SSA Pacific, Inc. *and* Roni Simisola *and* John Stubbe *and* Alan Couch

Pacific Maritime Association *and* Roni Simisola *and and* John Stubbe *and* Alan Couch

International Longshore and Warehouse Union, Local 18 *and* Roni Simisola *and* John Stubbe *and* Alan Couch. Cases 20–CA–151433, 20–CA–156741, 20–CA–156786, 20–CA–153169, 20–CA–-156732, 20–CA–156792, 20–CB–151490, 20-CA-156767, and 20–CB–156787

April 3, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On September 13, 2016, Administrative Law Judge Mara-Louise Anzalone issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondents each filed an answering brief, and the General Counsel filed a reply brief. In addition, the Respondents each filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondents each filed a reply brief.

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-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as clarified below and to adopt the judge's recommended Order as modified and set forth in full below.[2]

We adopt the judge's dismissal of the complaint allegations that SSA Pacific and PMA violated Section 8(a)(1) by suspending Roni Simisola for exercising Section 7 rights. Initially, we emphasize that Simisola's request to review the dispatch list was activity protected by Section 7. And, in affirming the judge, we assume arguendo that the General Counsel established a prima facie case under *Wright Line*.[3] We find, however, that the evidence establishes that the Respondents met their rebuttal burden by proving that they suspended Simisola not because she requested dispatch records, but rather because she disrupted the dispatch process.

We further adopt the judge's dismissal of the complaint allegations that Local 18 violated Section 8(b)(1)(A) by suspending Simisola for the conduct described in the preceding paragraph and Section 8(b)(2) by causing SSA Pacific and PMA to suspend her for that conduct. The judge applied both a duty-of-fair-representation and a *Wright Line* analysis to these allegations, and we agree with her, for the reasons explained in her decision, that Local 18 did not violate the Act under either framework.[4]

Finally, we adopt the judge's dismissal of the complaint allegations that SSA Pacific and PMA violated Section 8(a)(1) and Local 18 violated Section 8(b)(1)(A) by suspending Simisola pursuant to Rule 12 of the Identified Casuals Dispatch Rules, which provides that "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch

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[1] There are no exceptions to the judge's dismissal of the allegations in the amended consolidated complaint (complaint) that Respondents SSA Pacific, Inc. (SSA Pacific), and Pacific Maritime Association (PMA) violated Sec. 8(a)(3) and (4) of the Act by suspending Roni Simisola, and violated Sec. 8(a)(3) and (1) by discharging John Stubbe and suspending Alan Couch. There are also no exceptions to the judge's dismissal of the complaint allegations that Respondent International Longshore and Warehouse Union, Local 18 (Local 18), violated Sec. 8(b)(1)(A) by restraining or coercing Stubbe and Couch, and violated Sec. 8(b)(2) by causing SSA Pacific and PMA to discharge Stubbe and suspend Couch.

The General Counsel has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We have modified the judge's recommended Order to conform to our findings. Complaint pars. 9, 15, and 18 allege, inter alia, that SSA Pacific and PMA violated Sec. 8(a)(1) and Local 18 violated Sec. 8(b)(1)(A) by jointly maintaining Rule 12 of the Identified Casuals Dispatch Rules, which provides that "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked." We shall sever the above-described allegations from the complaint and retain them for further consideration.

[3] 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 445 U.S. 989 (1982). The judge's decision could be interpreted as misstating the General Counsel's initial burden under *Wright Line*. Contrary to the judge's suggestion, "proving that an employee's protected activity was a motivating factor in the employer's action does *not* require the General Counsel to make some additional showing of particularized motivating animus towards the employee's own protected activity." *T-Mobile USA, Inc.*, 365 NLRB No. 15, slip op. at 1 fn. 1 (2017), quoting *Libertyville Toyota*, 360 NLRB 1298, 1301 fn. 10 (2014) (emphasis in original), enfd. 801 F.3d 767 (7th Cir. 2015).

[4] Although the judge did not separately analyze the complaint allegation that Local 18 violated Sec. 8(b)(1)(A) by disciplining Simisola for engaging in activity protected by Sec. 7, we find that dismissal of that allegation is appropriate for the same reasons that she dismissed the related 8(b)(2) allegation against Local 18.

Member Pearce agrees that Local 18 did not violate the Act under a duty-of-fair-representation analysis and would not analyze the allegations under *Wright Line*.

privileges permanently revoked."[5] As the judge observed, the general rule is that discipline imposed pursuant to an unlawfully overbroad rule is unlawful. See *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 fn. 3 (2004), enfd. 414 F.3d 1249 (10th Cir. 2005), cert. denied 546 U.S. 1170 (2006). "Nevertheless, an employer will avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee's conduct . . . actually interfered with the employer's operations, and that the interference, rather than the violation of the rule, was the reason for the discipline." *Continental Group, Inc.*, 357 NLRB 409, 412 (2011).[6] Assuming, without deciding, that Rule 12 is unlawfully overbroad, we agree with the judge that the Respondents proved that Simisola's conduct actually interfered with the work of others, and that this interference (which, as the judge found, the Respondents cited in suspending Simisola), and not her violation of the unlawful rule, was the reason for her suspension.[7] See id.

ORDER

IT IS ORDERED that the allegations that Respondents SSA Pacific and PMA violated Section 8(a)(1) and Respondent Local 18 violated Section 8(b)(1)(A) by jointly maintaining Rule 12 of the Identified Casuals Dispatch Rules, which provides that "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked," are severed and retained for further consideration.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically severed.

Dated, Washington, D.C. April 3, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] Although the judge did not separately analyze the 8(b)(1)(A) allegation against Local 18, we find that dismissal of that allegation is appropriate for the same reasons that she dismissed the related 8(a)(1) allegations against SSA Pacific and PMA.

[6] As the Board explained in *Continental Group*, supra:

> It is the employer's burden, not only to assert this affirmative defense, but also to establish that the employee's interference with production or operations was the actual reason for the discipline. In this regard, an employer's mere citation of the overbroad rule as the basis for discipline will not suffice to meet its burden. Rather, assuming that the employer provides the employee with a reason (either written or oral) for its imposition of discipline, the employer must demonstrate that it cited the employee's interference with production and not simply the violation of the overbroad rule.

357 NLRB at 412.

[7] In light of our finding, we find it unnecessary to pass on the Respondents' argument that they also avoid liability under the *Double Eagle* rule because Simisola's conduct was "wholly distinct" from activity protected by Sec. 7. See *Continental Group*, 357 NLRB at 412.

David B. Reeves, Esq., for the General Counsel.
Robert S. Remar, Esq. (Leonard Carder, LLP), for Respondent International Longshore and Warehouse Union, Local 18.
Jonathan C. Fritz and *Nicole Buffalano, Esqs. (Morgan, Lewis & Bockius LLP),* for Respondent Pacific Maritime Association.
Joseph M. Galosic, Esq., for Respondent SSA Pacific, Inc.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case over the course of 9 days between January 20 and April 8, 2016, in San Francisco, California. This case was tried following the issuance of an order consolidating cases, consolidated amended complaint, and notice of hearing (the complaint) by the Regional Director for Region 20 of the National Labor Relations Board on November 30, 2015. The complaint was based on a number of original and amended unfair labor practice charges, as captioned above, filed by Charging Parties Roni Simisola, John Stubbe and Alan Couch (collectively, the Charging Parties or the discriminatees). The General Counsel alleges that Respondent International Longshore and Warehouse Union, Local 18 (the Union or Local 18) violated Sections 8(b)(1)(A) and 8(b)(2) and Respondents Pacific Maritime Association (PMA) and SSA Pacific, Inc. (SSA) (collectively, the Employer-Respondents) violated Section 8(a)(1), (3) and (4) of the National Labor Relations Act, 29 U.S.C. Sec. 151, et. seq. (the Act). Each Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices alleged against it.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file posthearing briefs.[1] Posthearing briefs were filed by the General Counsel, PMA and Local 18, and each of these briefs has been carefully considered.[2] Accordingly, based upon

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh.__" for General Counsel's Exhibit; "U Exh. __" for Local 18's Exhibit; "PMA Exh. __" for PMA's Exhibit; "Jt. Exh. __" for Joint Exhibit; "GC Br. at __" for the General Counsel's posthearing brief; "U Br. at __" for Local 18's posthearing brief; and "PMA Br. at __" for PMA's posthearing brief.

[2] On February 29, 2016, I granted counsel for the General Counsel's unopposed motion to correct the transcript, which was filed the day

the entire record herein, including the posthearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT[3]

I. JURISDICTION

The complaint alleges that SSA, a California corporation, is engaged in the business of providing stevedoring and longshore services at the Port of West Sacramento. SSA is an employer-member of PMA, a California corporation with its principal place of business in San Francisco, California, and a branch office at Oakland, California. PMA is an association of employers whose approximately 50 employer-members are engaged in business in California, Oregon and Washington as stevedore companies, operators of marine terminals, and equipment maintenance and repair contractors. On behalf of its employer-members, PMA negotiates and enters into collective-bargaining agreements with various unions including the International Longshore and Warehouse Union (ILWU) and its Local 18.

The complaint alleges and PMA admits that the employer-members of PMA annually derive gross revenues in excess of $50,000 from the transportation of goods and passengers between California and other States or foreign countries. PMA and its employer-members are thus engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Accordingly, I find that SSA and PMA are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[4] I additionally find that Local 18 Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

This case involves actions taken against three longshore workers at the Port of West Sacramento (the Port). The General Counsel contends that the Employer-Respondents issued unwarranted discipline to John Stubbe (Stubbe), Roni Simisola (Simisola) and Alan Couch (Couch) in violation of Section 8(a)(3) of the Act, because they protested the operation of Respondents' jointly operated dispatch hall. In addition, it is alleged that discriminatee Simisola's discipline was motivated by her filing unfair labor practice charges, in violation of Section 8(a)(4) of the Act. In each case, Local 18 is alleged to have violated Section 8(b)(2) and (1)(A) of the Act by causing the Employer-Respondents to take the adverse action in question. The General Counsel additionally alleges that Simisola's discipline was based on the application of an overbroad rule maintained by Respondents, which rule is separately alleged as an independent violation of Section 8(a)(1) and (b)(1)(A) of the Act. Finally, the General Counsel alleges that Local 18 violated Section 8(b)(1)(A) of the Act by refusing to provide Simisola with access to dispatch hall records.

A. Factual Background

1. Respondents' officers, supervisors and representatives

SSA's terminal manager at the Port is Frank Patalano. David Robinson is PMA's labor relations administrator. Since September 2015, William Bartelson has been PMA's senior coast director of contract administration and arbitration; this position (albeit with a different job title) was held previously held by Richard Marzano. Todd Amidon is senior counsel for PMA. (Tr. 377, 858, 1206–1207, 1286)[5]

Tim Campbell has been Local 18's President since May 2014. Sean Farley was president of ILWU Local 15 (which represents marine clerks at the Port) during 2015. Justin Deed and Joey Schaffer are joint dispatchers at Local 18. (Tr. 217, 1647, 2006, 2079)[6]

2. The longshore bargaining unit

Since the 1930s, the ILWU has represented West Coast longshore workers; that representation currently consists of a single multiemployer/multiport coastwise unit, the origins of which can be traced to an order of the National Labor Relations Board (Board) issued over 75 years ago. *Shipowners' Assn. of the Pacific Coast*, 7 NLRB 1002 (1938).[7] Longshore workers on the West Coast, including the workers involved in this case, are subject to the terms of the Pacific Coast Longshore Contract Document (PCLCD), a portion of the collective bargaining agreement negotiated by the ILWU and its employer counter-

prior. The record is therefore amended to reflect the proposed changes set forth in that motion.

[3] I have based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying and the form of questions eliciting responses. Credibility findings need not be all-or-nothing propositions, and it is common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB 622, 622 (2001).

