DEcision and Direction of Election

International Longshoremen’s Association, Local 1359-1860, AFL-CIO (the Petitioner) filed a representation petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a bargaining unit of “all shipside employees in [the] stevedoring department” employed by Tropical Shipping USA, LLC (the Employer) at its Port of Palm Beach, Florida facility. There are approximately 63 employees in six job classifications comprising the petitioned-for unit. The Employer contends that the petitioned-for unit is not appropriate and that the only appropriate unit is a larger unit of all employees employed at the Port of Palm Beach, including all stevedoring, interchange, auto/flat rack receiving, TL-rail yard, port maintenance, container/chassis maintenance, and refrigeration (reefer) maintenance department employees. There are approximately 132 employees in approximately 24 job classifications in the unit proposed by the Employer.

A hearing officer of the Board held a hearing in this matter by videoconference. Both parties submitted post-hearing briefs, which I have carefully considered.

Based on a community of interest analysis under extant Board law, and for the reasons fully described below, I am directing an election in a bargaining unit of all full-time and regular part-time stevedoring department employees, interchange department employees, auto/flat rack receiving department employees, and TL-rail yard department employees employed by the Employer at its Port of Palm Beach, Florida facility; excluding all port maintenance department employees, chassis/container maintenance department employees, refrigeration (reefer) maintenance department employees, guards, and supervisors as defined in the Act. There are approximately 82 employees in the unit found appropriate.1

1 I have administratively determined that the Petitioner has an adequate showing of interest in the unit found appropriate.
I. FACTS

A. Overview of the Employer’s Operations

The Employer is a logistics and shipping company that provides cargo and container shipping services in the U.S., Canada, the Bahamas, and the Caribbean. At the Port of Palm Beach the Employer receives and ships cargo over sea, by land, and by rail.

Since 1963, the Employer has leased 60 acres at the port. The Employer’s property abuts the Atlantic Ocean to the east and a public highway to the west. Another highway, U.S. 1, cuts through the property from north to south as an overpass. The main gate to the Employer’s premises is in the northwest corner of the property. Trucks enter the Employer’s facility at a second gate located between the main gate and the U.S. 1 overpass, called the Tropical interchange gate. Directly to the east of the Tropical interchange gate is the interchange area, where employees in the interchange department “in-gate” incoming cargo, which means to inspect it, collect relevant documentation, and input information about the cargo into the Employer’s terminal operating system, called NAVIS N-4. Cargo also crosses the port’s land boundary by rail via the Florida East Coast Railway. That cargo is taken off railcars and in-gated in the rail receiving/loading area to the east of the U.S. 1 overpass.

To the north and northeast of the interchange and rail areas, containers are stored at Employer’s refrigerated container terminal and its container (dry container) terminal. The container terminal is located in the center of a peninsula, which is bounded by the seawall. Ships berth along the seawall, where stevedore department employees load and unload cargo. Fifty feet from the water’s edge, a line running down the pier demarcates the “swing zone” for cranes used to load and unload vessels. The swing zone is the area where stevedores bring containers to be loaded onto vessels, and retrieve containers that have been unloaded from vessels.

Directly south of the main gate is the refrigerated container pre-trip and maintenance area, where maintenance work is performed on refrigerated containers (also called reefers). To the northeast of the main gate, and next to the container/chassis repair office and shop, are the damaged container storage and chassis storage areas. There is another chassis storage area in the southwest corner of the property.

Abutting the chassis storage area in the southwest corner is the auto receiving area. To the north of the auto receiving area is the flat rack receiving area and office trailer. In those two work areas, employees in the auto/flat rack receiving department perform preliminary work

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2 The parties stipulated, and I find, that the Employer, Tropical Shipping USA, LLC, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board; the Employer, a Florida limited liability company with an office and place of business located in Riviera Beach, Florida, is engaged in the business of freight transportation; and during the past 12 months, in conducting its business operations described above, the Employer purchased and received at its Riviera Beach facility, goods valued in excess of $50,000 directly from points located outside the State of Florida. The parties further stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

necessary to shipping automobiles and out-of-gauge cargo, such as lumber or large machinery. That work includes processing certain paperwork and storing (or “stuffing”) the cargo into dry containers or storing it on flat racks.

B. Departmental Organization and Supervision

The petitioned-for unit is coextensive with the Employer’s stevedoring department, which is also a separate cost center. The 63 stevedoring department employees are in six job classifications. There are 4 signal persons, 9 shipside inspectors, 10 stevedores I, 3 stevedores II, 26 senior stevedores, and 11 lead stevedores.

