervisors because they serve as Officers of the Watch, finding that this position reflects a routine execution of tasks with little need for independent judgment.[4] The unit, therefore, was at most a mixed unit

[1] *Union Plaza Hotel & Casino*, 296 NLRB 918, 918 fn. 4 (1989), enfd. sub nom. *E. G. & H., Inc. v. NLRB,* 949 F.2d 276, 278–280 (9th Cir. 1991).

[2] Under Sec. 10(a) of the Act, the Board "is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in [S]ection 8) affecting commerce." 29 U.S.C. §160(a).

[3] *Oakwood Healthcare*, 348 NLRB 686 (2006).

[4] *Chevron Shipping Co.*, 317 NLRB 379, 380 (1995).

of statutory employees and statutory supervisors. Under *Union Plaza*, supra, Sunrise could not invoke the mixed nature of the unit as a defense to the unfair labor practice allegations after having *voluntarily* recognized the Union as the representative of its LDOs, as the judge found.[5]

Finally, the judge correctly rejected Sunrise's defense that the Board lacks jurisdiction over the case because the Union was not certified by the Board as the unit's representative under Section 9(a) of the Act, following an election. The judge recognized that Board certification is not the only way for the Union to become the exclusive collective bargaining representative of the unit members: voluntary recognition by the employer also suffices.

II.

Instead of simply adopting the correct decision of the administrative law judge, the majority now reverses, invoking a rationale never argued by Sunrise, unsupported by record evidence, and inconsistent with Board and court precent. The majority does not deny that Sunrise is a statutory employer or that the Union is a statutory labor organization. Nor does the majority deny that the bargaining unit includes statutory employees, failing even to engage with the judge's conclusion that the second and third mates are not supervisors. It also acknowledges our long-held *Union Plaza* principle, endorsed by the Ninth Circuit, that an employer has a duty to bargain with a voluntarily recognized union representing employees in a "mixed" bargaining unit that comprises both employees and supervisors.

But under the majority's view, that the bargaining unit here is, in fact, a "mixed" unit is immaterial to Sunrise's statutory obligations and to the Board's power to enforce them. What matters, rather, is that (as the majority would have it) Sunrise "voluntarily recognized a unit that was understood—by the Union and [Sunrise] alike—to consist solely of supervisors." In support of this conclusion, the majority first invokes language in the collective-bargaining agreement stating that "the duties of the Licensed Deck Officers, including Master, shall be maintained as supervisory and professional" and that LDOs "shall have the shipboard supervision of all hull maintenance, cargo gear maintenance, lifesaving equipment, firefighting and safety equipment, and all cargo activity" and "shall supervise the opening and closing of hatches, the spotting or trimming of cargo booms or any other type of cargo gear whatsoever."

Second, the majority looks to what it considers maritime-industry practice. Here, it claims that for nearly 40 years the Union "accepted recognition from and bargained with the owners of these vessels as the representative of the unit of LDOs without (until now) invoking the Act or involving the Board." The majority also references other cases in which union-represented LDOs have either been found to be statutory supervisors or have been treated as such. Based on these two primary arguments, the majority concludes that Sunrise only "consented to a unit consisting entirely of supervisors excluded from coverage under the Act" and that the Board therefore lacks jurisdiction.

III.

For the reasons that follow, the majority's view—that in applying the *Union Plaza* principle to a mixed unit of employees and supervisors, the judge somehow made a fundamental error that was never identified by Sunrise or argued on exceptions before the Board—is untenable.

A.

To begin, the majority wrongly faults the judge for failing to consider what it deems the "threshold question" of what kind of unit Sunrise recognized—or more precisely, what kind of unit Sunrise *thought* it was recognizing. The majority quotes dictum from *Virginia Mason*, 357 NLRB 564 (2011), for the proposition that the Board has jurisdiction where the employer consents to a mixed unit of supervisors and statutory employees, but not where the unit consists "*entirely* of supervisors or managerial employees excluded from coverage under the Act."[6] From this proposition, the majority argues "that a finding that the Respondent consented to a 'mixed' unit necessarily implies that it *understood* the LDO unit to be a 'mixed' unit when it voluntarily recognized the Union as the unit's bargaining representative," but that Sunrise in fact "had no such

[5] Sunrise admits that *Union Plaza* prohibits a mixed-unit defense but argues that there is no dispute that all of the LDOs in this case are supervisors. Sunrise does not point to evidence justifying reversal of the judge's determination that the second and third mates were statutory employees, not statutory supervisors.

[6] The majority makes no effort to reconcile this proposition with the Supreme Court's decision in *NLRB v. News Syndicate Co.,* 365 U.S. 695 (1961), which suggests that the *Union Plaza* principle would extend even to voluntary recognition of a union as representative of an all-supervisor bargaining unit. Citing Sec. 14(a) of the Act, 29 U.S.C. §164(a), the Supreme Court concluded that "under these provisions even a union of foremen [i.e., statutory supervisors] could be recognized by an employer, though no employer could be compelled to do so." Id. at 699 fn. 2. The Court cited a statement in the Senate committee report accompanying the Taft-Hartley Act, which explained that:

> [T]he bill does not prevent anyone from organizing nor does it prohibit any employer from recognizing a union of foreman. It merely relieves employers who are subject to the national act free from any compulsion by this National Board or any local agency to accord to the front line of management the anomalous status of employees.

S. Rep. No. 105, 80th Cong., 1st Sess., p. 5. In enforcing the Board's decision in *Union Plaza*, the Ninth Circuit cited the Supreme Court's in *News Syndicate*. *E. G. & H., Inc. v. NLRB*, 949 F.2d 276, 279 (9th Cir. 1991).

understanding" and instead "voluntarily recognized a unit that was understood—by the Union and [Sunrise] alike—to consist solely of supervisors." The majority cites no record evidence for this factual claim apart from the collective-bargaining agreement.

The bargaining unit in this case does *not* consist solely of supervisors, nor does the majority argue otherwise.[7] In effect, then, the majority asserts both that Sunrise made a mistake when it recognized the Union and that it should be excused for its error.[8] But the *Virginia Mason* dictum provides no support for the majority's position.[9] *Virginia Mason* does not somehow create a "mistake" exception to the *Union Plaza* principle. It in no way suggests that an employer may avoid a present bargaining obligation by belatedly asserting a mistaken belief about the composition of a bargaining unit that, in fact, comprises at least some statutory employees. Indeed, when Sunrise voluntarily recognized the Union, Sunrise—as the employer—must be charged with knowledge of the duties of unit employees. The Board has long held an employer's voluntary recognition of a unit that may include supervisors is binding when the employer knew of the duties of the unit positions.[10]

B.

The majority's invocation of the collective-bargaining agreement to show that voluntary recognition was premised on a mutual understanding between Sunrise and the Union that the unit was all-supervisory is unavailing. In the agreement, Sunrise voluntarily recognized the Union as the "sole representative for collective bargaining of its Licensed Deck Officers" and agreed that it would "not engage in activities . . . calculated to undermine the status of the Organization as the sole collective bargaining representative."[11] The majority, however, argues that contractual language stating that the duties of the LDOs "shall be maintained as supervisory and professional" and that they "shall have all the shipboard supervision" of listed tasks means that the parties understood the LDOs to be supervisors *under the Act*. Neither the record nor the collective-bargaining agreement supports this position.

The collective-bargaining agreement does not state, explicitly or implicitly, that the parties intended for the LDOs to be treated as *statutory* supervisors under Section 2(11).[12] Nor does the agreement recite or refer to the statutory criteria for determining supervisory status. And there is nothing in the record to suggest that Sunrise said or did anything that would have put the Union on notice that Sunrise supposedly believed that the unit consisted

[7] Indeed, the majority recognizes that provisions in the parties' collective-bargaining agreement, the Union's prior conduct, maritime practices, or federal court cases do not establish that the LDOs in this case are in fact statutory supervisors under the Act. Nevertheless, my colleagues suggest that what Sunrise purportedly believed about the LDOs' status has transformed them into statutory supervisors and divested the Board of jurisdiction, regardless of the legal standard that the statute and our cases have set.