[4] Since PMA is admittedly subject to the Board's jurisdiction, SSA is also deemed to be an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. See *Pace Industries, Inc.,* 320 NLRB 661, 667 (1996) (where one entity of single-employer is subject to the Board's jurisdiction, all entities part of that single employer are subject to the Board's jurisdiction); *Insulation Contractors of Southern California*, 110 NLRB 638 (1955) (all members of a multiemployer group who participate in, or are bound by, multiemployer bargaining negotiations are considered as a single employer for jurisdictional purposes).

[5] At hearing, counsel for the General Counsel moved to amend the complaint to allege Todd Amidon and Richard Marzano as agents of PMA. Insofar as these individuals at various times took positions on behalf of PMA regarding certain aspects of the parties' grievance and arbitration machinery, I find that they did act as its agents.

[6] At hearing, counsel for the General Counsel moved to amend the complaint to allege joint dispatchers Justin Deed and Joey Shaffer as agents of all Respondents. Based on the record as a whole, I find that, insofar as they carry out their dispatching duties, Deed and Schaffer did act as agents of Local 18. I cannot find any support in the record, however, for finding either of them to be an agent of SSA or PMA.

[7] The West Coast longshore industry has a storied organizational history which is set forth in detail in this decision.

part, the PMA. (Tr. 860)

3. The parties' joint dispatch hall operation

The origins of the dispatch hall system at the core of this case predate the Act and can be traced to 1934 award by the National Longshoremen's Board. This award ordered the creation of joint dispatch halls in West Coast ports and at least one joint port labor relations committee (JPLRC) in each port. See *Shipowners' Assn. of the Pacific Coast*, supra. Each JPLRC has a local union and management component with equal voting power. PMA serves as the spokesperson for each committee's employer component and provides additionally administrative support for the committee. (Tr. 1209, 1319; GC Exh. 2 at 84.)

JPLRCs, including one established at the Port (referred to as the SJPLRC), are charged with establishing and maintaining registered lists of longshore workers eligible for dispatch to available jobs. They are also authorized to establish rules governing the operation of the parties' joint dispatch halls. One of these rules (discussed in more detail, infra) prohibits workers from "causing a disturbance at the Dispatch Hall or at any other job-related area." (GC Exh. 14) JPLRCs, including the SJPLRC, are also charged with investigating and adjudicating claims of employee misconduct, including that occurring at the dispatch hall. Such a claim, when brought by a PMA employer against a longshore worker, is referred to as an "employer complaint." (Tr. 1209–1211, 1788; GC Exh. 2 at 85, § 17.125.)

4. The Port's registration system

Three classifications of longshore workers work at the Port, and each are afforded different dispatch rights: fully registered Class A workers, limited-registered Class B workers and unregistered identified casuals. Each of the discriminatees in this case was classified as an unregistered identified casual (also referred to as "ID casuals" or simply "casuals") during the relevant period. (Tr. 1657–1658)

The PCLCD dictates that casuals, who are not Local 18 members, are dispatched only after all local and visiting Class A and Class B registered longshore workers and marine clerks have been offered work. (Tr. 1648, 1670–1673; GC Exh. 2 at 51–52, § 8.41.) The PCLCD also provides that casuals, as unregistered longshore workers, are "subject to greater penalties" than registered longshore workers; as Respondents' witnesses credibly testified, throughout the industry, casuals are effectively treated as probationary employees subject to heightened discipline. (GC Exh. 2 at 103, § 17.861; Tr. 899–900, 960–961, 1517–1519.) Casuals are also subject to a jointly negotiated set of rules, discussed infra, called the "Identified Casuals Dispatch Rules," which include the rule alleged by the General Counsel as unlawfully overbroad, as well as an additional (unalleged) rule stating that casuals who are the subject of an employer complaint "will be placed on the Non-Dispatch List and will not be dispatched until their grievance has been adjudicated by the [JPLRC]." (GC Exh. 14.)

ID casuals may eventually progress to registered longshore worker status. (Tr. 1236, 1241.) Specifically, when there is a demand for additional Class B members, casuals are advanced (or "elevated") in descending order by work experience, i.e., the hours each has been paid for work. (GC Exh. 40 at 2.) It is undisputed that elevation to Class B status brings with a guarantee of work, benefits and significantly higher earnings. (Tr. 1016, 1072–1073)

5. The 2014 registration grievances

In March 2014, Local 18 conducted a "registration" process, whereby it elevated a number of ID casuals to Class B longshore worker status. Stubbe, Simisola and Couch, who were not selected, each filed a grievance in March 2014, alleging that the selection process was tainted by the practice of "chiseling" (i.e., cheating at the dispatch hall) in favor of certain, favored employees and that their prior ID casual work performed outside of the Port should have been considered in the registration process. Similar grievances were filed by 8 other ID casuals on the same date. Each of the grievances was heard by the SJPLRC on June 24 and December 9, 2014. (Tr. 160–162, 432, 771–772; GC Exh. 15.)

Discriminatee Couch testified that, during one of the two hearing dates, Union President Campbell took him as well as 4 other grievants aside for a caucus. According to Couch, Campbell told the group that, if they did not drop their grievances,

> [I]t would be a lot harder for us because they were going to bring some more people in, make a new list and we would be more or less SOL, because when they do that we're going to be rotating with another 30 or 40 people.

(Tr. 434) Couch testified that he understood this to mean that Respondents would create a new ID casual list, thereby diluting the hours for the current ID casuals. According to him, Campbell next told the workers that, if they did not drop the grievances, "you're going to be on your own," but that if they withdrew them he would "take care" of them. Counsel for the General Counsel only called one other employee-witness to this conversation, ID casual Peter Bianchini (Bianchini). Like Couch, Bianchini testified that Campbell told the grievants that, if they did not drop their grievances, 30–40 more ID casuals would be added to the casual rotation and they could be stuck rotating with these individuals. (Tr. 434, 1072)[8]

Campbell admitted having a conversation with the group in the hallway outside the June grievance meeting, but his recollection was markedly different. Campbell testified that, during a break in the meeting, Biancini asked him about the likelihood of further registration, to which Campbell responded that there would be more registration because Respondents were having a hard time filling gangs. Biancini then asked whether there would be more casuals added to the casual list, and Campbell said that yes, there would be more casuals added as well. Campbell specifically denied asking any of the grievants to withdraw their grievance regarding the 2014 registration, or telling them that they would either get stuck in a larger casual rotation or be "on their own" if they failed to do so. (Tr. 2084–2085.)

On December 9, 2014, each of the 11 grievances was denied; Stubbe and Couch each elected not to pursue his grievance

[8] On the date of the June grievance meeting, 3 of the 11 grievants in fact withdrew their registration grievances; 2 of those 3 were subsequently "elevated" in a later 2015 registration. (Tr. 435–436, 2101–2102.)

further. Simisola appealed her grievance, and it was pending arbitration decision as of the close of the record in this matter. (Tr. 432, 772, 774–775; GC Exhs. 21, 40.)

6. ID Casual Rule 12 and the Port's dispatch process

Posted at the dispatch hall are the Port's "ID Casual Rules," which were jointly negotiated by Respondents several decades ago. The rules address both the conduct of the dispatch itself, as well as the conditions under which individual casuals will be considered eligible for dispatch.

As noted, the General Counsel alleges that one of these rules, referred to as "ID Casual Rule 12," is unlawfully overbroad in violation of the Act. This rule, put in relevant context, states:

IDENTIFIED CASUALS DISPATCH RULES

> The following rules are for the dispatch of Identified Casuals, and shall be posted in clear view at the Joint Dispatch Hall.
>
> . . .
>
> 12. Casuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked.

(GC 14) It is undisputed that Respondents maintain similar rules barring disruption of dispatch by the other classes of longshore workers at the Port. (Tr. 1216–1221; PMA 8.)

The day-to-day operation of the Port's dispatch hall is the responsibility of Local 18 member-dispatchers who are elected by the membership. (Tr. 1209–1211; GC Exh. 2 at 85, § 17.121.) The dispatch process begins with SSA sending job orders to the dispatcher assigned to the shift in question. This dispatcher then dispatches by telephone the class A workers registered in the Port; he then moves on to workers, including casuals, physically present in the hall. During this portion of the dispatch, the dispatcher stands behind a podium and calls jobs and workers in sequence. A yellow line is painted on the floor of the dispatch hall in front of the podium where dispatching takes place. According to Respondents' witnesses, the purpose of the yellow line is to keep order in the dispatch hall, and, in particular, to enforce ID Casual Rule 12.

While individuals may occasionally cross the yellow line (even when not being dispatched), the dispatcher may order a worker behind the line if she is disrupting dispatch. (Tr. 1661–1662, 1687; U Exh. 20.) Failure to comply with an order to retreat behind the yellow line may result in the worker receiving a "citation" (the Union's version of an employer complaint). According to dispatcher Justin Deed (Deed), this device is typically used to prevent workers from "rushing" the podium when particular jobs are being dispatched, as well as to keep groups of workers from being loud, distracting the dispatcher and thereby interfering with the dispatch process. As Deed explained, "[i]f I instruct them to get behind the yellow line, they need to get behind the yellow line." (Tr. 1893–1895, 1898.)

After dispatching in the hall, the dispatcher returns to the dispatch office, where he does additional dispatching by phone, which consists of filling late job orders, correcting clerical errors and duplicate assignments and making any required last-minute changes in job assignments. Some of these tasks require the dispatcher to coordinate with the dispatcher for the Port's marine clerks, who are represented by ILWU Local 15. The dispatcher then completes the paperwork necessary to document each worker's assignment and generates a running tally of the hours worked in order to ensure, per the dispatch rules, that the registered longshore workers are dispatched in the order of "lowest hours" first. (Tr. 1679–1685)

B. Facts Relevant to the General Counsel's Individual Allegations

1. Roni Simisola

Simisola has been an ID Casual longshore worker at the Port since approximately May 22, 2008. The JPLRC suspended her from April 30 through June 2, 2015 based on her conduct at the Port's joint dispatch hall. (Tr. 767.)

a. Simisola's protected conduct

As noted, Simisola filed a grievance in March 2014 alleging that she was not elevated in the 2014 registration because of inappropriate dispatching, and she appealed the denial of her grievance (and that of another grievant) in December 2014. (Tr. 772, 774; GC Exhs. 21, 40.) Prior to Respondents' June 2015 decision to suspend Simisola, she also filed several Board charges regarding the operation of the Port's dispatch operation, including a January 28, 2015 charge against the Union and an April 13, 2015 charge against PMA. (GC Exhs. 22, 23.)

b. Simisola's conduct at the dispatch hall[9]

Simisola regularly photographed dispatch sheets to support her grievance claim that Local 18 dispatchers were cheating in the dispatch. Until mid-March 2015, the dispatchers left these dispatch sheets at the podium following dispatch where they were available for inspection or photographing. Deed testified that, around this time, five longshore workers complained that Simisola violated their privacy by photographing them and their dispatch sheets. There was no action taken against Simisola, but it appears that the dispatchers ceased their practice of leaving the dispatch logs on the podium following the dispatch. (Tr. 441, 985–986, 1688–1689; U Exh. 10.)[10]

On April 9 and 10, 2015, Simisola attempted to photograph the sheets during the dispatch when she herself was called to the podium. On each occasion, Deed instructed her to return behind the yellow line. (Tr. 982; PMA Exh. 22 at 4.) Simisola admitted at hearing that she has been aware of the "yellow-

[9] While the testimony regarding these events was not significantly inconsistent, I have generally credited the testimony of Respondents' witnesses where it contradicted that of Simisola. I found Deed particularly credible, in that he clearly worked hard to recall details, was careful in listening to and answering questions and generally seemed concerned with testifying truthfully as opposed to "candy coating" any aspect of Local 18's case. Simisola, for her part, had significant difficulty recalling even basic facts regarding her conduct in the dispatch hall on the dates she was accused of disrupting dispatch, April 29 and 30; as such, her testimony was far less reliable. (See Tr. 796–797, 801, 805–806, 809–819.)