The Employer’s proposed unit is coextensive with two broader organizational groups at the port which report to Tim DiPietropolo, Vice President Operations, Non-Vessel Operating Common Carriers, and Global Logistics. The two groups are US Terminal Operations and Fleet Maintenance. Claude Clevinger is the Director of US Terminal Operations, which includes the aforementioned 63 stevedoring department employees and a total of 19 employees in the following three additional departments and job classifications:

- The interchange department, including 1 freight coordinator, 1 interchange rail planner, 2 interchange checkers, and 6 PPB operations checkers, a total of 10 employees.
- The auto/flat rack receiving department, including 1 freight coordinator and 3 cargo inspectors, a total of 4 employees.
- The TL-rail yard department, including 1 freight coordinator, 2 senior cargo inspectors, and 2 cargo inspectors, a total of 5 employees.

Kevin Blake is the Director of Fleet Maintenance, which includes a total of 50 employees in the following three departments and job classifications.

- The refrigeration maintenance department, including 3 lead reefer mechanics, 2 equipment operators/jockey drivers, 1 lead electrician technician, 6 reefer mechanics, 1 equipment support specialist, 2 reefer monitors, and 1 utility person, a total of 16 employees.
- The container and chassis maintenance department, including 2 lead container repair persons, 1 stevedore II, 5 chassis repair persons, 10 container repair persons, 1 lead tire mechanic, 1 commercial truck tire mechanic, 2 OTR tire technicians, 1 maintenance coordinator, and 1 maintenance trainee, a total of 43 employees.

4 The Employer also has marine operations and purchasing departments at the port, but does not contend that the employees in those departments should be included in the unit.
5 PPB stands for Port of Palm Beach.
6 Although Hector Acevedo-Peña has the same job title as the stevedore IIs in the stevedoring department, he works in the container and chassis department, and is supervised by the manager of that department, Todd Welsh. Acevedo-Peña operates a reach stacker to move recently repaired containers into a ready area. Stevedoring department employees use the repaired containers to move cargo throughout the port.
24 employees.

- The port maintenance department, including 2 lead fabricator welders, 2 lead heavy equipment mechanics, 4 heavy equipment mechanics, 1 equipment support specialist, and 1 operations maintenance expeditor, a total of 10 employees.

According to the Employer’s organizational chart, each of the above-listed departments has a single supervisor and line of reporting, except for the stevedoring department. There are five supervisors in the stevedoring department. Stevedoring supervisors Hiran Rosado, Rob Ackley, and Daniel Gonzalez report to Yard Manager Merrilee Gorman and oversee 42 employees who primarily load and unload vessels.7 Stevedoring supervisors Paul Wall and Rich Slater report to Yard Manager Ed Shoemaker, and oversee 21 employees who are primarily responsible for moving cargo throughout the port. Also reporting to Shoemaker is interchange supervisor Grace Judge, who supervises the interchange department employees.

Stevedoring department employees begin each shift with a “huddle” meeting led by a supervisor within the department to discuss safety issues, scheduling, etc. Since the Employer has implemented the NAVIS N-4 terminal operating system, specific work tasks are generally not discussed during a huddle. Rather, stevedoring department employees are assigned specific work tasks through the terminal operating system and receive those assignments on a tablet. In the general course of operations, those assignments are triggered by an automated workflow based on a previously-devised work plan and real-time inputs made by non-supervisory employees. Thus, supervisors’ involvement in work assignments is limited. Stevedoring supervisors are primarily responsible for scheduling, ensuring coverage in the case of absences, and safety.

Employees’ immediate supervisors have authority to issue discipline and to participate in the evaluation of performance of their direct reports, but do not have authority to discipline or evaluate the performance of employees who are not their direct reports.

The Employer contends that employees are expected to take direction from supervisors from any department, but there is scant record evidence that this occurs. In one instance a stevedoring department employee offloaded containers in the interchange area. However, that process is mainly driven by the terminal operating system’s workflow.8

C. Job Functions, Skills and Training

The function of all employees in the petitioned-for unit is to move cargo to various locations within the port. Most stevedoring department employees work in five-person shipside crews, consisting of a signal person, a shipside inspector, two senior stevedores operating straddle carriers, and a lead stevedore operating a crane. Those crews work as a unit to load and unload vessels in the shipside area (the aforementioned swing zone) and they generally remain

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7 Some Lead Stevedores in this group report directly to Yard Manager Gorman.
8 On another occasion a reefer technician asked a stevedore to move a container, but that did not involve a supervisor.
intact over time. However, approximately 21 stevedoring department employees under Yard Manager Shoemaker and the two stevedoring supervisors who report to Shoemaker do not work shipside and are instead assigned to other areas within the port.