[8] Sunrise does not make that argument. It claims instead that the LDOs are actually *statutory supervisors* under the Board's traditional analysis. Instead of addressing the supervisory status of the LDOs, the majority falls back on its own supposition about what Sunrise thought it was doing when it voluntarily recognized the Union. The majority makes no attempt, however, to ground its theory in contract doctrine or to demonstrate that, under that doctrine, Sunrise's supposed mistake would somehow entitle it to escape its contractual obligations.

[9] In *Virginia Mason*, supra, a hospital initially defended against an. 8(a)(5) allegation by contending before the administrative law judge that its registered nurses were not employees under the Act. Subsequently, it dropped that contention, the judge did not address the employee-status issue, and no party excepted. Thus, the issue was not before the Board. The Board, however, chose to correct the judge's description of Board precedent, observing:

> In discussing this matter, however, the judge misstated the Board's holding in *Gratiot Community Hospital,* 312 NLRB 1075 (1993), enfd. in relevant part 51 F.3d 1255 (6th Cir. 1995). We correct that misstatement here. As does this case, *Gratiot* concerned unilateral changes affecting a registered nurse bargaining unit. According to the judge, the Board in *Gratiot* held that the changes would have been unlawful "even if all the nurses were statutory supervisors" because the parties voluntarily agreed to include them in the unit. The Board did not so hold. The issue in *Gratiot* was not whether the bargaining unit consisted entirely of statutory supervisors, but whether some or all of the "nursing supervisors," who had been voluntarily included in the unit, were statutory supervisors. Thus, even if all the "nursing supervisors" were statutory supervisors, the bargaining unit in *Gratiot* still included statutory employees. In contrast, if the Hospital's initial contention were correct, the unit here would consist entirely of supervisors or managerial employees excluded from coverage under the Act.

357 NLRB at 564 fn. 2. In contrasting a "mixed" unit and an all-supervisor unit, then, the *Virginia Mason* Board made clear that an employer that voluntarily recognizes a union as representative of a "mixed" unit—the situation here, as found by the judge—is indeed obligated to bargain, notwithstanding the presence of supervisors in the unit.

[10] See *Arizona Electric*, 250 NLRB 1132 (1980). The Board has also held that it "may appropriately issue a bargaining order covering a unit which it could not have initially certified under the Act but concerning which the parties have knowingly and voluntarily bargained." Id.; accord *Nexstar WETM-TV*, 363 NLRB No. 32, slip op. at 11-13 (2015). Accordingly, Sunrise is bound by its voluntary recognition of the Union, if—as the judge properly found and the majority has not refuted—the LDOs include at least some statutory employees.

[11] See Master Collective Bargaining Agreement, sec. II (1982).

[12] Sec. 2(11) states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C. § 152(11).

only of statutory supervisors and that the parties' relationship was not governed by the Act.[13]

Although the collective-bargaining agreement refers to the duties of the LDOs as "supervisory," Board precedent makes clear that merely labelling a position as supervisory this way does not make an employee a supervisor under the Act. *Oakwood Healthcare*, 348 NLRB 686, 687, 690 fn. 24 (2006) ("[T]he Board has long held that job titles and descriptions prepared by employers are not controlling; rather the Board looks to the authority actually possessed and the work actually performed by the alleged supervisor.")[14] "[J]ob descriptions, job titles, and similar paper authority, without more, do not demonstrate supervisory authority."[15] Were it otherwise, an employer would be able to transform any employee into a supervisor merely by changing a job description or contractual title. Similarly, inferences and conclusory statements are insufficient to establish supervisory status.[16] As the judge properly found, the Respondent has not met its burden to show that the entire unit consists of supervisors.

Indeed, by stating that the Union is to be the "sole representative for collective bargaining of its Licensed Deck Officers," the recognition clause of the collective-bargaining agreement uses terms of art that clearly imply that the bargaining relationship was intended to be governed by the Act and that it encompassed statutory employees. Because Sunrise is a statutory employer, because the Union is a statutory labor organization, and because collective bargaining under the Act typically involves statutory employees, the parties presumably believed that the bargaining unit comprised at least some statutory employees, and that the parties' bargaining relationship would be governed by the Act.

C.

Equally unavailing is the majority's reference to what it considers norms of the maritime industry. According to the majority, Sunrise believed it was recognizing an all-supervisor unit (1) because "numerous federal courts have either found union-represented LDOs working aboard large ocean-going vessels to be statutory supervisors or treated them as such;" (2) because the Union has not invoked the Act previously and once argued before the Board that it was "not a labor organization;" and (3) because the "practicalities of operating large vessels on the open seas" require a distinction between crew and LDOs.

Sunrise has not made these arguments before the Board in this case. But even if it had, they do not support the majority's conclusion. First, it is axiomatic that under Section 2(11) of the Act, supervisory status determinations require a "fact intensive and careful examination of the relevant facts and circumstances in each case." *USF Reddaway, Inc.*, 349 NLRB 329, 339 (2007). Accordingly, the duties and supervisory status of other LDOs in the federal cases the majority cites is not determinative of the status of the LDOs in *this* case. The judge properly considered the record evidence regarding the work of *these* LDOs and determined that they did not meet the Board's longstanding criteria for supervisory status under Section 2(11). The majority's argument does nothing to undermine that analysis.

Second, whether or not the Union has invoked the Act does not change its status as a statutory labor organization.[17] The judge found, and Sunrise does not except to the finding, that it is. Likewise, the majority's reliance on what the Union once claimed before the Board in another case is of no import. Indeed, in *International Organization of Masters (Seatrain Lines)*, 220 NLRB 164, 170 (1975), the very case that the majority cites, the judge and

[13] As a result, it is a reasonable inference that the Union relied, to its detriment, on Sunrise's actions, statements, and omissions. See *Red Coats*, 238 NLRB 205, 206–207 (1999). Certainly, the Union did not file a representation petition or a unit-clarification petition with the Board, actions that it might have taken had Sunrise given any indication that it believed the parties' collective-bargaining relationship was not governed by the Act. It cannot be suggested, meanwhile, that the Union somehow misled Sunrise as to any issue related to statutory coverage; indeed, as the employer, Sunrise had full knowledge of, and control over, the duties of unit employees relevant to their supervisory status under the Act. There is no evidence these duties were different at the time of the hearing in this case than they were when Sunrise recognized the Union.

[14] See also *Lakewood Health Center d/b/a Chi Lakewood*, 365 NLRB No. 10, slip op. at 1 fn. 1 (2016) (citing cases); *NLRB v. Security Guard Service, Inc.*, 384 F.2d 143, 149 (5th Cir. 1967) ("Tables of organization and job descriptions do not vest powers.").

[15] *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072–1073 (2015). See also *Peacock Productions*, 364 NLRB No. 104, slip op. at 2–3 (2015) ("Titles are insufficient to show supervisory status.")

[16] *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006) (finding reference to accountability for subordinates on evaluation forms was speculative and insufficient to show such accountability actually existed).

[17] Contrary to the majority's argument, that the Union did not seek Board certification, file charges, or pursue Board remedies in no way affects the parties' status under the Act, divests the Board of jurisdiction, or establishes that the LDOs are statutory supervisors. While the parties here may not have invoked the Board's processes before, this is not unusual in a mature bargaining relationship. Of course, a change in a previously good relationship may prompt a party to assert statutory rights for the first time. There is no evidence that the parties agreed that they would not resort to the Board, nor does the record support finding that the Union is estopped from invoking the Board's jurisdiction. If the arrival and actions of Pasha prompted the Union to file charges, it was the Union's right to do so.

Board *rejected* the Union's claim and found it to be a labor organization under the Act that represents employees.[18]

Finally, the conditions and practices in the maritime industry invoked by the majority are not part of the record before the Board (nor has Sunrise cited them). And even if such evidence *were* in the record, maritime law and practice would not be relevant to the issues presented for decision here. As the Board explained in *Brusco Tug & Barge*, 359 NLRB 486 (2012), incorporated by reference, 362 NLRB 257 (2015), enfd. 696 Fed.Appx. 519 (D.C. Cir. 2017), maritime law and the Act "serve separate purposes," and the existence of authority that derives from the "privileges and obligations of maritime law . . . doesn't answer the questions posed by the 2(11) indicia of supervisory status." Id.[19] There is no record evidence supporting the majority's assertion that LDOs were universally understood in the maritime industry to be *statutory* supervisors.