[10] The Union brought up these complaints at an April 14, 2015 SJPLRC meeting, at which time SSA's representatives suggested that the Union remind Simisola about rule 12's prohibition on disrupting dispatch. It is unclear from the record whether the Union did so.

line" rule since at least June 2014, and had been warned by a dispatcher as of that date to return behind the line or risk discharge. (Tr. 976–977.)[11]

(i) April 29

On April 29, 2015, Simisola again attempted to document what she considered to be evidence of cheating in dispatch. On this occasion, when Deed called her to the podium to receive her assignment, she began making a video recording (using her cell phone) of him and the dispatch sheets. Deed asked Simisola not to take photographs or videos while he was dispatching; she did not respond, but simply stared at him, at which point Deed repeated his request. After another period of silence, Simisola turned around and walked away. According to Deed, this entire interaction took approximately 2 minutes. (Tr. 1726–1727.)

After Deed had finished dispatching the ID casuals, he gathered up the dispatch sheets and went into the dispatch office to complete his dispatching duties (i.e., making follow-up phone calls and documenting the details of the dispatch into a daily log). A minute later, Simisola appeared at the office; standing in an entryway near where Deed sat working, she asked if she could photograph the dispatch sheets. According to Deed, he told her no, explaining that he was still working on the dispatch, and then ordered her back behind the yellow line in the hall. Simisola did not comply, instead insisting that he must not still be dispatching, because the hall was empty. She then said she wanted to see where she was in the order of dispatch. Deed gave in, showing her the dispatch sheet containing her name. Simisola then stated she wanted to photograph all of the day's dispatch sheets, to which Deed responded he was still working and he had already shown her where she stood in the dispatch. After more back-and-forth, Deed finally threated to call Local 18 President Tim Campbell (Campbell), saying "I'm not going to go through this with you anymore. I've got work to do." (Tr. 1729–1733.)

While not complying with Deed's order to get behind the yellow line, Simisola did back away from the entryway where she had initially stood. Deed called Campbell, who was out of state at the time. Agreeing that Simisola needed to leave the office, Campbell in turn reported the situation to SSA's then-terminal manager Frank Patalano (Patalano), saying that Deed was being "harassed" and Patalano was needed at the hall.[12] Patalano arrived within minutes; after consulting briefly with Deed, Patalano confronted Simisola about her conduct. According to Patalano, Simisola admitted she had entered the dispatch office and acknowledged that she wasn't supposed to disrupt dispatch. Meanwhile, Deed returned to his office to complete the dispatch paperwork. (Tr. 1411, 1416, 1418, 1739–1740, 1733, 1743.)

It is undisputed that, as a result of the incident with Simisola, Deed's dispatching was delayed; specifically, he was unable to contact two workers in sufficient time for them to make it to the Port to accept job assignments, instead resorting to continuing down the dispatch list and offering the assignments to workers out of order. After Simisola had left the hall, Campbell conferred with Robinson and they agreed that, since the problem appeared resolved, they could address it at the next regular SJLRC meeting. (Tr. 1419–1420, 1521, 1534, 1739–1740, 1758, 1760, 1763–1764, 1785.)

(ii) April 30

The following morning (approximately 13 hours after she had left the hall the prior day), Simisola appeared at the dispatch office while Deed was completing his dispatch paperwork and asked if she could take photographs of the dispatch sheets. Deed said he was still dispatching, and instructed her to return behind the yellow line. Once again, instead of complying, Simisola asked Deed to confirm that she was not allowed to photograph the dispatch sheets. Deed responded, "I'm not telling you that. I'm just telling you that you need to get back behind the line until I'm finished dispatching." (Tr. 1768–1769.)

Simisola complied, only to return 25 minutes later again demanding to photograph the dispatch sheets. As Deed again ordered her behind the yellow line, Class A longshore worker and Union sergeant-at-arms Alphonso Valdez (Valdez) entered the office. Deed yet again asked Simisola to leave, but she remained, asking whether she was being refused access to the dispatch sheets. After Deed again explained that he was still working, Valdez asked Simisola to leave, saying Deed needed to finish his job. When she did not respond, Valdez ordered her to leave, this time identifying himself as the sergeant-at-arms.[13] Simisola questioned whether Valdez did, in fact, hold that position, but then she retreated to the dispatch hall. This time, Simisola's appearance at the dispatch office resulted in a delay of dispatch to the point at which Deed was late reporting for his own longshore work assignment that day. (Tr. 1421–1423, 1522–1523, 1771–1777, 1783–1785, 1997.)

(iii) Respondents suspend Simisola

When Simisola refused to leave the dispatch office on April 30, Deed sent a text[14] to Campbell and Patalano, the tone and language of which reflected his frustration with Simisola's repeated disruptions: "This is bullshit. I'm trying to work. I want something done about this harassment." (U Exh. 14; Tr. 1779.) Campbell (who was still out of town) and Patalano spoke briefly, and Campbell asked Patalano to go the hall and assess the situation. (Tr. 1421.) Patalano soon arrived, where he was briefed by Deed and Valdez; after conferring, Deed and Patalano agreed they would each report Simisola's conduct to the SJPLRC, on behalf of Local 18 and SSA, respectively. Patalano testified that he decided to file an employer complaint after conferring with PMA's David Robinson (Robinson),

[11] While Simisola initially testified that, as of April 2015, she had never actually seen Rule 12, she was impeached by her Board affidavit which stated that she had. (Tr. 968–969.)

[12] As Patalano testified, his position as terminal manager made him responsible for the safety of all individuals at SSA's operations at the Port. (Tr. 1417.)

[13] Valdez corroborated Deed's version of these events, albeit testifying in what appeared not to be his first language and without the assistance of a translator. (Tr. 1997–1999, 2001.)

[14] Patalano recalled getting a "call" from Deed; considering that Deed's text was authenticated at the hearing, I believe Patalano simply confused the means by which Deed contacted him. (Tr. 1421.)

based on the fact that she had knowingly violated the very rule she had been warned about the day prior.

At an emergency SJPLRC meeting that afternoon, Robinson, Patalano, Deed and Campbell (who telephoned in) discussed the situation. They agreed that Simisola appeared prepared to continue disrupting dispatch, and Patalano announced that he was going file an employer complaint against Simisola. The committee then decided, pursuant to the ID Casual Rules, to suspend Simisola from dispatch pending the adjudication of Patalano's complaints. On April 30, 2015, the JPLRC informed Simisola that she was barred from entering the dispatch hall pending investigation of her conduct. On May 1, 2015, Patalano filed two employer complaints against Simisola stating that she had disrupted dispatch and refused to get behind the yellow line when ordered. Deed filed corresponding Union citations accusing Simisola of disrupting dispatch on the days in question. (Tr. 1421–1423, 1522–1526, 1771–1777, 1783–1788; GC Exhs. 14, 24, 34, U Exh. 15, 16; PMA Exh. 21.)

On June 2, 2015, the complaints about Simisola's conduct on April 29 and 30 were heard by the SJPLRC.[15] In attendance were Simisola, Deed and representatives of all three Respondents. Patalano, Deed, Simisola and Valdez testified regarding the events at the dispatch hall on the two days in question. While initially denying being warned about crossing the yellow line during dispatch, Simisola eventually admitted that, prior to April 29, 2015, she had been warned that disrupting dispatch violated Rule 12 and that she knew that crossing the yellow line or entering the dispatch office during dispatch was a violation of the dispatch rules. While she downplayed the amount of time she spent in the office on the occasions in question, she did not deny entering the office or refusing to return behind the yellow line as repeated ordered. After the witnesses testified about each Simisola's conduct on each of the 2 days in question, the witnesses were excused and the committee deliberated[16] for at least 45 minutes. (Tr. 1527; 1533–1542, 1791–1792; U Exh. 17; PMA Exh. 22.)

Ultimately, the committee concluded that Simisola was guilty of disrupting dispatch, in that, despite being aware of Rule 12, she had repeatedly refused to follow the dispatcher's instructions to leave the dispatch office and return behind the yellow line. Despite the fact that Rule 12, by its terms, calls for immediate removal from the dispatch list, the committee instead issued Simisola a final and binding last chance agreement, which stated that if she were to disrupt dispatch again, she would be removed. In addition, the SJPLRC decided that Simisola's penalty was "time served" (i.e., the 43 days she had been placed on nondispatch while her complaint was adjudicated. (Tr. 1541–1544; GC Exh. 25; PMA Exh. 22)

1. John Stubbe

Stubbe worked as an ID casual at the Port from 2008 until April 2015. Prior to that, he had worked for approximately 15 years at another West Coast port. On or about April 20, 2015, following an arbitration regarding alleged sexual harassment by Stubbe, Respondents implemented an arbitration award ordering him permanently removed from ID casual dispatch list. (Tr. 131–132; GC Exhs. 3, 4.)

a. Stubbe's protected conduct

Stubbe testified that, in addition to filing his own grievance over the 2014 registration, he assisted two other ID casuals, Couch and Peter Bianchini, in drafting similar grievances; there is no evidence, however, that any Respondent had knowledge of this. (Tr. 164–166; GC Exh. 15–16) Stubbe also claims that, in the fall of 2014, Union dispatcher Joey Schaffer (Schaffer) told him that he was "making enemies out there." (Tr. 219) Immediately after relating this comment, Stubbe testified as follows:

> I'm not—I don't have any friends, and I never did any—I never took the city to task about my vessels that they confiscated and basically, you know, primarily about the—about not having any friends. Basically that was the gist of it.

(Tr. 219) No further testimony was elicited from Stubbe to clarify his putting the alleged threat in this context.

b. Stubbe's interaction with "Ms. X"

In December 2014, Stubbe had two interactions with a fellow ID casual identified in the record as "Ms. X." First, on December 6, 2014, X asked Stubbe to perform a strenuous task that had been assigned to her, explaining that she needed the help because she was pregnant, and asked him to keep that information confidential. Agreeing to help, Stubbe added that, should anyone ask why he was doing her work, she should tell them that she had sex with him in exchange. Shortly after this conversation, X informed the walking boss,[17] Pauly Rhodd (Rhodd), about the conversation. Rhodd told Stubbe to apologize to X, which he did. (Tr. 195, 349–353; 662; Jt. Exh. 4)

Four days later on December 10, Stubbe entered a restroom while X occupied one of its stalls, despite having being warned by a coworker (discriminatee Couch) that a female worker was present.[18] As Stubbe entered the restroom, Couch (who was standing in the doorway) said, "there's somebody in there." As X exited the bathroom stall, Stubbe addressed her, saying, "how's it going?" X reported this incident to Rhodd the same day. (Tr. 365, 1814–1815.)

c. The 13.2 grievance procedure

Section 13.2 of the PCLCD sets forth a procedure for addressing harassment complaints arising in the longshore workforce. (GC Exh. 2 at 72–73) Pursuant to guidelines established jointly by Respondents (the 13.2 guidelines), longshore workers may individually file grievances to be decided by an area arbi-

[15] imisola's case was originally scheduled to be heard at an earlier SJPLRC meeting; Simisola, however, was not available and Campbell assisted her in being excused from appearing on that date and rescheduling her appearance for June 2, 2015. (Tr. 1525–1527, 2098; GC Exh. 24; PMA Exh. 22.)

[16] Deed, who was a union representative on the SJPLRC, was recused from these deliberations. (Tr. 1536, 1544, 1803–1804.)

[17] In longshore parlance, a "walking boss" essentially amounts to a foreman. (Tr. 1857–1858.)