The six classifications in the petitioned-for unit, ranked in order of increasingly demanding qualifications, are signal person, shipside inspector, stevedore I, stevedore II, senior stevedore, and lead stevedore. Each classification generally requires all the skills of the lower-ranked classifications. Many of the requisite skills pertain to the ability to operate various freight handling equipment, including a forklift, jockey truck, reach stacker, straddle carrier, and crane.

The entry-level job classification within the stevedoring department is signal person. The job requires a high school diploma, six months’ experience in the field, a valid driver’s license and certain physical capacities. The signal person is the only job classification in the stevedoring department that does not utilize a NAVIS N4 tablet. The signal persons provide on-the-ground guidance, using hand signals, so that the lead stevedores can safely operate cranes to load containers aboard vessels and unload containers from vessels. The signal persons ensure that the correct containers are loaded into the correct positions, check containers for damage, and sweep out containers in the shipside area. All signal persons are assigned to the shipside area.

The shipside inspectors work together with signal persons and lead stevedores to ensure the correct containers and cargo are properly placed on vessels. The shipside inspectors are responsible for inspecting containers that are loaded and unloaded on and off vessels to ensure that containers are properly sealed and free of damage. The shipside inspectors use the NAVIS N-4 terminal operating system to input information and document the movement of cargo and equipment throughout the port, including on and off vessels. A shipside inspector must hold a valid Commercial Driver’s License and be certified to operate a forklift.

The cargo inspectors in the auto/flat rack receiving department, interchange checkers and PPB operations checkers in the interchange department, and cargo inspectors and senior cargo inspectors in the T-L rail yard department (a total of approximately 15 employees of the 19 employees in terminal operations departments other than stevedoring) have similar cargo checking and receiving duties to the duties of shipside inspectors in the stevedoring department. The PPB operations checkers are uniquely required to have a certification in rigging. Only the interchange checkers and interchange rail planners working out-gate must obtain a security certification.

Stevedores I move cargo and equipment throughout the port using a jockey truck. A jockey truck is a single-axle tractor used to move containers that are placed on a chassis. They transport loaded racks from the auto/flat rack receiving area and stage them shipside to be loaded onto a vessel. They also transport dry and reefer containers to the appropriate maintenance areas, and transport loaded containers to be examined by customs. A stevedore I must possess a full year of experience in the field and be certified to operate a jockey truck. Employees in certain other job classifications operate jockey trucks, including equipment operators/jockey drivers in the reefer maintenance department.

Stevedores II load and unload containers from rail equipment using reach stackers, and transport containers and out-of-gauge cargo to facilitate cargo movement throughout the port.
Thus, stevedores I and II move cargo and containers to and from areas of the operation other than shipside, including other operations areas and maintenance areas. A stevedore II must possess two years of experience in the field and be certified to operate a reach stacker. A reach stacker resembles an oversized forklift and is used to store and retrieve containers, which are stored in stacks that are up to four containers high.

The two equipment operators/jockey drivers in the refrigeration maintenance department and the sole stevedore II in the container/chassis maintenance department also operate reach stackers, but their work is limited to their respective maintenance areas, unlike the stevedores II in the stevedoring department.

Senior stevedores stage containers at various locations using a straddle carrier, including the rail area, the interchange area, and the reefer and dry container terminals. A senior stevedore assigned to a shipside crew works in conjunction with the lead stevedore to stage containers to be loaded and unloaded on and off vessels. A senior stevedore must have three years of experience operating a jockey truck and reach stacker, one year in the stevedoring department, and be certified to operate a straddle carrier. A straddle carrier (or “strad”) is a machine that straddles over the top of a container and truck. Because a straddle carrier can lift a container over two other containers, it can stack up to three containers high. Operating a straddle carrier requires the ability to climb and descend heights up to one hundred feet several times daily. Senior stevedores are the sole job classification that regularly operates straddle carriers. Heavy equipment mechanics are authorized to operate straddle carriers, but only for the limited purpose of maintaining them.