The Board has never held—nor could it hold, consistent with the Act—that all LDOs are, have been, and always will be statutory supervisors, regardless of their actual duties and authority in a particular workplace at a particular time. Nor is the majority free here to declare—without the support of any record evidence—that based on the supposedly universal contemporary understanding in the maritime industry that all LDOs are statutory supervisors, the Board must conclude that Sunrise recognized the Union only as the representative of an all-supervisor bargaining unit.

Thus, none of the reasons offered by the majority for reversing the judge withstand scrutiny. In turn, the consequences of the majority's fundamentally mistaken position here cannot be reconciled with the Act's policies of promoting stable bargaining relationships or with basic considerations of fairness. Six years after it voluntarily recognized the Union, and with no showing that the bargaining unit is not at least a "mixed" unit, Sunrise is apparently now free to deny the Union recognition as the statutory representative of unit employees—including employees covered by the Act, as the judge correctly found (and as the majority does not dispute). That result frustrates stable collective bargaining instead of promoting it, as Section 1 of the Act requires.[20] And it is deeply unfair to the Union, which we can reasonably infer detrimentally relied on Sunrise's voluntary recognition in 2015.[21]

IV.

In sum, this is a straightforward case with a clear result under Board precedent endorsed by the Ninth Circuit. The judge correctly found that the Board has jurisdiction over Sunrise, an employer under the Act that voluntarily recognized the Union, a labor organization under the Act, to represent employees in a unit correctly found to comprise at least some statutory employees. Thus, Sunrise had a duty to bargain with the Union, a duty Sunrise violated by failing to provide the requested relevant information and to meet as required for arbitration proceedings. The majority's rationale for finding that Sunrise had no duty to bargain and that the Board has no jurisdiction over the relationship between Sunrise and the Union, was never advanced by Sunrise and is simply untenable. The majority has presented no grounds for reversing the judge's finding with respect to the supervisory status of the LDOs, which triggers application of the *Union Plaza* principle here, where a mixed bargaining unit is involved. The majority's attempt to avoid precedent, by inventing an exception to the *Union Plaza* principle, has no support in our case law. It relies almost entirely on factual assertions unsupported by the record. The result is an outcome that is not only deeply unfair, but also undermines Board and statutory policy encouraging collective bargaining and voluntary

[18] See also *International Organization of Masters, Mates, & Pilots* , 197 NLRB 400 (1972) (Union here did not deny that it was a labor organization).

[19] Accord: *Buchanan Marine, L.P*, 363 NLRB No. 58 (2015); *McAllister Bros.*, 278 NLRB 601, 614 (1986) (captains' legal "responsibility" under Coast Guard regulations does not confer supervisory status under the Act), enfd. 819 F.2d 439 (4th Cir. 1987).

[20] "It is declared to be the policy of the United States to . . . encourag[e] the practice and procedure of collective bargaining and . . . protect[ ] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment . . . ." 29 U.S.C. § 151.

[21] For this reason, the Board applies estoppel principles to bar employers from challenging the appropriateness of a unit to escape the consequences of voluntary recognition. *Red Coats*, 238 NLRB at 206–207.

In *Red Coats*, the Board held that estoppel barred an employer, after voluntary recognition of the union, from challenging the appropriateness of a unit in three locations where it had bargained for five months. Bargaining showed the employer's knowledge and intent, and the voluntary recognition and bargaining induced the union to believe the employer would not challenge unit appropriateness. As a result, the union did not perfect its recognition by seeking Board certification. The Board concluded that having both voluntarily recognized the union and bargained with it, the employer could not then challenge the unit's appropriateness. This case is no different.

As the Board in *Red Coats* recognized, to allow Sunrise to renege on its voluntary recognition, and avoid the Board's jurisdiction, would encourage parties to manipulate the process, thereby undermining voluntary recognition under the Act. Id. at 206–207. See also *Alpha Associates*, 344 NLRB 782, 783–784 (2005) (applying *Red Coats* and rejecting employer's inappropriate-unit defense to a refusal to bargain allegation because the employer voluntarily recognized the unit a year earlier; voluntary recognition showed knowledge and intent, and the year of bargaining led the union to believe there would be no challenge to appropriateness under the Act); *Strand Theatre*, 346 NLRB 523 (2006) (employer estopped under *Red Coats* from challenging its own earlier voluntary recognition of a union based on a new claim that the unit was inappropriate).

recognition. Having steered this case far off course, then, the majority's decision crashes into the labor-law rocks—and, I think, will sink on judicial review. Accordingly, I dissent.

Dated, Washington, D.C. July 12, 2021

Lauren McFerran, Chairman

NATIONAL LABOR RELATIONS BOARD

Yasmin Macariola, Esq., for the General Counsel.
William Miossi and *Kara E. Cooper, Esqs. (Winston & Strawn, LLP),* for the Respondent.
Lisa Demidovich, Esq. (Bush Gottlieb, a Law Group), for the Charging Party.

DECISION

STATEMENT OF THE CASE

LISA D. ROSS, Administrative Law Judge. On May 2, 2018, the International Organizations of Masters, Mates & Pilots, ILA/AFL–CIO (the Charging Party, MM&P, or the Union) filed an unfair labor practice (ULP) charge against Sunrise Operations, LLC (Sunrise or Respondent), a wholly owned subsidiary of The Pasha Group.[1]

On September 18, 2018, the Union filed a second ULP charge against Respondent which was amended on October 2, 2018.[2] On November 14, 2018, the Union filed a third ULP charge against Respondent.[3] On December 28, 2018, Region 20 of the National Labor Relations Board (NLRB) consolidated all three charges and issued a Second Consolidated Complaint and Notice of Hearing (complaint).

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (NLRA or the Act) when it failed/refused to: (1) furnish and/or unreasonably delayed in furnishing necessary and relevant information to the Union; and (2) continue to abide by section 36 of a Memorandum of Understanding (MOU) dated June 16, 1984, which required the parties to meet for arbitration proceedings in Linthicum Heights, Maryland.

Respondent filed its answer and amended answer, denying all material allegations and setting forth multiple affirmative defenses to the complaint.

This case was tried in San Francisco, CA from November 6 through 8, 2019. Counsel for the General Counsel as well as counsels for Charging Party and Respondent presented witness testimony along with documentary evidence. After the trial, counsel timely filed extensive post-hearing briefs.

On December 31, 2019, the General Counsel filed a motion to strike three (3) portions of Respondent's brief. Respondent filed its response on January 7, 2020. After carefully reviewing the motion, Respondent's response together with the record, I grant in part and deny in part the General Counsel's motion.[4]

Based upon the entire record, including the testimony of the witnesses, my observation of their demeanor, and the parties' briefs, I conclude that Respondent violated the Act as alleged.[5]

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent Sunrise is a limited liability company with an office and place of business in Charlotte, North Carolina. Respondent is a wholly owned subsidiary of The Pasha Group (Pasha). Pasha, which provides diversified global logistics and transportation services to automotive, maritime and relocation industries, has an office and place of business in San Rafael, California.[6]

It is undisputed that, at all material times, Respondent's gross revenue exceeded $50,000 by transporting freight between Hawaii and California. Respondent has received goods valued in excess of $5000 from points outside the State of California. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also undisputed, and I find that, at all material times, the International Organizations of Masters, Mates & Pilots has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts[7]

Pasha is the parent company to approximately 40 subsidiaries,

[1] Case No. 20–CA–219534.

[2] Case No. 20–CA–227593.

[3] Case No. 20–CA–230861.

[4] These instances are discussed in more detail below in the appropriate section of the decision.

[5] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh. #" for the General Counsel's exhibits, "CP Exh. #" for Charging Party's exhibits, "R. Exh. #" for Respondent's exhibits, "GC Br." for the General Counsel's brief, "CP Br." for Charging Party's brief, and "R. Br." for Respondent's brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive.