[18] Both Couch and X testified that when a female uses the restroom in question (which is marked "male" but is occasionally used by women), it is common practice to leave their hardhat in the doorway or have a coworker stand there as a signal for men not to enter.

trator who conducts a formal hearing, determines whether the grievance has merit and, if so, what remedy is appropriate. Prior to the hearing, it is not uncommon for the area arbitrator to order interim relief to ensure the integrity of the process and/or to protect the grievant; these remedies may include temporary job reassignment, dispatch, transfer, or separation of the accused from the grievant. (Tr. 1255–1256, 1641; GC Exh. 3.) According to the 13.2 guidelines, an ILWU local union, through separate representatives, can represent both the grievant and accused. Alternately, the grievant and accused each have the option to have a class A or class B registered worker represent them. (Tr. 891–892) As Robinson testified, it is not unusual for the PMA, in order to protect the interest of an employer-member, to take a position regarding the merits and/or appropriate remedy in a 13.2 hearing. (Tr. 1289–1294, 1513.)

An employee found guilty of a 13.2 violation is subject to a penalty ranging from a minimum of seven days off work up to deregistration from the industry. Any party may appeal the arbitrator's decision to a Coast Appeals Officer. (GC Exh. 3) However, following the issuance of a final award, the 13.2 guidelines provide that the JPLRCs are required to implement the final award. (Tr. 1260–1261; GC Exh. 3.) While there is no evidence of a JPLRC vacating a § 13.2 decision, the PMA did on occasion in 2012 unsuccessfully attempt to convince the ILWU to do so. In that case, the conduct alleged to violate 13.2 was, in PMA's view, also arguably protected by Section 7 of the Act, and the PMA was therefore concerned that the 13.2 award might appear to constitute unlawful retaliation. (See Tr. 384–388, 1262; GC Exh. 12)

d. X's 13.2 grievance against Stubbe

Within 2 days of the "bathroom incident," walking boss Rhodd reported X's complaints about Stubbe to Local 18 dispatcher Deed. The following day, Deed called X; once she had described the two incidents, Deed stated that conduct like Stubbe's "can't happen out there in the workplace" and that, if she "felt violated or disrespected or harassed in any way," she had options. He then asked if she wanted to file a 13.2 grievance against Stubbe, and X responded that she wanted to think about it. About a day later, they spoke again, and X said she wanted to move ahead with the grievance. Deed offered to help her fill out the grievance form, and she accepted.

X and Deed met on December 14, 2014, along with Local 18 President Campbell. After Campbell read aloud to X the language of Section 13.2, Deed filled out a 13.2 grievance form, reading each line to X and writing down her answers.[19] X's grievance accused Stubbe of sexual harassment based on the two above-described incidents, alleging that he had engaged in verbal harassment and subjected her to "unwelcome romantic or sexual attention." With respect to the bathroom incident, X's grievance states that, upon seeing X, Stubbe should have left the bathroom immediately and later should have apologized for ignoring Couch's signal. When they got to the part of the form asking for the identity of the grievant's representative, X asked Campbell if he would represent her and he said yes, adding a disclaimer that he had never handled a Section 13.2 grievance before. After X reviewed and signed her grievance, Campbell filed it. X credibly testified that she was not pressured or coerced by anyone into filing her grievance and likewise credibly explained that she personally selected Campbell as her representative based on her confidence in him. (Tr. 205, 340, 358–364, 704, 1814–1822, 1826–1829, 2088–2091; U Exh. 2 at 3; Jt. Exh. 4 at 42)

e. Stubbe's prior 13.2 complaint

X's complaint was not the first time a coworker had accused Stubbe of sexual harassment at the Port. In February 2011, a female Class B longshore worker, identified at hearing as "Ms. Y," filed a Section 13.2 complaint against Stubbe alleging that he sexually harassed her by calling her a "bitch," and telling her, "[i]f you hurt me, I will knock your teeth down your throat." At a 13.2 arbitration, Stubbe admitted making these comments, which he characterized as a mistake. The area arbitrator in that case found Stubbe guilty, ordered him off work for 7 days (suspended pending any future 13.2 violation) and required him to attend diversity training. (Tr. 652–653, 656; GC Exh. 8; PMA Exh. 3.)[20]

f. Local 18's pre-arbitration investigation and Respondents' interim remedy

On either December 18 or 19, 2014, Campbell, along with Local 15 president Sean Farley (Farley) called Stubbe. Farley (unlike Campbell) had participated in numerous 13.2 proceedings and was called in to investigate X's allegations.[21] Campbell identified himself as X's representative and said that a 13.2 grievance had been filed against him, to which Stubbe replied, "I knew that was coming." Campbell said they wanted to hear his side, and Stubbe told them essentially the same story as had X.[22] Campbell then gave Farley contact information for X and Couch. After interviewing each of them, Farley concluded that Stubbe was guilty of violating Section 13.2. As he testified, he reached this conclusion based on his experience with 13.2 hearings. (Tr. 2112, 2114, 2023, 2047–2049, 2058–2059.)

Adjudicating X's grievance was complicated by the fact that the PCLCD was expired at the time, and the Union had not agreed to arbitrate any grievance during the contract hiatus. On

[19] According to Deed, in the narrative portion of the form describing Stubbe's alleged prohibited 13.2 conduct, he simply wrote down, verbatim, what X told him had occurred. (Tr. 1824, 1826.) X confirmed this, with one exception regarding the bathroom incident. Specifically, while the written grievance stated that Couch had explicitly warned Stubbe not to enter the bathroom, X testified that all she actually heard was him use the phrase, "someone's in there." (Tr. 360, 365–371; U Exh. 2.)

[20] Stubbe later filed an appeal of this decision, which was found untimely by the coast appeals officer. (GC Exh. 9.)

[21] It is undisputed that Farley had participated in over a hundred arbitrations and had represented the accused in Section 13.2 hearings at least 10 times. (Tr. 2006–2007.)

[22] I credit Farley and Campbell's accounts of this conversation. Stubbe's recollection was both hazy and inherently implausible; he could not recall whether Campbell identified himself as representing X, and claimed that he told the two men he had no "decent recollection" of the incidents with X, which had occurred only two weeks earlier. (Tr. 183–184.)

December 19, Local 18 proposed that X's complaint instead be heard by the SJPLRC, but PMA disagreed. (Tr. 1563–1566, 2113; GC Exh. 39; U. Exh. 2) Respondents did, however, fashion an interim remedy at a JPLRC meeting held the following day. At that meeting, Campbell announced that, based on the witness interviews, the Union had concluded that Stubbe was guilty of conduct prohibited by 13.2. Campbell and Farley then each stated that they believed, based on Stubbe's admitted conduct, that X was entitled to interim relief (i.e., separating Stubbe and X) pending the adjudication of her grievance. According to Campbell, the parties determined that the only effective interim relief, given the Port's relatively small size, was to place Stubbe on non-dispatch pending the outcome of the grievance. (Tr. 2043–2044, 2095–2096; GC Exh. 10.)

g. The Stubbe 13.2 arbitration

On February 26, 2015, it was determined that all of the Section 13.2 complaints that had been filed during the contract hiatus would be heard by Area Arbitrator Jan Holmes (Arbitrator Holmes) with appeal to Coast Appeals Officer Rudy Rubio (CAO Rubio). (Tr. 1324; PMA Exh. 20.) X's complaint was scheduled to be heard on March 18, 2015. (GC Exh. 37.)

Initially, Stubbe selected Class A marine clerk Kevin McDonald (McDonald) as his representative at the arbitration. In early March, McDonald asked Farley for help in preparing for the hearing, and they decided that, based on Farley's far more extensive experience with 13.2 arbitrations, he should step in and represent Stubbe. McDonald consulted with Stubbe, after which Farley and Stubbe spoke and agreed that Farley would defend Stubbe going forward.[23] During the following weeks, Farley followed his "normal steps" in preparing for a hearing, including researching legal issues as well as consulting the well-known *Elkouri & Elkouri* treatise on arbitration. He also discussed the case with Stubbe at least six times, including two sessions that lasted over two hours each, and spent the weekend before the hearing preparing his closing statement and procedural arguments. Farley also spoke with X, as well as with witnesses Couch and Rhodd. (Tr. 2012–2018, 2020, 2023, 2026–2028; U Exh. 19.)

At the arbitration, Campbell appeared for X and Farley appeared on behalf of Stubbe. Appearing for Local 18 were Deed and Local 18's Secretary-Treasurer, and appearing for the PMA were Robinson and another PMA representative.[24] According to Respondents' witnesses, prior to Stubbe's 13.2 hearing, PMA and the Union had not discussed what, if anything, might be an appropriate remedy for X's grievance. At the outset of the hearing, Farley moved to dismiss the grievance on various procedural grounds, and also requested that Stubbe be awarded 85 days' back pay for the time he had been placed on nondispatch. Arbitrator Holmes denied each of these motions. Next, X, Stubbe, Couch and Rhodd testified; as detailed infra, Couch failed to appear in person but was permitted to testify by telephone. Farley presented Stubbe and Couch's testimony, made objections and cross examined X. (Jt. Exh. 2; Tr. 1512)

Stubbe, for his part, admitted before the arbitrator that he had advised X to tell others they were "exchanging sex" for him doing her work, which he alternately characterized as a "gaffe" and a "big" error for which there was no way to apologize. With respect to the bathroom incident, Stubbe did not dispute the basics of the exchange, admitted that Couch had warned him "there's someone in there" as he entered the bathroom and further admitted that he knew that female longshore workers would post someone at the door to "stand guard" while they used the men's restroom. Couch then testified that he was, in fact, watching the door for X and had warned Stubbe, "somebody's in there." (Tr. 56–63, 67, 73, 545–546.)

Following the witness testimony, PMA's Robinson argued that Stubbe had essentially admitted to a second violation of Section 13.2, and asked the arbitrator to permanently revoke Stubbe's dispatch privileges. According to Robinson, PMA's concern was that, despite effectively admitting to two 13.2 violations, Stubbe was "not getting it" and was therefore likely to engage in further prohibited harassment, creating a source liability for SSA and its member employers. (Tr. 899, 1511–1512; Jt. Exh. 4 at 94.) He testified:

> [a]s the case progressed, it was my opinion that there was no corrective behavior that could be applied to Mr. Stubbe that would correct his behavior. I personally did not feel that Mr. Stubbe, after testifying about knocking a woman's teeth down her threat and the subsequent case after that, the case that we were actually there for, in my opinion, he was blaming everybody. He was taking no accountability and I did not see an individual that was going to be reformed by any penalty short of removal.

(Tr. 1516)

In Stubbe's defense, Farley argued that the bathroom incident (which involved no inappropriate comments or body language) did not rise to the level of a 13.2 violation. (Jt. Exh. 4 at 86–89) Asked for a closing statement on behalf of X, Campbell stated that Stubbe's suggestion that she tell people they had a sexual relationship was "completely out of line," had made her "very uncomfortable" and justified Stubbe's "immediate removal off the I.D. list." (Id. at 89–90) In his closing, Farley argued for leniency based on what he described as a "lax enforcement" of the 13.2 rules at the Port, where, he argued sexual jokes were "commonplace."[25] He also cited SSA's failure to file its own 13.2 grievance upon learning of X's complaint as evidence that his actions were not worthy of losing his dispatch privileges entirely. (Id. at 91–92)

Arbitrator Holmes let Stubbe have the last word; he stated that he "had no problem with [X] filing a complaint" but that PMA was taking advantage of her complaint to retaliate against him for filing his grievance regarding the 2014 registration process. After Stubbe had spoken on this issue at some length, Robinson interrupted, stating that Stubbe was entitled to make these arguments "in another forum, but not here today in this

[23] Once again, Stubbe's recollection was foggier; to the extent that he suggested that Farley was somehow involuntarily foisted on him, I do not credit Stubbe. (Tr. 186.)