Lead stevedores function as the leaders of their respective shipside crews. With the assistance of the crew, a lead stevedore operates a crane to load and unload cargo on and off vessels. All lead stevedores are assigned to the shipside area. A lead stevedore must have three years of experience operating a jockey truck, reach stacker, and straddle carrier, three years in the stevedoring department, and be certified to operate a crane. Cranes are used to load and off-load cargo on and off vessels. No other job classification regularly operates the cranes, although heavy equipment mechanics are authorized to do so for the limited purpose of maintaining the equipment.

Employees in the fleet maintenance group departments (reefer maintenance, container and chassis maintenance, and port maintenance) are required to possess technical skills that are specific to their duties. For example, the refrigeration mechanics must be certified in electrical or refrigeration work, and diesel mechanics must possess a Class A license with hazardous endorsements. The container repair persons must pass a welding test and have experience with ironwork, brake presses, hydraulic sheet metal sheers, and various power tools. Heavy equipment mechanics must have three years of experience in heavy equipment repair, maintenance, and operation, supply their own hand tools, and be able to travel to domestic and international destinations.

Regardless of job classification, the Employer offers training and certification opportunities that allow employees to advance to more highly qualified classifications. The Employer offers both in-house training and training through a third party.
D. Level of functional integration and frequency of contact

The Employer’s overall purpose is to offer one-stop “total supply chain logistic solutions” that allow its clients to source cargo from anywhere in the world. The Employer’s operations at the port serves that purpose by receiving cargo from points of entry within its premises at the port, either by truck or rail, and transporting that cargo to docked vessels, and vice versa. Two groups of employees are essential to accomplishing that goal: the terminal operations group, which is charged with moving cargo and equipment from point to point throughout the port, and the fleet maintenance group, which is charged with maintaining and repairing the equipment used by terminal operations. The terminal operations group is highly functionally integrated within itself and, to a lesser extent, with the fleet maintenance group.

The path that cargo takes through the port demonstrates the level of functional integration within the terminal operations group. Containers arriving by truck enter the port at the main gate and first comes into contact with the Employer’s interchange department. There, interchange checkers inspect the cargo, enter information pertaining to the cargo into the terminal operations system, process various paperwork, and perform other related tasks to in-gate the cargo. The terminal operating system is the primary generator of work orders; it communicates instructions to the terminal operations employee who comes next in the chain of custody of the cargo.

Once a container has been taken into the Employer’s custody, the stevedoring department is responsible for moving it throughout the port. In the case of a regular dry container, a stevedoring department employee would move the container from the interchange gate to the dry container terminal, where it would await its vessel.

If the cargo being shipped is a vehicle, a cargo inspector performs the intake tasks before a freight coordinator in the auto/flat rack receiving department assumes the responsibility of processing the vehicle’s paperwork through U.S. Customs. Once Customs has cleared the vehicle, the freight coordinator loads the vehicle into a container and the cargo inspector seals the container. Then, a stevedore II operating a reach stacker moves it into position so that a senior stevedore operating a straddle carrier can store the container in the dry container terminal. The sealed container remains there until its vessel arrives.

The auto/flat rack receiving department also receives out-of-gauge cargo that does not fit into a container. In that instance, a stevedore II uses a reach stacker to lift the cargo into a flat rack and chassis. Then a stevedore I operating a jockey truck can transport the flat rack and chassis.

In the case of a refrigerated container arriving at the port, the stevedoring department transports it from the interchange gate to the reefer container terminal. Once delivered there, a reefer monitor from the refrigeration maintenance department plugs it into electrical power and periodically performs a temperature check. When it is time to load that container onto its vessel, the terminal operating system issues an “unplug” work order to a reefer monitor or mechanic, so that the container can be safely transported by the stevedoring department. Once that has been done, a senior stevedore transports the reefer to the shipside area using the straddle carrier.

In addition to arriving by truck, cargo arrives at the port by rail. Before a train arrives,
the interchange rail planner builds a discharge plan using the terminal operating system. When the train arrives, the rail planner and stevedoring department shipside inspector coordinate the discharge. Stevedore IIs operating reach stackers unload containers from the rail cars to the ground, and senior stevedores operating straddle carriers bring the containers to the appropriate holding area.

As previously described, when a vessel arrives at the port, cargo is loaded and unloaded by five-person crews consisting of stevedoring department employees: a lead stevedore operating a crane, two senior stevedores operating straddle carriers, a shipside inspector, and a signal person. All five receive work instructions on their tablets so that the containers can be loaded on board the vessel in the correct sequence and in the correct locations, according to a stow plan.