[6] The Pasha Group is not a party to this litigation. It is only referenced in this decision because Pasha is the parent company of Respondent Sunrise Operations.

[7] Although 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. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some,

including Respondent. (Tr. 266–267.)

The Union represents mariners throughout the U.S. and abroad. Specifically, 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. Both Sealand and CSX recognized the Union as the exclusive bargaining representative for its LDOs. (GC Exh. 2.)

It 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.

In 2004, CSX sold its shipping business to Horizon Lines, LLC (Horizon). Horizon also recognized the Union as the exclusive bargaining representative for its LDOs.

Sometime in 2014, Horizon carved out their Hawaii trade lane business—four (4) oceangoing vessels that traveled between California and Hawaii. Horizon's four vessels were named the Horizon Spirit, the Horizon Enterprise, the Horizon Pacific, and the Horizon Reliance. The Union served as the collective-bargaining representative for the LDOs on the Spirit, Enterprise, Pacific and Reliance vessels. By 2015, Horizon sought to sell their Hawaii trade lane business.

It is undisputed that Pasha purchased Horizon's Hawaii trade lane business—or more succinctly, the four vessels: Horizon Spirit, Enterprise, Pacific and Reliance. To purchase the four vessels, Pasha engaged in an elaborate corporate ownership structure to own these vessels.

Specifically, Pasha created a wholly owned subsidiary, SR Holdings, LLC (SR Holdings), which was formed solely to acquire Horizon's four (4) Hawaii vessels and Horizon's liabilities. SR Holdings has no employees. (Tr. 284, 301, see also GC Exh. 3, at 002186.)

Horizon entered into a Contribution, Assumption and Purchase Agreement (CAPA) with Pasha, SR Holdings and Respondent. Under this Agreement, Horizon would transfer the vessels to Respondent. Thereafter, 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. (Tr. 74, GC Exhs. 5–6.)

In March and April 2015, prior to the acquisition, Horizon sent a copy of the CAPA and the Disclosure Schedule to the Union. Tr. 74, GC Exh. 4. The CAPA and the Disclosure Schedule specifically informed SR Holdings and Respondent that Horizon was a party to a CBA with the Union. (GC Exh. 3, at 002213, GC Exh. 4, at 8.)

On April 28, 2015, Horizon informed the Union of the upcoming sale of the Enterprise, Pacific, Reliance and the Spirit to SR Holdings. Horizon also explained to the Union that SR Holdings would purchase the stock of Respondent, and as such, Respondent would be contractually bound to the Union under the CBA as to the LDOs on the four vessels. (GC Exh. 5.)

That same day, SR Holdings also informed the Union of its upcoming acquisition of the vessels. More importantly, SR Holdings told the Union that *Respondent Sunrise* would be honoring the CBA upon closing of the purchase. (GC Exh. 5.) Prior to the sale, Respondent never requested a copy of the CBA from the Union. (Tr. 87, 307.)

On May 26, 2015, approximately 3 days prior to the sale closing, Horizon sent the Union a copy of the Assignment and Assumption Agreement (AAA) it had with Pasha, SR Holdings and Respondent. Tr. 79, GC Exh. 7. The AAA described all of the parties' duties and obligations under the purchase transaction (CAPA) and who would be responsible for honoring the CBA with the Union (which was Respondent). The AAA also included Schedule A—which was supposed to be a copy of the CBA between Horizon and the Union with all 29 Memoranda of Understanding attached.

When the Union reviewed the AAA, it immediately notified Horizon that Schedule A of the AAA was incorrect, because it was missing several MOUs. Tr. 86. Despite this, however, the Union received assurances from Horizon and George Pasha, President of Pasha, that *Respondent* would assume and abide by the CBA. (Tr. 144.)

On May 29, 2015, Horizon transferred the Hawaii trade-lane business to Respondent. (Tr. 279.) It is undisputed that Respondent operates the oceangoing vessels (previously owned by Horizon) transport in California and Honolulu, Hawaii.

It is also undisputed that Respondent retained a majority of the LDOs that were represented by the Union when the vessels were owned by Horizon. Tr. 80, 326. In fact, Respondent admits that it recognized the Union as the collective bargaining representative of the LDOs. (Tr. 541, GC Exh. 1(cc), at 5.)[8]

As such, I find 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. See *Bronx Health Plan*, 326 NLRB 810, 812 (1998), enfd. 203 F.3d 51 (D.C. Cir. 1999) (successorship can be established even if new owner acquires only a portion of predecessor's business so long as new owner acquires the separate appropriate bargaining unit and that unit comprises a majority of the unit in the new operation), see also *NLRB v. Burns Security Services*, 406 U.S. 272, 281–295 (1972)(employer is a successor employer and must recognize/bargain with the union when: (1) there is substantial continuity between the two enterprises, (2) the successor hired a majority of its employees from

but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951)).

[8] Respondent also recognized the Union by: (1) complying with the terms and conditions of the CBA, (2) protecting the wages, pension rights, and other economic benefits of the Union's members for the life of each Hawaii vessel, and (3) processing the Union's grievances. (Tr. 80–81.) At no time during the acquisition or immediately thereafter did Respondent inform employees or the Union that it would be setting its own initial terms and conditions of employment or request to bargain over the MOUs that were not listed in Schedule A. (Tr. 81, 88.)

the predecessor's employees, and (3) the bargaining unit that existed remains appropriate), and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43–54 (1987)).[9]

Returning to the facts of the case, 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. Peterson also informed the masters that another corporation, Crowley Maritime Corporation (Crowley), would provide ship management through its subsidiary, Marine Transport Management, Inc. (MTM). GC Exh. 30.)

At this point, 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. It is further undisputed that Pasha was the parent company to all of these entities. Consequently, 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.

B. The Information Requests

1. September 19, 2017 request

On or about September 19, 2017, the Union requested documents from Respondent as to whether Pasha, Pasha Hawaii and Respondent were a single employer. (Tr. 155, GC Exh. 13.)[10] The 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, see GC Exhs. 3, 7; (2) Horizon previously informed the Union that Pasha and Respondent were parties to the sale, see GC Exh. 5; (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, GC Exh. 30; and (4) Pasha Hawaii advertised on its website the name on the side of each vessel as "Pasha." (Tr. 179, GC Exhs. 14–17.)

Most 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.

As such, the Union requested that Respondent provide the following documents, from September 1, 2014 to present, to include any:

> (i) articles of incorporation or charters for the Pasha Group, Pasha Hawaii Holdings, LLC, and Sunrise;
> (ii) bylaws or other similar corporate governance documentation for the Pasha Group, Pasha Hawaii Holdings, LLC and Sunrise;
> (iii) documents reflecting all of the directors and officers of The Pasha Group and Pasha Hawaii;
> (iv) documents reflecting stockholders holding over 10% of stock in the Pasha Group and Pasha Hawaii;
> (v) documents reflecting the familial relationships between any director, officer of major stockholder of The Pasha Group and Pasha Hawaii;
> (vi) organizational charts of the Pasha Group, Pasha Hawaii Holdings, LLC and Sunrise;
> (vii) documents reflecting the business locations of the Pasha Group, Pasha Hawaii Holdings, LLC and Sunrise;
> (i) invoices reflecting any common customers or vendors of The Pasha Group, Pasha Hawaii and Sunrise;
> (ii) employee handbooks and employee policies for LDOs working on vessels owned, in whole or in part, by The Pasha Group or Pasha Hawaii;
> (iii) documents reflecting the benefits plans offered to LDOs employed or working on vessels owned, in whole or in part, by The Pasha Group or Pasha Hawaii;
> (i) applications or hiring documents for LDOs employed by or working on any vessels owned, in whole or in part, by The Pasha Group or Pasha Hawaii;
> (ii)documents showing loans between or among The Pasha Group, Pasha Hawaii Holdings and Sunrise operations;
> (i) rental or lease agreements between or among The Pasha Group, Pasha Hawaii and Sunrise Operations; documents showing any services, including financial, legal and human resources services, rendered by the Pasha Group or Pasha Hawaii;
> (i) documents showing any financial arrangements for compensation of services for or rendered by The Pasha Group or Pasha Hawaii; and
> (ii) documents showing whether the Pasha Group, Pasha Hawaii Holdings, LLC and Sunrise have an ownership interest in the vessels Enterprise, Pacific, Spirit and Reliance. (GC Exh.