[24] It is undisputed that the hearing started late because Farley had misinformed Stubbe about the starting time. (Tr. 2050.)

[25] As Farley explained, he based this argument on information provided to him by Stubbe. (Tr. 2053.)

form." Apparently agreeing, the arbitrator asked if Stubbe had anything else to add, and he said no. (Jt. Exh. 4 at 96; Tr. 925, 2051.) There is no evidence that, prior to this point, Farley was aware that Stubbe had filed a grievance regarding the 2014 registration process.[26]

On March 31, 2015, Arbitrator Holmes found Stubbe guilty of prohibited conduct in violation of Section 13.2, and ordered him removed from the industry. (GC Exh. 4.) On or around April 20, 2015, after Stubbe had unsuccessfully appealed this decision to CAO Rubio, Respondents implemented the arbitration award against Stubbe, permanently removing him from the dispatch list. (GC Exhs. 3, 4.)

3. Alan Couch

Couch, who had worked as an unregistered longshore worker since 1983, became an ID casual at the Port in 2004. On June 2, 2015, Couch was disciplined by the JPLRC for failing to appear as a witness at Stubbe's March 18, 2015 hearing. (Tr. 431–432)

a. Couch's protected conduct

As detailed above, Couch claims that Campbell told him and four other 2014 registration grievants that they would lose work to newly hired casuals if they did not abandon their grievances. I do not credit Couch's version of this conversation. His manner in testifying about the alleged incident suggested fabrication, and only corroborating witness, Bianchini, related the conversation in a rehearsed manner, seemingly "remembering" the critical threat only after a significant, unexplained pause. I instead credit Campbell's version of the conversation instead, in which, during a break in the grievance hearing, he merely answered the grievants' questions about whether further registrations and casual hiring were expected.

Couch also testified that Local 18 President Campbell at some point "before Christmas" in 2014 spoke to him personally about his grievance. According to Couch, Campbell asked him, "how far are you willing to take this?" Then, when Couch responded, "all the way," Campbell supposedly replied, "you're on your own." Campbell denied that any such conversation occurred. (Tr. 445–448, 2086) Once again, Couch's manner in testifying and his overall presentation did not convince me that this conversation actually occurred. Instead, I credit Campbell's testimony; his demeanor suggested forthrightness and his denial appeared quite genuine.

The record contains evidence of Couch engaging in additional protected conduct, but all such conduct occurred following his alleged discriminatory discipline.[27]

b. Couch's failure to appear at Stubbe's 13.2 hearing

Stubbe and Farley planned to call Couch as a witness to testify about Stubbe's bathroom run-in with X. Farley, who had initially interviewed Couch shortly after the incident, also spoke with him on two other occasions. In either January or February, 2015, Farley interviewed Couch by telephone and informed him that he would need to be present at an upcoming hearing. Couch said he would need "a few days' notice" because he worked as a an over-the-road truckdriver. According to Couch, Farley said that should not be a problem.[28] Farley and Couch spoke again on March 7, 2015. According to Couch, he expressed concern about having to show up at a hearing, and Farley told him that he would "record" his statement and he "shouldn't have to be there." Farley's account of the conversation was more detailed. According to him, he told Couch he was not sure he would need to appear and might instead be allowed to sign an affidavit or testify via telephone. He denied, however, saying that he was tape recording the conversation or that Couch would definitely not need to appear. (Tr. 473, 466–472, 2020–2026, 2069)

On Friday, March 13, during a telephonic prep session with Stubbe, Farley suggested that Couch might not be a helpful witness, but Stubbe disagreed. Farley acquiesced, telling Stubbe, if he wanted Couch to testify, he needed to call him and make sure he appeared. (Tr. 2026) According to Couch, on the Friday in question, he was truck driving out of town when Stubbe called him; he rather incredibly testified that Stubbe told him to expect a "cite letter" ordering him to appear at the hearing, but that he probably did *not* need to appear, because Farley had said he was going to record his statement. (Tr. 580-91, 879)[29] Couch testified that he nonetheless "stay[ed] close" for the next few days in Southern California and arranged for his mother to check his mail for a letter from PMA, but decided to drive to Arizona on Monday, March 16, after she told him no such letter had arrived. (Tr. 464, 585–586)[30]

Couch also testified that he contacted the Local 18 hall and left a message for Campbell to check on whether he needed to appear. Couch's testimony about what prompted this call leads

[26] At most, the record indicates that Stubbe told Farley that he wanted to present evidence pertaining to "an elevation" at the hearing. (Tr. 2019)

[27] For example, in October 2015, Couch filed his own 13.2 grievance complaining about women using the men's bathroom; this grievance was denied pre-hearing by Arbitrator Holmes (who was later upheld by CAO Rubio) as lacking merit. Finally, Couch testified that he, like Simisola, took pictures of the dispatch sheets at the hiring hall and was instructed on two occasions in the fall of 2015 (by dispatchers Shaffer and Deed, respectively) that he should not do so. (Tr. 432, 477–479, 509–510; GC Exh. 28(a), 40.)

[28] Present on Couch's side of the conversation (via speakerphone) were Stubbe and Couch's girlfriend, Rose Rojas, but I do not credit either of them as to this conversation. Stubbe's recollection was devoid of details, and Rosas claimed that Couch definitively said he was not going to attend the hearing, to which Farley supposedly responded "not to worry about it." Even Couch himself did not corroborate this. (Tr. 320–321, 720–721.)

[29] At hearing, even Couch did not actually appear convinced of his own story. Initially testifying that Stubbe told him, "keep an eye out for [a cite letter] because you might have to. . ." he then abruptly cut off, stating, "I didn't think I —I wasn't even home." (Tr. 584) Notably, Stubbe was not asked to corroborate Couch's testimony regarding this conversation.

[30] According to Couch, he gave his mother this instruction on either the Friday he spoke with Stubbe or the following day. (Tr. 588–589) This was contradicted by testimony given by his mother who, on cross-examination, clearly stated that the "only time" Couch ever called her about getting a cite letter was the following Monday. (Tr. 257.)

me to believe that, in fact, he received his cite letter around the same time as his conversation with Stubbe. In his words, he called the hall "after I got the letter—not the letter. I mean, after [Stubbe] told me about it, I figured I'd call and see what's going on." (Tr. 591.) He then stated that he called "the number they gave me on the letter" only to backtrack, explaining that the "letter" to which he had referred was "a letter I've gotten from [Campbell] before." (Tr. 592–593) No such letter was proffered by the General Counsel to corroborate Couch's rather shaky explanation of these events.

According to the General Counsel's witnesses, who included Couch, as well as his mother and brother, the cite letter arrived at Couch's residence the following day (March 17); the cite letter itself, however, is dated March 9. (U Exh. 1; Tr. 255–256, 464) Couch's mother testified that, per Couch's instruction, she recognized the letter as being from PMA and opened it right away; his brother recalled differently, testifying that she was "hesitant" to open the letter and did not understand its significance. (Tr. 292–293) At some time prior to the hearing, Couch telephoned Stubbe and informed him that there was no way he would be able to attend, but it is undisputed that Couch did not inform any of Respondents of this prior to the hearing. (Tr. 591–594, 2096)

C. Couch's interaction with Arbitrator Holmes

When Couch did not appear at the hearing on March 18, 2015, Stubbe informed the arbitrator that he had spoken to him the prior week and told him to watch out for his cite letter. After Couch was connected to the arbitration via telephone, Arbitrator Holmes asked him to explain his nonappearance. Couch admitted he knew he was supposed to be at the hearing, but said he that he had to make a living. He then became argumentative, asking, "how long is this gonna be?" and urging the arbitrator, "let's get on it, because I've gotta get rolling . . . I mean they ain't paying me for this." It is undisputed that the arbitrator was not impressed; according to Couch himself, she was "upset" by his failure to appear and "reamed him out" for being disrespectful to her. (Tr. 533–543, 542, 954–955; Jt. Exh. 4 at 78) As described, supra, Couch then testified by telephone about the bathroom incident.

Following his testimony, Couch was disconnected from the arbitration. Farley then stated that Couch's failure to appear was improper and that his remarks to the arbitrator were "flippant"; he then suggested that Couch should "at least" be sent a letter of reprimand. Campbell joined in, calling Couch's conduct "completely rude" and asking that he be penalized. Farley backed off, stating, "I'm not saying that." (Jt. Exh. 2 at 81–83) Robinson weighed in, noting that X had missed a funeral to appear at the arbitration; Campbell stated that this justified penalizing Couch and suggesting putting him on nondispatch for a ship, which would amount to missing roughly 6–8 shifts. Farley pushed back, suggesting that he was uncomfortable with the arbitrator fashioning a remedy, considering Couch had no designated representative in the hearing. Ultimately, Arbitrator Holmes decided that "a penalty would be appropriate in this particular case," and that she would "leave it to [the SJPLRC] to figure out what would be appropriate." (Tr. 1550; Jt. Exh. 4 at 84–85)

d. Respondents suspend Couch

On June 2, 2015, the SJPLRC, pursuant to Arbitrator Holmes' order, held a hearing over the appropriate penalty. Couch and Farley testified regarding what Couch had been told about his need to appear. Couch initially maintained that Farley had excused him from attending, and Farley denied this. Later during the hearing, however, when Couch was asked why he had not informed anyone from the JPLRC that he was not going to attend Stubbe's arbitration, he admitted that, in hindsight, he probably should have done so. (Tr. 475–476, 872, 1550–1552; PMA Exh. 22.)

Following the testimony, the committee determined that Couch should receive a penalty of fourteen shifts off work, with seven shifts suspended. According to PMA's Robinson, because a nonparty witness had never failed to appear for a 13.2 hearing before, the committee considered the penalties applicable for analogous misconduct, such as 14 days off work for a failure to appear for work, and concluded that something less was sufficient to send impress on him the importance of appearing. On June 2, 2015, the JPLRC issued Couch a "Letter of Reprimand" setting forth his penalty. (Tr. 1552–1553, GC Exh. 28.)

Analysis

A. The Applicable Statutory Framework

The Act aims "to separate membership obligations owed by employees to their bargaining representatives from the employment rights of those employees." *IBEW Local 1547 (Rogers Electric)*, 245 NLRB 716, 717–718 (1979). Indeed, the statutory provisions at the core of this case were designed to constitute a "wall . . . between organizational rights and job opportunities." See *Lummus Co. v. NLRB*, 339 F.2d 728, 734 (D.C. Cir. 1964). This "wall" is policed by two separate mechanisms under the Act. First, Section 8(b)(1)(A) of the Act makes it an unfair labor practice for labor organizations "to restrain or coerce . . . employees in the exercise of the rights guaranteed by section 7 of the Act." Among those Section 7 rights is "the right to refrain from" forming, joining, or assisting labor organizations (i.e., engaging in dissident union conduct). *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963).

Union conduct that compromises the "wall" separating membership obligations and employment rights is also addressed by Section 8(b)(2) of the Act, which makes it an unfair labor practice

> for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . . [or]; (2) to cause or attempt to cause an employer to discriminate against an employee in violation of [section 8(a)(3)]. . .

Where a union is found to have caused an employer to take adverse action against an employee, the Board recognizes a rebuttable presumption that "[the labor organization] acted unlawfully because by such conduct [it] demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees." *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662,

673 (2002) (citing *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382, 1385 (1984)). Under Section 8(b)(2), a union that causes employer action against an employee may be found to have violated the Act even though the questioned action, if taken by the employer alone, would not constitute a violation of the Act. Thus, the allegations against Local 18 in this case are not dependent on whether PMA or SSA violated the Act, and, regardless of the Employer-Respondents' motivation in taking action against the discriminatees, Local 18 will be found to have violated the Act if it caused such action to be taken. *Carpenters Local 2205 (Groves-Granite)*, 229 NLRB 56 (1977). Accord *Town & Country Supermarkets*, 340 NLRB 1410 (2004).