Senior stevedores deliver full containers from the container terminals to the shipside area. There, a shipside inspector verifies the container number and performs other preparatory work. In the case of a flat rack holding out-of-gauge cargo, a shipside inspector and signal person attach a hook assembly so that the lead stevedore operating a crane can lift the flat rack on board the vessel. The lead stevedore attaches the crane to the flat rack or container and loads it onto the vessel. If needed, the signal person acts as a separate set of eyes for the lead stevedore and will use hand signals and talk to the lead stevedore over the radio to assist in loading the container in the correct position.

Once the container is in the correct position on board the vessel, the shipside inspector acknowledges completion of that specific work order in the terminal operating system. In the case of a reefer, the reefer maintenance department then receives a work order to verify that the reefer has been properly loaded on board and plugged in.

In addition to arriving by truck and rail, cargo also arrives at the port by vessel. In that instance, the above-described sequence is essentially followed in reverse order, with the same level of functional integration as the handling of cargo that arrives by truck or rail.

As for the fleet maintenance group, its three departments are responsible for maintaining and repairing the various equipment used by terminal operations employees. With the exception of reefer monitors or mechanics performing plug-in and unplug tasks, as described above, employees in fleet maintenance generally do not perform tasks that are integrated into the process of transporting cargo through the port. Rather, they perform tasks that are necessary for the successful transportation of cargo through the port but performed separately.

For example, employees in the container/chassis maintenance department are responsible for repairing the tires on jockey trucks, reach stackers, and straddle carriers; employees in the reefer maintenance department are responsible for performing pre-trip tasks on reefers, like clearing any alarms, washing out the container, and fueling its generator. Employees in the port maintenance department are responsible for performing daily pre-shift inspections of the cranes, putting the cranes in position based on the vessel’s scheduled workload of the day, and performing repair and maintenance work on the various types of equipment.

In performing those tasks, fleet maintenance employees may come into contact with terminal operations employees, but such contact is minimal and does not appear to require
routine discussion between maintenance employees and other employees. For example, each piece of equipment in the port has a clipboard with a blank issue log form inside. If a stevedore notices any issue with the equipment while operating it, he may leave a note on the form, and the port maintenance department later retrieves those forms. From there, the port maintenance employees perform the necessary tasks and track them using an electronic record system dedicated to maintenance tasks, called FleetWave.

Aside from the issue logs, the record contains some evidence of infrequent interaction between terminal operations and fleet maintenance employees for the purpose of annual equipment inspections. Straddle carriers and cranes require an annual inspection or calibration to be performed by an employee from the stevedoring department with a heavy equipment mechanic present.

E. Degree of interchange and transfers

In the past five years, there have been approximately four permanent transfers from the Employer’s stevedoring department to other departments. During the same time period, approximately 11 of the 69 job openings in the stevedoring department were filled by permanent transfers, but only 4 of 39 openings in the stevedoring department during the past 3 years were filled by transfers. There is no evidence of involuntary transfers. The record contains testimony that promotion within the stevedoring department is “possible but it is not automatic.” Tr. 326. There is no evidence of any specific employees that were promoted within the stevedoring department.

There is no evidence of any employee in the stevedoring department temporarily transferring to a different department. The record contains some general testimony from Vice President DiPietropolo in response to the hearing officer’s questions, pertaining to temporary interchange between departments, but the record does not reflect the basis for DiPietropolo’s knowledge about interchange. He testified that stevedoring department employees have covered for an absent employee in another department for one or two days at a time, such as a stevedore I temporarily driving a jockey truck in the reefer maintenance area three to four days out of the week (and more frequently during the fourth quarter, when reefer volumes increase). He further testified speculatively that an employee from outside the stevedoring department may cover for an absent employee such as a PPB operations checker assigned to fill in for a shipside inspector, and that this has occurred three to four days per week during the last twelve to fifteen months. The record contains no documentary evidence establishing the frequency of interchange, no specific instances of interchange were cited and the testimony concerning interchange was largely speculative in nature. Vice President DiPietropolo testified, “for short-term coverage to make sure that we can still do the loading and unloading of vessels, we will maybe, and it could be just for a day, we may assign someone that has these skills and the knowledge of a shipside inspector, for example, we would put a PPB operations checker has the skills and requirements and the systems access to go cover that position for the day.”