[9] Respondent argues that it is not a successor employer to Horizon. I have addressed that argument in the Discussion and Analysis section set forth below.

[10] Whether Pasha, Pasha Hawaii and Respondent are in fact a single employer is not an issue asserted in the complaint. It is only the Union's belief that formed the basis for its information requests. As such, the single employer issue, and any arguments about the Union's single employer theory, are irrelevant and will not be addressed in this decision.

However, Respondent attached Exhs. A and B to its Brief. These exhibits are correspondence from Region 20 determining whether Respondent, Pasha and Pasha Hawaii are a single employer. Respondent also referred to these exhibits in its Brief at pp. 57, 58 and 59. Although 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. As such, the General Counsel moved to strike Exhibits A and B and Respondent's references to them in its brief.

In response, Respondent urged that I take judicial notice of these letters since they were referenced in the aforementioned pleadings in the case. However, the fact remains that these letters were not actually introduced into the record. Moreover, the single employer issue is irrelevant to this case. In any event, I decline to take after-the-fact judicial notice of Exhs. A and B since these exhibits were never offered as part of the record, nor were they introduced into evidence at trial and are irrelevant to this complaint. Accordingly, I grant the General Counsel's motion to strike as to Exhs. A and B and strike the references to them at the last sentence on p. 57, the first sentence on p. 58 and the second full sentence on p. 59 in Respondent's brief.

13.)[11]

Respondent did not respond to the Union's first request. (Tr. 159.)

For its part, 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. See Case 20–CA–202809.

2. March 2, 2018 request

On March 2, 2018, the Union sent a second request for information which was almost identical to the September 19, 2017 request, except: (1) the March 2 request cited legal cases to support the Union's single employer theory, and (2) the Union removed a request involving the ship management system. (Tr. 158, GC Exh. 18.)

Turner testified that the Union sent Respondent the second request because Respondent had not responded to the Union's September 19 request. Moreover, the Union sought information to support its single employer theory in an upcoming arbitration that would settle the parties' 2017 contract re-opener negotiations. (GC Exh. 18.)

Also, the Union told Respondent that it requested the information in order to determine which entity—Respondent, Pasha or Pasha Hawaii – was obligated to sign the parties' CBA if the parties reached agreement during reopener negotiations. Lastly, 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. (GC Exh. 18, at 2.)

It 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. The Union did not respond to Respondent's offer to confer. (GC Exhs. 19–20.)

Despite this, on March 14 and 23, 2018, the Union received a limited response to its second information request. (Tr. 160–66, GC Exhs. 19–20.) The Union did not receive any documents for request numbers 1–3, 8–10, 13–15 regarding Pasha or Pasha Hawaii. (Tr. 161–164, GC Exh. 19.) The Union also did not receive any documents for request numbers 4–7 and 16–17. (Tr. 162–165, GC Exh. 19.)

3. September 27, 2018 request

On September 27, 2018, the Union sent Respondent a third information request asking for an updated fleet roster. The 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. (Tr. 168, GC Exh. 21.

On October 1, 2018, Washburn was given two versions of the fleet roster. (R. Exh. 3.) However, Washburn did not turn over the roster to the Union at that time. Although Respondent and the Union met with one another on or about October 30, 2018, neither party mentioned the roster. Respondent did not turn over the roster to the Union during this meeting. (Tr. 226–228.)

On or around December 4, 2018, 2 months after receiving the rosters, Washburn realized he never sent the roster to Turner, so on December 4, 2018, Respondent, through counsel, forwarded the roster to the Union. (Tr. 495, GC Exh. 22.)

After receiving and reviewing the roster, Turner emailed Respondent's counsel noting "errors" in the roster. (R. Exh. 3.) It is undisputed that, on December 10, 2018, Respondent, by its counsel, sent Turner a "corrected" fleet roster. (R. Exh. 7.) It is undisputed that Respondent's only explanation for the 2-month delay was that Washburn forgot to send the roster to the Union in October 2018.

4. October 11, 2018 request

On October 11, 2018, the Union sent Respondent a fourth information request inquiring whether Respondent implemented the terms of an August 3, 2018 arbitrator's decision and award. Tr. 171, GC Exhs. 23–24. Turner testified that the Union specifically sought wage arrearage calculations from Respondent. Turner explained that these calculations were relevant to ensure its members had been/were being properly paid in accordance with the arbitrator's award. Id.

For its part, while Washburn admitted at trial that it had already implemented the terms of the arbitration award within approximately a week of the August 3, 2018 decision, it had not communicated this to the Union at the time of the information request. Moreover, Respondent did not respond to the Union's information request until December 4, 2018, approximately 2 months later. (Tr. 176, 524–525, GC Exh. 25.) According to Washburn, in order to fully respond to the Union's request, Respondent's payroll manager had to obtain the necessary contribution information from the Union's benefit plans administrator then perform the calculations for each of the LDOs who worked aboard the Spirit, Reliance, Enterprise and Pacific during the preceding 17 months. Washburn further testified that it took time to generate the report and verify that the LDOs received accurate pay and benefit contributions (Tr. 73, 309, 497–498, 553).

5. November 7, 2018 request

It is undisputed that Union heard rumors that Pasha was constructing two new containership vessels. 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. (GC Exh. 2, at 210, GC Exhs 27–29.)

[11] I note that Respondent did not become a corporate entity until on or about May 25, 2015.

Thus, on November 7, 2018, the Union sent its fifth information request to Respondent asking for the sizing requirements for the LDO's quarters on the two new containerships. (Tr. 175–176, GC Exh. 26.) The Union based its request on Section 5, Subsection 4 – New Construction and Major Reconversion of the Master CBA, which required that the LDOs' quarters be constructed within certain specifications.

When asked why the Union requested information from *Respondent Sunrise* about *Pasha Hawaii's* new containerships (the ships were advertised as being part of Pasha Hawaii, not Respondent), Turner explained that the Union saw Respondent, Pasha and Pasha Hawaii as one employer due to the different corporate entities that the Union was told employed the LDOs. Because 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.

According to Turner, the Union came to believe that its LDO members would work on the new containerships, because: (1) the new containerships had been mentioned at bargaining meetings between the Union and *Respondent Sunrise*, (2) *Pasha Hawaii's* Vice President of Operations previously told the Union that it was the party operating the Spirit, Reliance, Enterprise and Pacific vessels, (3) the four containerships that its LDO members were employed on and the new containerships being built would have *Pasha's* name on the sides of the ships, (4) all of the containerships were listed on *Pasha Hawaii's* website; and (5) all the press releases issued by *Pasha Hawaii* stated that new containerships would be added to its Hawaii trade-lane. (Tr. 176, 179–180, GC Exh. 14–17, 27–30.)

Turner opined that, since the Union represented all of the LDOs on the Spirit, Enterprise, Pacific and Reliance, regardless of what entity owned the vessels, the Union reasonably believed that any containerships being added to the Pasha Hawaii trade-lane would be manned by its LDO members. (Tr. 179, GC Exh. 2, at 210.) Accordingly, Turner testified that, for the aforementioned reasons, the information concerning the LDOs' quarters was relevant and necessary to further the Union's representation of the LDOs.

In any event, on December 10, 2018, the Union received four different answers to approximately 29 of its requests. (Tr. 182, GC Exh. 32). The Union did not receive a response to requests 1–3, 5–20, 23–27 and 29(a)-(c), 29(e)-(h). (Tr. 182–183, GC Exh. 32.)[12]

C. Repudiation of the 1984 MOU Grievance Arbitration Provision

The parties disagree on the location of where all of the parties' arbitration proceedings will be held. Based on the documentary evidence and the credible testimony of Union General Counsel Gabriel Terrasa (Terrasa), I find as follows:

Within the parties' original 1981 CBA, section 36 entitled, "Grievance Procedure and Arbitration" initially stated that all arbitration proceedings would be held in either New York or San Francisco.