Union conduct that compromises the "wall" separating membership obligations and employment rights is also addressed by Section 8(b)(1)(A), whereby the Board enforces unions' "duty of fair representation," which stems from the right of employees under Section 7 "to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment." *Miranda Fuel*, 140 NLRB 181, 185 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963). Under this analysis, a violation will be found where a union takes "action against any employee upon considerations or classification which are irrelevant, invidious, or unfair." Id.[31]

B. Individual Allegations

1. ID casual rule 12

The General Counsel alleges that, by maintaining a jointly negotiated ban on ID casuals "causing a disturbance at the Dispatch Hall or at any other job-related area," the Employer-Respondents are violating Section 8(a)(1) and Respondent Local 18 is violating its duty of fair representation. It is asserted that the rule is unlawful for two independent reasons. First, the General Counsel argues that Rule 12 is unlawfully overbroad pursuant to *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).[32] Second, it is alleged that the rule, on its face, discriminates against non-Union members. Respondents argue that the rule would not be reasonably interpreted by employees to prevent Section 7 conduct; Respondent PMA additionally argues that Rule 12 cannot be found to unlawfully restrict workers' Section 7 rights, because Local 18 waived any such rights implicated by the rule by agreeing to it. Finally, Respondents assert that Rule 12 does not discriminate on its face.

As set forth below, I agree with Respondents that Rule 12 is not facially discriminatory. However, I do find that Rule 12 is unlawfully overbroad and that its intrusion on individual employees' Section 7 rights cannot be waived by the Union.

a. ID casual rule 12 as facially discriminatory

It is well settled that granting preferential terms and conditions of employment based on employees' union membership violates the Act and contractual provisions which operate to do so are discriminatory on their face. *Postal Service,* 345 NLRB 1203, 1214 (2005) (contractual provisions granting preferential treatment to union members in applying for trainer position unlawful) (citations omitted); *Vanguard Tours*, 300 NLRB 250, 253 fn. 15 (1990) (unlawful for labor contract to provide for pension benefits only for union members), enfd. 981 F.2d 62, 67 (2d Cir. 1992). However, as the Supreme Court has made clear, illegal objects will not be presumed, and the terms of a parties' collective-bargaining agreement will not be found unlawful merely because they fail to disclaim all illegal objects. *NLRB v. News Syndicate Co.*, 365 U.S. 695 (1961); see also *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961).

In this case, although the challenged rule does not explicitly single out non-members, the General Counsel claims that the term "casual" is a proxy for non-member status. However, as Respondents established at hearing, certain non-casual longshore workers are, like casuals, ineligible for union membership, thus invalidating any automatic equation of the term "casual" with non-member status. Moreover, the record evidence indicates that union members subject to the PCLCD are bound by rules, similar to rule 12, aimed at preventing disruptions of dispatch. (See Tr. 860–861, 1325, 1648; GC 2 at 85, § 17.125 & 98, § 17.8 and § 17.81.)[33] Finally, the record is devoid of any evidence that rule 12, implemented approximately 40 years ago, was devised with an eye towards discriminating against non-members. For these reasons, I cannot find that rule 12, on its face, is discriminatory.

b. ID casual rule 12 as overly broad

I next examine rule 12 under the Board's standard for unlawfully overbroad rules. As noted, supra, even if Rule 12 is found to infringe on individual employees' Section 7 rights, the rule would remain lawful if Local 18 validly waived those rights. As Respondent PMA correctly points out, unions have been found to have waived the Section 7 rights of bargaining unit members, the most common example being a no-strike clause contained in a collective-bargaining agreement.[34] However, a union's waiver of represented employees' economic rights is not comparable to a waiver of those employees' right to organize (including their right to engage in union dissident conduct). For this reason, the Supreme Court has noted that:

> a different rule should obtain where the rights of employees to exercise their choice of a bargaining representative are involved –whether to have no bargain representative, or to retain the present one, or to obtain a new one.

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[31] A union's breach of its fair representation duty is also deemed a violation of Section 8(b)(2), in that any arbitrary union action that adversely affects an employee by definition tends to encourage or discourage union membership. *Miranda Fuel*, 140 NLRB at 188.

[32] The General Counsel also asserts that the Board's decision in *Local 876*, 339 NLRB 769 (2003), supports finding Local 18 liable for Rule 12's alleged overbreadth. I will address this argument infra.

[33] To the extent that Rule 12's wording differs materially from that of these provisions, there is no evidence that this reflects anything more than the more stringent standards to which casuals are held. See *Pacific Maritime Assn.*, 155 NLRB 1231, 1234 (1965) (applying more stringent standard for elevation and registration status based on longshore workers' differing registration classes).

[34] See *NLRB v. Allis-Chalmers Mfg. Co*., 388 U.S. 175, 180 (1967) (a union may "bargain away [an employee's] right to strike during the contract term, and his right to refuse to cross a lawful picket line") (footnote omitted).

NLRB v. Magnavox Co., 415 U.S. 322, 325 (1974). In other words, no union has the right to bargain away the right of individual employees to criticize the manner in which it represents them.[35] In this case, PMA argues that, due to the critical importance of timely dispatch in the longshore industry, rule 12 in fact amounts to a waiver of employees' right to strike (in that a concerted interruption of dispatch would have the same result as a strike). The problem with this argument is that, to the extent that rule 12 may be interpreted to apply to employees' conduct in protest of the Union's operation of the dispatch hall in favor of its members, Local 18 lacks the power to waive such rights. For this reason, the PMA's waiver defense of rule 12 is rejected.

In determining whether an employer's work rules violate Section 8(a)(1), the Board has held that:

> [A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule explicitly restricts activities protected by Section 7.... If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

Lutheran Heritage Village-Livonia, 343 NLRB at 646–647 (citing *Lafayette Park Hotel*, NLRB 824, 825–827 (1998), enfd. mem. 203 F.3d 52 (D.C. Cir. 1999)). Rules that are ambiguous and could therefore be interpreted to ban Section 7 conduct are to be construed against the employer; employees "should not have to decide at their own peril what information is not lawfully subject to such a prohibition." *Hyundai America Shipping Agency*, 357 NLRB 860, 862 (2011). Here, the rule in question does not explicitly restrict Section 7 activities. Nor is there any evidence that it was either promulgated in response to protected concerted activity, or has been relied on to punish employees for engaging in protected conduct.[36] The question then becomes whether a reasonable employee would interpret a prohibition on "causing a disturbance" as a restriction on Section 7 conduct or whether the rule's wording is so ambiguous that it could reasonably be interpreted that way.

In this regard, it is helpful to read rule 12 in its context (i.e., as part of a posted list of "Rules for Identified Casuals"). The list contains rules governing the conduct of the dispatch itself, as well as grounds for disqualifying workers from participating in the dispatch.[37] To the extent that Rule 12 governs employees' conduct during the dispatch itself, it actually functions as both rule-types, in that it identifies "causing a disturbance at the Dispatch Hall" a disqualifying condition for dispatch. I find that, based on the parties' long practice of enforcing rule 12 with the yellow-line in the dispatch hall, casuals would reasonably understand that, as applied during the dispatch itself: (a) the rule is aimed at protecting the disruption of dispatch; and (b) they are permitted to engage in protected conduct during the dispatch without being found in violation of rule 12, as long as they abide by the dispatcher's order to remain behind the yellow line.

The problem, however, is that Rule 12 does not merely forbid conduct during dispatch, but rather must be read along with rules listing other conduct disqualifying workers *for* dispatch (i.e., "refusal to work as directed" and "damage to company property"). Indeed, Rule 12 by its own terms applies to disturbances at the dispatch hall during *non-dispatch* and also explicitly prohibits causing a disturbance *outside* the dispatch hall in any "job-related area." It is here, without the help of a yellow line, that an employee would have be left to ponder whether Rule 12 forbids disrupting the industrial peace at the Port by criticizing Respondents' joint dispatch process,[38] and specifically what conduct would cross that invisible threshold. Would casuals donning anti-Union shirts or chanting anti-Union slogans as they left their work shift constitute a "disturbance" sufficient to result in their permanent loss of dispatch privileges? While Local 18 argues that Rule 12 is necessary to maintain production and discipline and PMA argues that it is merely an extension of the parties' no-strike provision, these rationales cannot justify leaving employees under such circumstances to decide—at their own peril—whether or not to exercise their rights under the Act.

Accordingly, I find that, by maintaining rule 12, the Employer-Respondents are violating Section 8(a)(1) of the Act. As for Local 18, I do not find this case analogous to the *Local 876* case cited by the General Counsel, supra, which dealt with a union rather unambiguously threatening its members with internal union discipline based on their protected conduct. Instead, I find that Local 18, as the operator of the dispatch hall, has a fiduciary duty to inform the Port's ID casuals of the rules governing their dispatch rights and obligations. See *Bartenders Local 165 (Nevada Resort)*, 261 NLRB 420 (1982); *Operating Engineers Local 324 (Michigan Chapter, NECA)*, 226 NLRB 587 (1976). I find that, by maintaining Casual Rule 12, an ambiguous rule that "would chill the exercise of employees' Section 7 rights," Local 18 failed to meet this responsibility and thereby violated Section 8(b)(1)(A) of the Act. See *Electrical*

[35] As the Court explained, even waivers of individual members' economic rights, such as the right to strike, "rest on 'the premise of fair representation' and presuppose that the selection of the bargaining representative 'remains free.'" 415 U.S. at 325 (citing *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 280 (1956)).

[36] As set forth infra, I find that Simisola's conduct lost the Act's protection because she repeatedly interrupted dispatch.

[37] The latter-type rules include, inter alia, bans on assault, intoxication and refusing work.

[38] See *Glen Berry Mfrs., Inc.,* 169 NLRB 799, 803 (1968) ("[a]n employee may disturb the peace and tranquility of a plant by disrupting an existing harmonious relationship between Company and Union, and in that sense an employee who is having trouble with the Union is in trouble with the Company also").

Workers IUE Local 444 (Paramex Systems), 311 NLRB 1031, 1040–1041 (1993) (union violates duty of fair representation by maintaining ambiguous union security clause).

2. The 8(a)(3) and (4) allegations against PMA and SSA

To determine whether an employer's adverse employment action violates either Section 8(a)(3) or 8(a)(4), the Board applies the analysis articulated in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). To establish a violation of Section 8(a)(3), "the General Counsel must show, by a preponderance of the evidence, that an employee's union activity was a motivating factor in the employer's decision to take adverse action against the employee." *Caravan Knight Facilities Mgmt.,* 362 NLRB No. 196, slip op. at 2 (2015) (citing *Wright Line* at 1089). For purposes of Section 8(a)(4), the General Counsel must demonstrate initially that the employee participated or gave testimony in Board or Board-related proceedings.[39] In either case, if the General Counsel makes the required showing, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the employee's union activity. Id.

a. Allegations regarding Simisola

The General Counsel contends that Respondents PMA and SSA, through the SJPLRC, agreed to suspend Simisola because she engaged in protected conduct, including filing and maintaining individual grievances alleging favoritism and discrimination in the 2014 registration process and filing Board charges regarding dispatch hall operations. PMA and SSA argue that the General Counsel has failed to demonstrate any unlawful animus against Simisola and additionally that she lost the Act's protection by disrupting dispatch. It is undisputed that Simisola engaged in protected activity as alleged; there is no dispute that Respondents SSA and PMA were aware of this activity. I find, however, that the General Counsel failed to establish animus on the part of either PMA or SSA towards this protected conduct.