F. Terms and conditions of employment

All employees in both the petitioned-for unit and the Employer’s proposed unit are paid on an hourly basis and are covered by the same health insurance policy, leave policy, overtime
policy, recognition program, and other benefits. The same employee handbook applies to all employees in both units. The Employer’s centralized human resources department governs labor relations with all employees.

Each job classification is assigned a pay range, which defines the minimum and maximum hourly wage rates for an employee in that classification. Some pay ranges are shared by multiple classifications. The Employer maintains two sets of pay grades denoted “UST” and “USH.” All terminal operations classifications in the Employer’s proposed unit (and therefore all classifications in the narrower petitioned-for unit) fall under a USH pay grade.

The four lowest-paid of the six petitioned-for classifications share the same pay grade as classifications in the Employer’s other terminal operations departments, as follows:

- Pay Grade USH 38, $14.56 to $22.67 per hour, applies to signal person, reefer monitor, equipment support specialist, and maintenance coordinator.
- Pay Grade USH 39, $15.66 to $24.45 per hour, applies to shipside inspector, cargo inspector, and interchange checker.
- Pay Grade USH 40, $16.55 to $26.39 per hour, applies to Stevedore I, equipment operator/jockey driver, and PPB operations checker.
- Pay Grade USH 41, $17.83 to $28.54 per hour, applies to stevedore II, interchange rail planner, and senior cargo inspector.

Senior stevedores are uniquely in pay grade USH 44, ranging from $22.40 to $36.56 per hour, and lead stevedores are uniquely in pay grade USH 46, ranging from $26.67 per hour to $43.78 per hour. These are the two highest paid classifications of any terminal operations classifications.

Other than a few exceptions (one utility person, two reefer monitors, and the Employer’s maintenance trainee), the maintenance department employees are in separate UST pay ranges. The wage rates in the UST pay grades vary from pay grade UST 1, including maintenance trainees, are from $15.57 to $22.72 per hour, to the UST 7 pay grades, for lead heavy equipment mechanics, lead electrician technicians, lead refrigeration technicians, and lead fabricator welders, ranges from $25.51 to $42.51 per hour, slightly below the wage range for lead stevedores.

With respect to work hours, employees within the stevedoring department work 19 of the 25 overlapping shifts at the port. The record shows that about 30 percent of the stevedoring department employees (19 of 63) work late shifts that includes hours later than 7:30 p.m. or earlier than 7:00 a.m., whereas about 16 percent of employees in the other terminal operations departments (3 of 19 interchange, auto/flat rack receiving, and TL-rail yard department employees) and 18 percent of the employees in the maintenance departments (9 of 50) work late shifts. Whenever the stevedoring department is working a vessel, at least two port maintenance

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9 The record does not explain the meaning of the UST and USH abbreviations.
employees work as well.

In 2021, the median overtime hours in the three maintenance departments (420.13 hours - container and chassis maintenance, 299.63 hours - port maintenance, and 202.25 hours - reefer maintenance), were higher than the median overtime hours in the terminal operations departments (156.25 hours – stevedoring, 39 hours - interchange, 27 hours – auto/flat rack receiving, and 6.88 hours - TL-rail yard).

II. ANALYSIS

In examining the appropriateness of a petitioned-for bargaining unit, the Board “consider[s] only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” Overnite Transp. Co., 322 NLRB 723, 723 (1996). When a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies its traditional community-of-interest factors to “determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.” PCC Structurals, Inc., 365 NLRB No. 160, slip op. at 7 (2017).

The Board has historically considered the following factors under its traditional community-of-interest test:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

PCC Structurals, Inc., 365 NLRB No. 160, slip op. at 5, quoting United Operations, Inc., 338 NLRB 123, 123 (2002). Additionally, in determining appropriate bargaining units, the Board has also long given substantial weight to prior bargaining history. The Boeing Company, 368 NLRB No. 67, slip op. at 3 (2019).10

In Boeing, the Board clarified that PCC Structurals contemplates a three-step process for deciding whether a bargaining unit is appropriate under the Board’s traditional community-of-interest test:

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from the proposed unit must be comparatively analyzed and weighed. Third,

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10 In American Steel Construction, Inc., 371 NLRB No. 41 (December 7, 2021), the Board has invited the filing of amicus briefs concerning the standard for the determination of appropriate bargaining units based on community of interest.
consideration must be given to the Board’s decisions on appropriate units in the particular industry involved. *Id.*

I address each of those three steps in turn.