However, 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" (1984 MOU) (Tr. 105, GC Exh. 2, at 2–3, 185.)

Terrasa testified that Respondent knew that the parties' arbitration proceedings were to be held at the Union's headquarters in Linthicum Heights, MD because it previously met with the Union for two different arbitrations in Linthicum Heights: one on April 26, 2018, see GC Exh. 9, and the second on July 26, 2018. (Tr. 97, 101–102; GC Exhs. 10-11.)

Terrasa further testified that, at the April 26, 2018 arbitration, Respondent admitted into evidence as a joint exhibit the CBA which included the 1984 MOU. (Tr. 100, GC Exh. 10.) I found Terrasa's testimony credible on this point as record evidence corroborated his testimony. (GC Exhs. 10–11.)

Nevertheless, it is undisputed that, in or around September 14,

[12] Regarding the November 7, 2018 information request, the General Counsel moved to strike portions of the first sentence on page 62 of Respondent's Brief that states, "Despite Sunrise's repeated assurances to the Union that it does not have any technical drawings of the vessels being built by Keppel with the exception of a basic vessel sketch and even after Sunrise produced a letter from Keppel expressly rejecting Sunrise's request to see the blueprint drawings of the new vessels for dissemination to the Union," as well as the third sentence on p. 62 that states, "Given that Sunrise does not have access to the technical vessel drawings, coupled with the fact that Sunrise attempted to gain access to these drawings from the third-party who owned the drawings, there can be no real dispute that Sunrise complied with the Act by responding to only those requests to which it had responsive information." As grounds therefore, the General Counsel contends that there are no facts in evidence that "Sunrise's 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." As such, allowing Respondent's statements to stand would be giving Respondent the ability to introduce facts not in evidence then argue its position therefrom, denying the General Counsel (and the Charging Party Union) due process under Sec. 102.45(b) of the Board's Rules and Regulations. See also *Today's Man*, 263 NLRB 332, 333 (1982). Respondent objected to striking these sentences, citing the Board's decision in *Cintas Corp.,* 353 NLRB 752, 756 (2009), arguing that all of its statements are legal argument which it is entitled to do in its brief.

However, Respondent's reliance on *Cintas* is misplaced. In *Cintas*, the Board refused to strike certain portions of the Union's brief, because the Board found the Union's statements constituted a legal argument since the statements in the Union's brief drew conclusions from certain facts *already in evidence*. Id at 756. However, 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." Thus, 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.

2018, Respondent's counsel informed the Union that the parties' upcoming arbitration should be held in San Francisco, California, not Linthicum Heights, Maryland. Respondent based its argument on Section 36 of the parties' original 1981 CBA. (Tr. 103, GC Exh. 12, at 256.)

To that end, Washburn testified that the 1984 MOU was not included in the AAA from Horizon, and as such, Respondent never agreed to change the arbitration location from New York/San Francisco to Linthicum Heights, MD. (Tr. 547.) According 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, which stated that all arbitrations were to be held in San Francisco (since it involved west coast vessels). (GC Exh. 2, at 1–2, 4, GC Exh. 12, at 256.)

However, I do not find Washburn's testimony credible on this point. Specifically, I note 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. (Tr. 107–108, GC Exh. 2, at 182–189.)[13] 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.

Moreover, Terrasa testified that, immediately prior to the acquisition, he personally told Respondent's General Counsel Amy Jacob (Jacob) about the missing MOUs, and after Respondent acquired Horizon's Hawaii trade lane business, Terrasa gave a copy of the complete CBA with all of the MOUs to Respondent during the parties' reopener negotiations on July 11, 2017. (Tr. 89.) Respondent never objected to any of the provisions in the CBA during these negotiations.

Lastly, as stated earlier in this decision, Washburn himself asked for and the Union gave him a copy of the complete CBA with all of the MOUs (including the June 1984 MOU) on September 1, 2017. (Tr. 542–544, GC Exh. 8.)

Accordingly, I find that the location of arbitration proceedings was/is governed by the parties' 1984 MOU. I also find that Respondent was given a copy of the 1984 MOU prior to September 2018. While Respondent may not have signed the 1984 MOU, I conclude 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.

Therefore, according to the parties 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.

Discussion and Analysis

After reviewing all of the evidence, I conclude that:

I. 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

A. Legal Standard

Each party to a bargaining relationship is required to bargain in good faith. See Section 8(a)(5) of the Act. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. *American Standard*, 203 NLRB 1132 (1973).

The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Thus, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a *per se* violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed "so intrinsic to the core of the employer-employee relationship" to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000).

However, when the requested information does not concern subjects directly pertaining to the bargaining unit, such material is not presumptively relevant. Under those circumstances, the burden is upon the union to demonstrate the relevance of the material sought. *Disneyland Park,* supra, at 1257; *Richmond Health Care*, 332 NLRB 1304, 1305 fn. 1 (2000). To show relevance, the union must demonstrate that it had "a reasonable belief supported by objective evidence for requesting the information." *G4S Secure Solutions (USA),* 369 NLRB No. 7, at 2 (2020); see also, *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994).

Suspicion alone is not enough, and an articulation of general relevance is insufficient. *G4S Secure Solutions*, supra (citations omitted). "Whether a union has gone beyond 'mere suspicion' to show relevance is a factual question to be decided on a case-by-case basis." Id., see also *Postal Service*, 310 NLRB 701, 702

[13] Washburn was articulate, open and very descriptive in his answers to questions posed by Respondent's counsel, but on cross examination by counsel for the General Counsel, and especially with counsel for the Union, his answers were short, direct, extremely vague, one-to-two-word answers. I also note 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 Washburn.

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.

(1993). Rather, the Union must demonstrate an objective factual basis for believing the requested information is relevant, unless the relevance of the information should have been apparent to the employer under the circumstances. *Disneyland Park*, supra at 1258. A "liberal, discovery-type standard" to determine relevance is used, and the Union's burden to establish the relevance of their information requests is "not exceptionally heavy." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011).

B. Analysis

1. September 19, 2017 and March 2, 2018 requests

Complaint paragraphs 8(a)-(e) allege that Respondent failed/refused to furnish and/or unreasonably delayed in furnishing information to the Union as to requests 3–7, 11–15 or failed to furnish information regarding Pasha and Pasha Hawaii as to request 1–2, and 8–10.

Requests 3-7 and 11-15 ask for documents that, on their face, do not directly concern subjects pertaining to the bargaining unit. Thus, the Union must establish relevance. However, I conclude the Union has satisfied its burden of relevance.

Specifically, 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. Subsequently, 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. Then, 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.

Thus, I find 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. Accordingly, I conclude 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. 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 Section 8(a)(5) and (1) of the Act.

Similarly, Requests 1, 2, and 8–10 sought information concerning the ownership/corporate relationship between Respondent, Pasha and Pasha Hawaii. Again, 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. The 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. Respondent's failure to provide these documents as to it, Pasha and Pasha Hawaii violated the Act as alleged.

Respondent claims, as its affirmative defense, that the September 19, 2017 and March 2, 2018 information requests are untimely because they fall outside of the 10(b) period. GC Exh. 1(cc) at 12. Section 10(b) of the Act prohibits the Board from issuing a complaint based on allegations that did not occur within 6 months of the filing of the ULP charge. 29 U.S.C. §160.

The record reveals that the Union filed its first ULP charge (regarding the September 19, 2017 and the March 2, 2018 requests) on May 2, 2018. GC Exh. 1(a). The 6-month period for issuing a complaint on this charge began on December 2, 2017. However, the 10(b) period does not start when the Union first issued its information request. Rather, it began to run when the Union received actual or constructive notice of the unlawful conduct that constitutes the alleged unfair labor practice. See *Vanguard Fire & Security Systems*, 345 NLRB 1016, 1016 (2005), enfd. 468 F.3d 952 (6th Cir. 2006); *Allied Production Workers Local 12*, 337 NLRB 16, 18 (2001) (finding that the 6-month period provided by Section 10(b) begins to run only when a party has "clear and unequivocal notice" of the unfair labor practice). The burden of showing such clear and unequivocal notice is on the party raising 10(b) as an affirmative defense – or in this case Respondent. See *Dedicated Services*, 352 NLRB 753, 759 (2008); *A & L Underground*, 302 NLRB 467, 469 (1991).