The General Counsel offers no credible evidence of animus against Simisola by the Employer-Respondents. Indeed, the only evidence he points to is their alleged failure to conduct an independent investigation of her alleged misconduct. (See GC Br. at 16, n.14 (citing cases)). I find this argument misplaced, in that the undisputed evidence reflects that, on both April 29 and 30, SSA's Terminal Manager Patalano did just that. On the 29th, he interviewed Simisola and confirmed that she understood the yellow-line rule. The following day, it appears that Simisola had already left by the time Patalano arrived, but he did interview Deed and Valdez as to what had occurred. Moreover, Simisola was given ample opportunity to present her version of events before the JPLRC, which rescheduled its hearing to fit her schedule. Under the circumstances, the Employer-Respondents' lack of animus is fatal to the General Counsel's prima facie case under *Wright Line*.

The General Counsel also argues that Simisola's suspension violated the Act because it was based on: (a) her conduct on April 29 and 30, which the General Counsel claims was Section 7 conduct; and (b) Respondents' application of ID Casual Rule 12, which I have found to be unlawfully overbroad. As explained below, I find merit in neither argument.

(i) Section 7 conduct as basis for the suspension

It is undisputed that the asserted reason for suspending Simisola was her conduct at Respondents' joint dispatch hall on April 29 and 30. The General Counsel alleges that this conduct (i.e., her attempts to photograph dispatch logs), was protected conduct. Unless that conduct is shown to be so opprobrious as to cost her the protection of the Act, the General Counsel argues, her suspension amounts to unlawful retaliation.

It is well established that opposition to union officers or policies, sometimes referred to as "dissident activities" are protected by Section 7 of the Act. *Sheet Metal Workers Local 16 (Parker Sheet Metal)*, 275 NLRB 867 (1985). However, a hiring hall user's otherwise protected conduct in "policing" the operation of a hiring hall, including raising complaints about the hall's operation and demanding access to referral records, may lose the Act's protection where the user acts in a disorderly or disruptive manner. *Teamsters Local 87*, 273 NLRB 1838 (1985). In this regard, the General Counsel compares Simisola's relatively "civilized" protest (i.e., repeatedly demanding to see the dispatch sheets and refusing to leave the hall) with cases in which hiring hall users are found to have lost the Act's protection based on more extreme and confrontational behavior, including yelling and cursing at dispatchers. But a polite disruption of dispatch has the same effect as rude one; in either case, the Board has made clear that an employees' right to hiring hall job referral records must give way to the need for an orderly dispatch. *Electrical Workers Local 3*, 331 NLRB 1498 (2000). It logically follows that even a relatively polite disruption of dispatch to review or photograph dispatch records may be considered unprotected.

Here, the credible evidence overwhelmingly indicates that Simisola's conduct was disruptive to the dispatch process; after being explicitly instructed not to interrupt dispatch on April 29, Simisola came back and did just that fewer than 24 hours later. I credit Respondents' witnesses, who made clear that Simisola's suspension was not based on her *request* for dispatch records, but rather on the disruptive manner in which she did so. As such, I find that her suspension was not based on protected conduct.

(ii) Rule 12's impact on Simisola's suspension

The Board has held that that discipline imposed pursuant to an unlawfully overbroad rule is unlawful. See *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 fn. 3 (2004). This rule, referred to as the "*Double Eagle*" rule, recognizes an exception where the employer can show that the disciplined employee's conduct actually interfered with her own work or that of others, and that this, and "not simply the violation of the overbroad rule" was the cited reason of the discipline. *Continental Group, Inc.,* 357 NLRB 409, 412 (2011) (citing *Miller's Discount Department Stores*, 198 NLRB 281 (1972), enfd. 496 F.2d 484 (6th Cir. 1974)). I find that Simisola's suspension qualifies for this exception. The testimonial and documentary evidence

[39] The Board applies the elements of the *Wright Line* standard to alleged violations of Section 8(a)(4). See *Newcor Bay City Division of Newcor, Inc.*, 351 NLRB 1034 fn. 4 (2007).

amply demonstrate that Simisola's was cited and penalized for disrupting Deed's dispatching work and costing him and others their longshore work.[40] Based on this showing, Respondents were within their rights to discipline Simisola despite Rule 12's invalidity.

While the Board now recognizes another exception to the *Double Eagle* rule for employees who engage in conduct "wholly distinct from activity that falls within the ambit of Section 7," I cannot find Simisola's interruption of dispatch distinct from her otherwise protected request for dispatch records. Put another way, simply because Simisola's conduct lost the Act's protection, this case is not one in which an employee violates an unlawful rule in the absence of any connection to Sec. 7 conduct whatsoever. Cf. *Continental Group*, 357 NLRB at 413 (employer lawfully terminated employee who violated an overly broad off-duty access rule because, rather than engaging in protected conduct while on the employer's property, the employee was in fact sleeping and living there during his off-duty hours).

Based on the above, I recommend dismissal of the Section 8(a)(3) and (4) allegations based on Simisola's suspension.

b. Allegations regarding Stubbe

The General Counsel alleges that Stubbe's discharge was caused, at least in part, by Respondents PMA and SSA in that they (along with Local 18) failed to vacate the arbitration award against him. PMA and SSA argue that, as mere participants in the 13.2 proceeding, they cannot be held accountable for its results and that, in any event, there is no evidence that they harbored unlawful animus against Stubbe. As a preliminary matter, I do not agree that the Employer-Respondents cannot, as a matter of law, be held responsible for Stubbe's discharge merely because it resulted from an arbitration process. While the parties had agreed that Section 13.2 arbitration awards would be final, technically nothing prevented them from revising or relaxing this rule in a particular case. In fact, as discussed below, PMA sought to vacate a 13.2 award on at least one occasion.

Moving on to the *Wright Line* test, I note that, while Stubbe is claimed by the General Counsel to have been the "ringleader" of the 2014 registration grievances, no witness testified to that effect. That said, there is no dispute that Stubbe engaged in protected activity by filing his own 2014 registration grievance or that Respondents SSA and PMA were aware of this activity. However, I find that the General Counsel has failed to demonstrate animus against Stubbe based on his proven protected conduct. As with Simisola, the General Counsel argues that the Employer-Respondents' failure to conduct an independent investigation demonstrates animus. I disagree. While an employer's failure to investigate alleged misconduct prior to issuing discipline has certainly been found to suggest animus, such a rationale misses the mark where, as here, the discriminatee's alleged misconduct becomes the subject of a hearing before an impartial arbitrator. SSA and PMA, in other words, did not simply "seize" on X's complaints regarding Stubbe's conduct, but rather allowed him to present his side of the story in a process arguably more thorough and fair than a one-sided, employer investigation.

With respect to Stubbe's hearing, the General Counsel claims that Robinson's request that the arbitrator impose a discharge remedy demonstrated animus against him, because PMA's role in such hearings is to be impartial. Based on Robinson's credible testimony, however, I find that it is not uncommon for PMA—on behalf of a member-employer—to weigh in at 13.2 hearings involving alleged coworker harassment. Moreover, it logically flows that an employer faced with admitted misconduct and a second-time offender such as Stubbe would act to protect its interests by taking affirmative action. The General Counsel also argues that Robinson "falsely represented" to Arbitrator Holmes that a specific provision of the PCLCD (Sec. 17.86) *required* a more severe penalty to be assessed against Stubbe based on his status as an ID casual. However, the record actually indicates that Robinson simply cited the provision in question as support for the proposition that, throughout the parties' grievance machinery, casuals are subjected to heightened discipline for offenses. In any event, there is simply no evidence to indicate that he did so based on any protected conduct on Stubbe's part.

The General Counsel argues that the discharge penalty assessed Stubbe—advocated for by Robinson on behalf of the Employer-Respondents—itself suggests animus. First, the General Counsel argues that I should consider as "comparators" first-time 13.2 offenders who received less severe discipline than Stubbe. In this regard, I adhere to my ruling on the record that such individuals are not proper comparators. See *Diamond Electric Mfg. Co.*, 346 NLRB 857, 858 (2006) (ALJ erred in finding disparate treatment, because, unlike his proposed comparators, discharged employee had a history of discipline); *Hoffman Fuel Co. of Bridgeport,* 309 NLRB 327, 329 (1992) (no disparate treatment found, because other employees did not have disciplinary history like the discharged employee). The General Counsel next argues that I find animus based on the fact that the 13.2 arbitration process, on another occasion, resulted in a lesser penalty for an accused's second violation. However, this lesser penalty—a 2-week suspension—was handed down not by Arbitrator Jan Holmes, but by another area arbitrator, significantly detracting from its value as comparative discipline. Nor is there any indication that the accused in those cases, identified in the record as "Mr. A" did not himself engage in protected conduct. The General Counsel also suggests that I consider the facts of a third case, Pacific Maritime Assoc., 358 NLRB 1184 (2012). However, as that decision was invalidated by *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), I find it inappropriate to do so.[41] For all of these reasons, I find

[40] That Respondents were not simply mechanically applying rule 12 is further demonstrated by the fact that the rule, on its face, dictates that an infraction "shall" result in the permanent revocation of dispatch rights, not the lesser suspension she actually received.

[41] The General Counsel argues in his posthearing brief that I should take an adverse inference based on the PMA's failure to produce additional cases involving second offenses of 13.2. Regardless of the merits of that argument, I find that the General Counsel waived it on the record when, after a lengthy debate over documents offered by PMA to rebut such an inference, he stated, "I will not make that argument. I

that the General Counsel's proffered "comparator evidence" is insufficient to establish that Stubbe was treated differently based on his protected conduct.

Finally, the General Counsel argues that the Employer-Respondents demonstrated animus against Stubbe by failing to vacate the arbitration award against him. While it is true that PMA previously sought to vacate a Section 13.2 award based on its concern that it might be viewed as unlawful retaliation against the accused, there has been no showing that Stubbe's case presented such a situation. Unlike the accused in that case, Stubbe's admittedly inappropriate remarks to a female longshore worker are not even arguably protected by Section 7, and thus it would not be logical or appropriate for the PMA to propose compromising X's right to be free of sexual harassment. There is simply no evidence that, following Stubbe's unsuccessful appeal of Arbitrator Holmes' decision, SSA and PMA's implementation of the penalty she ordered was motivated by anything other than a genuine concern for the liability his conduct might cause them as employers. For these reasons, I find that the Employer-Respondents did not violate Section 8(a)(3) of the Act with respect to Stubbe and recommend the dismissal of these allegations.

c. Allegations regarding Couch

The General Counsel contends that the Employer-Respondents agreed, through the SJPLRC, to suspend Couch because he engaged in protected conduct, including filing a 2014 registration grievance. As with the other discriminatees, the General Counsel alleges that the Employer-Respondents demonstrated animus against Couch by failing to independently investigate his alleged misconduct. This argument has little force as applied to Couch. The credible record evidence establishes that Couch *admitted* to Arbitrator Holmes that he knew he was supposed to be at Stubbe's 13.2 hearing, but chose to work at his truck driving job instead. Asked by the arbitrator to design an appropriate penalty for his nonappearance, Respondents agreed that he should be allowed to appear before the JPLRC to explain himself before any penalty was imposed. As such, not only was there very little to "investigate" with respect to Couch's nonappearance, but as members of the JPLRC, the Respondent-Employers demonstrated a concern for his internal "due process" rights inconsistent with discriminatory intent. Because the General Counsel failed to adduce any additional evidence indicating that the Employer-Respondents took issue with Couch's protected conduct, I find, as with the other discriminatees, that the General Counsel failed to establish the element of animus necessary to establish his prima facie case. Accordingly, I recommend dismissal of the Section 8(a)(3) allegations based on Couch's suspension.