**A. The petitioned-for unit shares an internal community of interest.**

The first step of the *PCC Structurals* analysis requires identifying shared interests among members of the petitioned-for unit because any unit without an “internal, shared community of interest is inappropriate.” *Boeing*, 368 NLRB No. 67, slip op. at 3. For the reasons that follow, I find that that the petitioned-for unit shares an internal community of interest.

The petitioned-for unit uniquely works in the Employer’s stevedoring department. Employees in the department interact with each other on a daily basis, including daily pre-shift huddles, in the course of performing their duties, and during breaks. All employees within the department are separately supervised by one of six supervisors, who conduct the pre-shift huddles, set schedules, and have the authority to issue discipline and evaluate their direct reports. Those supervisors do not supervise any employees outside the department.

All employees in the stevedoring department perform the function of moving cargo within the port, and most perform the specific function of loading and unloading vessels in five-person shipside crews consisting exclusively of stevedoring department employees. While employees in other departments also perform the function of transporting containers, they generally do so only within the specific work areas to which they are assigned. Only stevedoring department employees regularly transport cargo from receiving areas to shipside, transport containers and flat racks between various locations in the port, load and unload vessels, and operate the straddle carriers and cranes.

In terms of skills, the six different job classifications in the stevedoring department build upon one another such that each classification generally requires all the skills of the lower-ranked classifications. Thus, stevedoring department employees share a common core of skills.

There is insufficient record evidence to show significant interchange between the stevedoring department and other departments. Although there have been some permanent transfers into the stevedoring department, none were involuntary. Notably, senior stevedores and lead stevedores are the only employees qualified to operate straddle carriers and cranes for the purpose of moving cargo, and they constitute 37 of the 63 employees within the department. Vice President DiPietropolo’s generalized and at times speculative testimony pertaining to interchange between the stevedoring department and other departments, in the absence of any documentary or any evidence of specific examples, is too vague to establish the level of interchange that would disprove an internal community of interest.

Finally, all stevedoring department employees share the same benefits and are paid at an hourly rate, based on the same USH wage scale. The increases in their hourly rates mirror the increases in their skills as they are promoted within the stevedoring department.

For the above reasons, and based on the record as a whole, I find that that the petitioned-for unit shares an internal community of interest.
B. The interests of employees are insufficiently distinct from the interests of the other terminal operations employees in the interchange, auto/flat rack receiving, and TL-rail yard departments, and the interests of all terminal operations employees are sufficiently distinct from the employees in the Employer’s maintenance departments.

The second step of the PCC Structurals analysis requires “a comparative analysis of excluded and included employees … [that] consider[s] whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.” Id. at 4 (quotation and emphasis omitted). On balance the distinctions between interests of the stevedoring department employees and the other terminal operations employees in the interchange department, the auto/flat rack receiving department, and the TL-rail yard department do not outweigh similarities common to all terminal operations employees. On the other hand, the interests of the fleet maintenance employees who the Employer also seeks to include in the unit are sufficiently distinct to warrant their exclusion from the unit.

Most compelling is the high degree of functional integration among the entire terminal operations grouping. The petitioned-for stevedoring department employees, like the interchange department, auto/flat rack receiving department, and TL-rail yard department employees, work as an interdependent unit to receive cargo at the port’s multiple points of ingress, process paperwork, unload containers from trains, trucks, and vessels, stuff cargo, move containers throughout the port, and load both full and empty containers as appropriate onto trains, trucks, and vessels at the port’s points of egress. Stevedoring department employees regularly come into contact with other terminal operations employees in performing those tasks. The stevedoring department constitutes one link in the chain of departments responsible for transporting cargo. It makes sense, then, that the Employer organizes those departments into a single administrative grouping under Claude Clevinger, Director of U.S. Terminal Operations. In addition to the involvement of employees in all of the terminal operations departments in the common tasks of loading, unloading, and moving cargo, as noted above there are significant similarities in the job duties of employees in these various terminal operations departments. Shipside inspectors in the stevedoring department check and receive cargo in the same way as cargo inspectors in the auto/flat rack receiving department, interchange checkers and PPB operations checkers in the interchange department, and cargo inspectors in the T-L rail yard. The 15 employees in these job classifications in the auto/flat rack receiving, interchange, and T-L rail yard departments, whose duties are very similar to those of shipside inspectors in the stevedoring department, comprise the overwhelming majority of the total of 19 employees in the auto/flat rack receiving, interchange, and T-L rail yard departments.