Even assuming, *arguendo*, that the Union had "clear and unequivocal notice" that Respondent did not intend to respond to its September 19, 2017 request, Respondent cannot show that the March 2, 2018 information request, which is practically identical to the September 19, 2017 information request, was untimely. In fact, 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. Respondent's untimeliness argument has no merit.

Respondent also argues that it was prohibited from timely turning over the documents responsive to the September 2017/March 2, 2018 requests since it was defending an ULP charge filed by the Union alleging that Respondent, Pasha and Pasha Hawaii were acting as a single employer. Thus, turning over the documents, Respondent contends, would be tantamount of unlawful pretrial discovery. See *Offshore Mariners United*, 338 NLRB 745, 746 (2002); and *David R. Webb Co*., 311 NLRB 1135 (1993) (no pretrial discovery of documents allowed in Board proceedings).

However, the Board has rejected Respondent's argument on this point. See *National Broadcasting Company, Inc.* 352 NLRB 90, 101 (2008) citing *Dodger Theatricals Holdings, Inc.*, 347 NLRB 953, 967 (2006) (Board found information requested by the union relevant to employer single employer status and ordered it to be turned over to union without being considered pretrial discovery – the fact that the union filed its arbitration request regarding single employer status, and the case had been scheduled for arbitration did not "change the nature and relevancy of the union's information request."), see also *Kellogg's Snack*, 344 NLRB 756, 760 (2005) (ALJ, affirmed by Board, required information to be turned over, even though some of the same information was subpoenaed by union in an arbitration proceeding). As 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.

2. September 27, 2018 request

Complaint paragraph 9(a) alleges that Respondent unreasonably delayed in furnishing the Union with an updated fleet roster showing which LDOs were permanently assigned to positions on the Spirit, Reliance, Enterprise and Pacific and how many available positions there were on the four vessels operated by Respondent. I find that the Union's request for the aforementioned roster was directly relevant to its representation of the LDOs since the parties' CBA specifically entitled the Union to this information. See GC Exhs. 2, 21, see also *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997) (documents concerns bargaining unit employees and their terms and conditions of employment is presumptively relevant and must be timely furnished to the Union).

Respondent ultimately furnished this information albeit delayed by 2 months. However, the Board has held that a 2-month delay in furnishing relevant information violates Section 8(a)(5) of the Act. See *Overnight Transportation Co.*, 330 NLRB 1275 (2000) (an employer is required to furnish relevant information requested by the Union in a timely fashion); see also *Postal Service,* 310 NLRB 530, 536 (1993) (2-month delay excessive); *Postal Service,* 308 NLRB 547, 550 (1992) (5-week delay excessive).

Further, Respondent's reason for the 2-month delay, Washburn forgot to turn the document over, failed to justify the delay. See *Postal Service,* 359 NLRB 56, 58 (2012) (1-month delay absent evidence justifying delay unreasonable); *Postal Service,* 308 NLRB 547, 551 (1992) (4-week delay unreasonable); *International Credit Service,* 240 NLRB 715, 718–719 (1979), enfd. in relevant part 651 F.2d 1172 (6th Cir. 1981) (6-week delay unreasonable); *Monmouth Care Center,* 354 NLRB 11, 52 (2009), enfd. 672 F.3d 1085 (D.C. Cir. 2012) (6-week delay unreasonable).

Thus, I conclude that Respondent violated the Act regarding the Union's September 27, 2018 request.

3. October 11, 2018 request

The General Counsel contends in Complaint paragraph 9(c) that Respondent unreasonably delayed in providing the Union with documents confirming that it implemented an August 3, 2018 arbitrator's award. The Union's request for this information is directly relevant to its representation of the LDOs since the information sought would assure the Union that Respondent properly calculated and implemented wage arrearages owed to the LDOs. *Disneyland Park*, supra, *Sands Hotel & Casino*, supra.

Again, Respondent's 2-month delay in furnishing this information violates the Act unless there is evidence justifying the delay.

Here, 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. Moreover, 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 2 months in providing the Union with the requested information and its reasons for the delay.

Nevertheless, the Board has rejected these types of delayed justifications. See *E.I. Du Pont De Nemours & Co.*, 366 NLRB No. 178 (2018) (employer's 7-month delay in providing information violated the Act, because: (1) the employer failed to provide any explanation or argument justifying the delay, (2) when the employer proffered an after-the-fact explanation for the delay, the Board found no evidence to support the explanation, and (3) the employer "never once" requested an extension of time or to narrow the scope of the request).

Accordingly, I conclude Respondent violated the Act as to the Union's October 11, 2018 request.

4. November 7, 2018 request

Lastly, complaint paragraph 9(b) alleges that Respondent failed to furnish information about the sizing requirements for the LDO's quarters on two new containerships that the Union believed its LDO members would operate. I find the Union's request for this information from Respondent directly relevant as a term/condition of employment, because the parties' CBA entitled the Union to this information. See GC Exh. 26.

Respondent contends that the information requested by the Union is irrelevant, and thus not required to be furnished, because the new containerships were being built and operated by *Pasha Hawaii* not *Respondent*. However, I find that the Union had a reasonable belief based on objective factual evidence for seeking these documents from Pasha Hawaii.

Specifically, 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. As such, 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.

Therefore, 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. 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.

C. Respondent's Affirmative Defenses to Furnishing the

Requested Information

In 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.

Respondent first contends that it is not a successor employer to Horizon since it only acquired 30 percent of Horizon's assets. However, 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. See Findings of Facts, at 4–5, supra.

Next, Respondent, for the first time in this case, challenges the appropriateness of the LDOs as a bargaining unit. Specifically, Respondent claims that the LDOs are supervisors under Section 2(11) of the Act. In fact, both parties dedicate a large portion of their briefs to addressing this issue. See R. Br. at 32–54; see also Tr. 516, R. Exhs. 1, 5; GC Br. at 9–11.

Specifically, Respondent argues all LDOs—the master, chief/first, second and third mate officers—are supervisors within Section 2(11). While it appears that the General Counsel concedes that the master mate officer is a supervisor, counsel for the General Counsel nevertheless contends that the second and third mate officers are employees, not supervisors under Section 2(11). Both parties cite to various Board precedent to support their respective positions.

Individuals 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." 29 U.S.C. Sec. 152, see also *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001) citing *NLRB v. Health Care & Retirement Corp. of America,* 511 U.S. 571, 573–574 (1994). In this case, Respondent carries the burden of proving supervisory status. See *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003).

Even if I conclude that the master mate officer is a supervisor under the Act (since s/he, inter alia, recommends/issues discipline, hires/fires LDOs, can transfer/lay off/suspend, promote LDOs, schedule/recall/rehire/assign work to/grant time off and respond to leave requests LDOs), I find, and the record clearly establishes, 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. (Tr. 348–351, 400–402.)

Respondent argues that second and third mate officers are supervisors when they serve as Officers of the Watch (OWW). However, the Board, in *Chevron Shipping Co.*, 317 NLRB 379, 380 (1995), determined that LDOs are not supervisors when serving as OWWs. Specifically, the Board found that while OWWs are

> responsible for directing the unlicensed employees, assigning tasks, and ensuring the safety of the ship and its cargo…their use of independent judgment and discretion is circumscribed by the master's standing orders, and the Operating Regulations, which require the watch officer to contact a superior officer when anything unusual occurs or problems occur.

Id at 381. As such, I conclude 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." Id.

Respondent also asserts that second and third mate LDOs are supervisors because they can evaluate whether an unlicensed officer is competent to stand watch and discipline them accordingly. However, Respondent failed to proffer any examples in the record that *their* second and third mate LDOs perform these functions. Moreover, 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." *Chevron Shipping Co.* supra at 381.