In contrast to the strong similarities between all terminal operations employees, the employees in the refrigeration, container and chassis, and port maintenance departments that the Employer seeks to include in the unit are organized into a separate administrative grouping led by Kevin Blake, Director of Fleet Maintenance. Although the work of the maintenance departments is necessary to support terminal operations, the maintenance employees have a separate function from the highly integrated terminal operations departments. The maintenance employees are not directly involved in the movement of cargo through the port between various modes of transport, ship, rail, and truck. Fleet maintenance employees possess unique skills such as certifications in electrical and refrigeration work, hazardous materials licenses, testing
requirements in trades like welding. They are competent in the use of many tools unique to the maintenance classifications, including certain tools supplied by the maintenance employees rather than by the Employer. In addition, the separate software system known as FleetWave is dedicated to maintenance tasks. There is insufficient evidence to show that fleet maintenance employees have significant contact with terminal operations employees.

All employees’ labor relations are centralized. However, all terminal operations classifications are paid based on the USH wage scales, whereas most of the fleet maintenance classifications are paid under the UST wage scales. Also, it appears that fleet maintenance employees work significantly more overtime hours than terminal operations employees.

There is insufficient evidence of significant interchange between the stevedoring department and other departments, or between any terminal operations departments and the fleet maintenance departments.

In summary, the evidence shows that all terminal operations employees share a community of interest. The terminal operations departments are highly functionally integrated, and the employees in those departments share certain common duties and skills, a single administrative grouping, and an upper-level supervisor. The fact that the vast majority of employees in the interchange, auto/flat rack receiving, and TL-rail yard departments have similar jobs to the shipside inspectors in the stevedoring department is an important factor in reaching this conclusion. The employees in various terminal operations departments also share similar working conditions. Thus, the petitioned-for unit’s distinct interests do not outweigh their shared interests with the other terminal operations employees, and the petitioned-for unit is inappropriate under the second step of the Boeing analysis. The terminal operations employees taken as a whole, including the stevedoring department, constitute an appropriate unit because of their shared interests.

The interests of the terminal operations employees are meaningfully distinct from the interests of the fleet maintenance employees in the refrigeration, container and chassis, and port maintenance departments. In summary, the Employer has organized the maintenance departments into a separate grouping from terminal operations, managed by a separate upper level supervisor. In addition, the vast majority of the fleet maintenance workforce possesses unique skills and certifications and operates a unique set of tools dedicated to the maintenance of equipment, and there is very little evidence that maintenance employees ever move cargo. Accordingly, I have excluded the maintenance employees from the unit found appropriate.

C. The Board has not established industry-specific guidelines relevant to the bargaining unit.

There are no relevant industry-specific guidelines established by the Board regarding the appropriate unit.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:
1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time employees in the stevedoring, interchange, auto/flat rack receiving, and TL-rail yard departments employed by the Employer at its Port of Palm Beach, Florida facility; excluding all employees in the port maintenance, container/chassis maintenance, and refrigeration maintenance departments, guards, and supervisors as defined in the Act.

I. DIRECTION OF ELECTION

   The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Longshoremen’s Association, Local 1359-1860, AFL-CIO.

   A. Election Details

   The election will be conducted by manual ballot on Wednesday, April 20, 2022, from 8:00 a.m. to 10:00 a.m. and from 3:00 p.m. to 5:00 p.m. at a trailer located under the U.S. 1 overpass on the Employer’s premises, Riviera Beach, Florida. The parties agreed to a manual ballot election and agreed to abide by the protocols for manual ballot elections during the Covid-19 pandemic as set forth in General Counsel Memorandum 20-10. The parties are required to abide by those protocols. The Notices of Election and ballots will be in English only.

   B. Voting Eligibility

   Eligible to vote are those in the unit who were employed during the payroll period ending April 3, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if

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11 The record shows that employees in the voting unit are scheduled to work on Wednesdays, during at least some portion of the voting hours.
they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

    Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Also eligible to vote using the Board’s challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

    Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

    As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

    To be timely filed and served, the list must be received by the regional director and the parties by April 6, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.¹²

    Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

    When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once

¹² Although the Petitioner stated that it would waive part of the 10 days that it is entitled to have with the voter list before the election, I have disregarded its waiver because the Petitioner failed to specify the number of days it waived.
the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.
Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: April 4, 2022.

/s/ David Cohen

David Cohen, Regional Director
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