Moreover, Respondent's own disciplinary records show that only the Master, Chief Mate and Chief Engineer ever issued letters of warnings to officers. (GC Exh. 33.) While Respondent offered an instance where a Master fired a Chief Mate, the record reveals that the Master consulted with his superiors before issuing discipline. (Tr. 519.)

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 supervision. R. Exh. 5, at SO_001488 and SO_001522. Neither of these job duties are listed under the second and third mates' job responsibilities. R. Exh. 5, at SO_001523 – SO_001528.

Respondent also solicited testimony describing a myriad of job functions that, it contends, require a LDO to demonstrate independent supervisory judgment (i.e., situations where the OWW enters or leaves port, what to do when the vessel is in heavy traffic, navigating the vessel in inclement weather, how to handle an actual/potential threat to the vessel's safety, coordinating abandon ship drills, lifeboat inspections, processes for typing up vessels).

However, 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. See Tr. 342, 347, 395–396, 398, R. Exh. 5, at SO_001350, SO_001596, and SO_001652, see also *In re Oakwood Healthcare, Inc.* 348 NLRB 686, 693 (2006)(a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement"), *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)) ("[T]he exercise of some supervisory authority in a merely routine, clerical, perfunctory, or

sporadic manner does not confer supervisory status.").[14]

Respondent also offered Washburn's testimony as to his knowledge as to whether Respondent's LDOs are supervisors. Tr. 516. However, 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. Simply put, Respondent has failed to show that its LDOs are supervisors under the Act.

Accordingly, I find 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. As a result, I conclude 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.

Lastly, Respondent argues that the Board lacks jurisdiction in this matter because the Union was never certified as a Section 9(a) representative for the LDOs. However, as counsel for the General Counsel argues in her brief, Section 9(a) certification through the Board is not the only way the Union can become the exclusive bargaining representative of a bargaining unit. See *Barrington Plaza & Tragniew, Inc.*, 185 NLRB 962, 963 (1970), enfd. in part 470 F.2d 669 (9th Cir. 1972)(Board noted that the requisite proof of majority status need not take the form of a Board certification or card showing. [T]he existence of a prior contract…raises a dual presumption…that the union was the majority representative at the time the contract was executed, and a presumption that its majority continued at least through the life of the contract. Such a presumption applies…even in a successorship situation).

In this case, the evidence overwhelmingly demonstrates that the Union was the exclusive bargaining representative for the LDOs. Specifically, 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.

More importantly, 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. Rather, I agree with counsel for the General Counsel 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." See GC Br. at 26. Accordingly, I find Respondent's argument on this point is without merit and that the Board has jurisdiction over this matter.

II. RESPONDENT VIOLATED SECTION 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

A. Legal Standard

Section 8(a)(5) and 8(d) of the Act defines the obligation of employers to bargain collectively as the "obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." The obligation to bargain in good faith also extends to bargaining over the location of where the parties will meet and confer.

B. Analysis

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.

The 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.

In fact, 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. In fact, Respondent attended *two* prior arbitrations at the Union's headquarters in Linthicum Heights, MD and never objected to the venue at that time. Furthermore, Respondent complied with the terms of the 1984 MOU when it implemented certain pay and benefits protocols within the 1984 MOU.

The fact is, Respondent does not get to pick and choose which provisions of the MOU it favors while disfavoring other

[14] In an effort to prove that Respondent's LDOs are supervisors, Respondent's brief at footnote 10 states, "The autopilot feature in no way diminishes the Officer of the Watch's supervision of the helmsman, as the Officer of the Watch must still instruct the helmsman on which course to take." R. Br. at 23–24, fn. 10. Respondent also referenced a link to a newspaper article involving a separate containership which has no relation to this case and was not introduced in evidence. Id.

The General Counsel moved to strike the aforementioned language and the link in footnote 10 since neither the statement nor the link are factual assertions that were introduced into evidence at trial.

Respondent objected to striking the language and the link to the newspaper article on the grounds that: (1) the statement was a summary of witness' testimony, (2) I should construe the statement as its argument, not a factual assertion, and (3) I should take judicial notice of the link to the newspaper article. While I will construe Respondent's statement as its argument summarizing other witness' testimony in the record about the autopilot feature (which purportedly goes to bolter Respondent's argument that the LDOs are supervisors), I agree with the General Counsel that the link referencing another containership is irrelevant to the matters in this case. Moreover, the link to the newspaper article was never introduced into the record at trial.

Accordingly, I will treat Respondent's sentence in footnote 10 at page 24, beginning "The autopilot feature" and ending "on which course to take" as its argument. The General Counsel's motion to strike is denied on this point. However, the link to the newspaper article and the article itself is struck.

provisions it dislikes. 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.

Conclusions of Law

1. Respondent Sunrise Operations, LLC, a wholly owned subsidiary of the Pasha Group, is an employer within the meaning of Sections 2(2), (6) and (7) of the Act.

2. By 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.

3. 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.

4. The unfair labor practices committed by Respondent affect commerce within the meaning of Sections 2(6) and (7) of the Act.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent failed/refused to provide and/or unreasonably delayed in furnishing necessary and relevant information to the Union, Respondent shall be required to provide this information, as specified in the proposed Order below.

Since Respondent has not clearly delineated and, by its corporate ownership structure, has confused the Union as to whether Respondent, Pasha Group and/or Pasha Hawaii operates as the employer to the Union's LDO members, Respondent shall post a notice at its offices and places of business in Charlotte, NC and San Rafael, CA.

Respondent is also ordered forthwith to meet and confer/bargain in good faith with the Union, as the exclusive representative of the employees in the appropriate unit concerning all terms and conditions of employment, at arbitration proceedings at the Union's headquarters in Linthicum Heights, MD.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

Respondent Sunrise Operations, LLC, a wholly owned subsidiary of the Pasha Group, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing/refusing to and/or unreasonably delaying in furnishing necessary and relevant requested information made by the Union in order for the Union to perform its duties as the exclusive collective-bargaining representative of the following unit of employees:

(b) 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.

(c) Failing/refusing to meet and confer with the Union for arbitration proceedings at the Union's headquarters in Linthicum Heights, MD in accordance with section 36 of the parties' 1984 MOU to the master collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with a copy of all documents responsive to its September 19, 2017 and March 2, 2018 requests 3–7, 11–15 and documents responsive to requests 1–2 and 8–10 as to Pasha and Pasha Hawaii.

(b) Provide the Union with a copy of all documents responsive to its November 7, 2018 requests which asked for the sizing requirements for the LDO's quarters on two new containerships that were being built and/or operated by Respondent, Pasha Group and/or Pasha Hawaii.

(c) Continue to meet and confer with the Union for arbitration proceedings at the Union's headquarters in Linthicum Heights, MD as set forth in section 36 of the parties' 1984 MOU to their master collective-bargaining agreement unless otherwise agreed to by the parties.

(d) Within 14 days after service by the Region, post at its Charlotte, North Carolina and San Rafael, California, places of business copies of the attached notice marked "Appendix"[16] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the businesses involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since May 2, 2018.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. May 11, 2020

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail/refuse to furnish or unreasonably delay in furnishing the Union with relevant information it requests in order to perform its duties as the exclusive collective-bargaining representative of the following unit of employees:

> 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.

WE WILL NOT fail/refuse to meet and confer with the Union for arbitration proceedings at the Union's headquarters in Linthicum Heights, MD as set forth in section 36 of the parties' 1984 MOU to their master collective-bargaining agreement unless otherwise agreed to by the parties.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL provide the following requested information to the Union forthwith:

(a) all documents responsive to its September 19, 2017 and March 2, 2018 requests 3–7, 11–15 and documents responsive to requests 1–2 and 8–10 as to Pasha and Pasha Hawaii.

(b) Provide the Union with a copy of all documents responsive to its November 7, 2018 requests which asked for the sizing requirements for the LDO's quarters on two new containerships that were being built and/or operated by Respondent, Pasha Group and/or Pasha Hawaii.

(c) WE WILL continue to meet and confer with the Union for all arbitration proceedings at the Union's headquarters in Linthicum Heights, MD as set forth in Section 36 of the parties' 1984 MOU to their master CBA.

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

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-219534 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.