3. Allegations against ILWU Local 18

The General Counsel alleges that Local 18 is responsible for the suspensions of Simisola and Couch, as well as the removal of Stubbe from the ID casual dispatch list, because it caused these actions in violation of Section 8(b)(2) of the Act, and violated its duty of fair representation with respect to each of the discriminatees in violation of Section 8(b)(1)(A). With respect to Simisola, the General Counsel additionally alleges that the Union independently violated its duty of fair representation by denying her access to dispatch logs. What follows is a discussion of the two, above-referenced statutory mechanisms for addressing union conduct that leads to discipline of a bargaining unit member and an analysis of the General Counsel's allegations with respect to each discriminatee.

a. Section 8(b)(1)(A) and the duty of fair representation

The Act prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair. *Miranda Fuel*, 140 NLRB 181, 185 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963). The duty requires a union to "represent fairly the interests of *all* bargaining-unit members," regardless of whether they are union members, *Electrical Workers (IBEW) v. Foust*, 442 U.S. 42, 47 (1979) (emphasis added), and to do so "without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). Unions must serve members and non-members alike. *Electrical Workers Local 2088 (Federal Elec. Corp.)*, 218 NLRB 396 (1975) (violation of duty found in processing union member's grievance before nonmember's similar grievance). Likewise, failing to adequately represent an employee because he engaged in conduct considered "disloyal" to the union constitutes a violation of the duty. *NLRB v. Pacific Coast Utilities Serv., Inc.*, 638 F.2d 73 (9th Cir. 1980).

In interpreting the duty of fair representation, however, the Board recognizes that unions must enjoy an amount of discretion in serving their represented employees. *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631 (Vosburg Equipment, Inc.)*, 340 NLRB 881, 881 (2003). As the Supreme Court has stated, "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). "Thus it is not every act of disparate treatment or negligent conduct which is proscribed by Section 8(b)(1)(A), but only those which, because motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as 'arbitrary conduct.'" *Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982, 982 (1978).

It is well established that a union's duty of fair representation extends to its operation of an exclusive hiring hall; where a union "causes, attempts to cause, or prevents an employee from being hired or otherwise impairs the job status of an employee," the Board draws an inference of unlawful coercion, which may be rebutted if the union shows its actions were justified. See *Laborers Local 872*, 359 NLRB 1076, 1078 fn. 9 (2013) (citing *Stage Employees IATSE Local 412 (Various Employers)*, 312 NLRB 123, 127 (1993)). However, the Board also recognizes a union's

> legitimate interest in maintaining order at its hiring hall

waive any such argument." (Tr. 2144, ll. 5–7.) I accepted that representation and hold the General Counsel to it now. See *Station Casinos, LLC*, 358 NLRB 1556, 1576 (2012). For the same reason, I deny the General Counsel's Motion to Strike, filed on June 3, 2016, as moot.

> against disruptions by members; in retaining its members' trust in the fairness of the operation; [and] in protecting its representatives from unwarranted abuse in the course of their duties. . . .

New York City Taxi Drivers, 231 NLRB 965, 967 (1977). Thus, when a represented employee engages in protected activity—such as protesting hiring hall practices—the legitimate interests of her bargaining representative in representing its constituency must be balanced against the interests of the individual dissident. *Longshoremen Assn. Local 341*, 254 NLRB 334, 337 (1981). Ultimately, to show unlawful retaliation for protesting hiring hall practices, "there must be a showing that the discipline was because [the employee] was exercising Section 7 rights and not because of the manner in which they were exercised." *Teamsters Local 87*, 273 NLRB at 1849.

The duty of fair representation also includes an obligation to provide hiring hall users access to job referral lists to determine whether their referral rights are being protected; this duty is breached when the union arbitrarily denies such a request. A refusal to provide hiring hall records will be deemed arbitrary unless the union can show the refusal was necessary to vindicate legitimate union interests. See *Operating Engineers Local 12 (Nevada Contractors Assn.)*, 344 NLRB 1066, 1068 (2005); *Operating Engineers Local 3 (Kiewit Pacific Co.)*, 324 NLRB 14, fn. 1 (1997); *Carpenters Local 102 (Millwright Employers Assn.)*, 317 NLRB 1099, 1105 (1995). However, not every request to review or photograph dispatch records is protected, and under certain circumstances, the time and manner in which a request for such records is made may deem a union's denial reasonable and non-arbitrary. *Electrical Workers Local 3*, supra.

b. Section 8(b)(2)

As the Board has stated, "[a]n 8(b)(2) violation can be established by direct evidence that the union sought to have the employer discriminate, or by sufficient circumstantial evidence to support a reasonable inference that the union requested that the employer discriminate." *International Operating Engineers, Local 12 (Kiewet Industrial)*, 337 NLRB at 545. Even what appears to be an "innocent act" by the union will support an 8(b)(2) violation, if it is shown that the union knew that action would produce the desired result. *Quality Mechanical, Inc.*, 307 NLRB 64, 66 (1992). For example, in *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, a union was found to have violated Section 8(b)(2) when one of its officials, in retaliation for protected activity, reported to the employer that a dissident member had made racial slur. Although the official did not specifically request that member be disciplined, it was sufficient that he knew the employer imposed severe discipline against those who engaged in racial harassment. 323 NLRB 1042 (1997). There must, however, "be some evidence of union conduct; it is not sufficient that the employer's conduct might please the union." *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499 (1993); *Toledo World Terminals*, 289 NLRB 670, 673 (1988).

In determining whether a union has violated Section 8(b)(2), the Board has applied both the analytical framework set forth in *Wright Line*, supra, as well as its duty-of-fair-representation framework. See *Caravan Knight,* 362 NLRB No. 196 (2015). As noted, under the latter analysis, whenever a labor organization causes an adverse action to be taken against an employee, "there is a rebuttable presumption that it acted unlawfully because by such conduct it demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees." Id. (citing *Acklin Stamping*, 351 NLRB 1263, 1263 (2007); *Bang Printing,* supra at 673. This presumption, however, may be overcome if the union demonstrates that its actions were taken "in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole." Id. (citing *Operative Plasterers & Cement Masons, Local 299 (Wyoming Contractors Assn.)*, 257 NLRB 1386, 1395 (1981)).

As noted, the Board has also analyzed 8(b)(2) allegations under its *Wright Line* standard, whereby

> [T]he General Counsel must establish that [the employee's] . . . protected concerted activity was a substantial or motivating factor in the Respondent's adverse employment actions. . . . If the General Counsel makes the required initial showing, the burden then shifts to the Respondent to prove, as an affirmative defense, that it would have taken the same action even in the absence of [the employee's] protected activity.

Ironworkers Local 340 (Consumers Energy Co.), 347 NLRB 578, 579 (2006).[42]

c. Allegations regarding Simisola

The General Counsel contends that Respondent Local 18 violated its duty of fair representation when, on April 29 and 30, 2015, dispatcher Deed refused to permit Simisola to examine and copy the dispatch sheets at Respondents' joint dispatch hall. The General Counsel further contends that Local 18, by raising complaints about Simisola's conduct at the dispatch hall, caused PMA and SSA (through the JPLRC) to suspend her. According to the General Counsel, Local 18 officials were motivated by animus against Simisola based on her protected and dissident conduct, including filing and appealing a grievance regarding the 2014 registration process, as well as based on her filing Board charges against Local 18. Local 18 denies harboring animus toward Simisola and maintains that any action it took against her was motivated by its legitimate interest in protecting dispatch hall operations. The Union additionally argues that dispatcher Deed was privileged to withhold the dispatch sheets sought by Simisola because she requested them in a manner unprotected by the Act. As set forth below, I agree with Local 18.

(I) EFUSRAL TO PROVIDE SIMISOLA ACCESS TO DISPATCH LOGS

As mentioned, a union violates its duty of representation by arbitrarily denying a worker's request for hiring hall records.

[42] Regardless of which theory is employed, where an 8(b)(2) violation is proven, a derivative violation of Section 8(b)(1)(A) will also be found, in that a union's causation of adverse action against an employee necessarily constitutes restraint and coercion of that individual's exercise of his Section 7 rights. *Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004); *Postal Workers (APWU)*, 350 NLRB 219, 222 (2007).

See *Operating Engineers Local 12 (Nevada Contractors Assn.)* and *Carpenters Local 102 (Millwright Employers Assn.)*, supra. However, the Board has made it clear that, where such a request is made in a disruptive manner in the middle of dispatch, it is not arbitrary for the union to deny it. *Electrical Workers Local 3 (Fairfield Electric)*, 331 NLRB 1498 (2000). Relied on by Local 18, *Fairfield Electric* involved facts quite similar to those of the instant case, in that a hiring hall user sought during the dispatch process a list of names corresponding with the referral numbers on a posted out-of-work list. The dispatcher told him that he "did not want him to look at the book [with the names] because he was in the middle of making referrals." Id. at 1500. The Board agreed with the administrative law judge that the charging party did not have a statutory right *at that particular time and circumstance* to access records that the dispatcher was using during dispatch and, correspondingly, that it was not arbitrary for the union to deny the request.

The General Counsel argues that *Fairfield Electric* is not controlling because the dispatcher in that case was "working on" the very documents requested and affirmatively told the worker that he could inspect the documents at a later time. I find these distinctions, to the extent they exist, inconsequential. In this regard, I credit Deed's testimony that acceding to Simisola's request would have further delayed his dispatch and find it irrelevant whether he was literally working on the document she wanted to see. Moreover, I do not see any material difference between telling an employee that they must wait until dispatch is complete to inspect records (which Deed did tell Simisola) and announcing what time that would be, as did the dispatcher in *Fairfield Electric*. The principle recognized by the Board in *Fairfield Electric* applies with equal force here: there is no recognized right, in the middle of dispatch, to inspect or copy dispatch documents on demand. As such, I find that, based on the time and manner in which Simisola requested dispatch documents, the Union did not fail or refuse to provide them in violation of its duty of fair representation.

(III) SIMISOLA'S SUSPENSION DID NOT VIOLATE THE ACT

As noted, the Board analyzes allegations of Section 8(b)(2) under both a duty of fair representation and a *Wright Line* analysis. With respect to the duty of fair representation analysis, the record evidence amply demonstrates that the Union, by bringing Simisola's conduct to management's attention, issuing her citations in coordination with SSA's employer complaints, took action aimed at causing Simisola's suspension; indeed, Local 18 does not contend otherwise. As such, there is a rebuttable presumption that Local 18 violated Section 8(b)(2). I find, however, that the Union rebutted that presumption by demonstrating that it was motivated by its legitimate interest in running a timely and orderly dispatch, a critical function benefitting its entire constituency. Local 18's lack of animus is likewise dispositive of this 8(a)(2) allegation when held to the *Wright Line* standard.

While it is true that the appeal of Simisola's 2014 registration grievance was pending as of her suspension date, over a year had passed since she filed that grievance, and the record is completely devoid of evidence that any representative of Local 18 harbored animus against Simisola based on her grievance filing or any of her other protected conduct, for that matter.[43] While the General Counsel claims that Local 18 attempted to limit Simisola's access to the dispatch sheets by changing its practice of leaving them at the dispatch podium, there is no evidence that this was anything other than the result of complaints about privacy by other employees. Likewise, I am not persuaded by the General Counsel's argument that dispatcher Deed demonstrated animus against Simisola by failing to inform her affirmatively that she had alternative means to access the dispatch logs; in fact, he made it clear that she would simply have to wait until he had completed dispatching before reviewing the sheets, and on one occasion, he actually acquiesced, stopped his dispatching, and showed her where she stood on the day's dispatch sheet. That Simisola had previously been warned about disrupting dispatch, that Deed's complaints about her conduct were contemporaneous with that conduct and that Local 18 took action against Simisola (by issuing her a lesser penalty than that prescribed by the joint dispatch rules) only after she had repeated the same disruptive conduct twice within 13 hours further convince me that the Union acted in good faith. Finally, contrary to the General Counsel, I am not persuaded that the "flurry" of phone calls between Respondents' representatives at the time of Simisola's activities on April 29 and 30 evidences anything more than the good-faith investigation he claims never occurred with respect to her conduct.

Accordingly, the complaint allegations against Local 18 regarding Simisola's suspension are dismissed.

d. Allegations regarding Stubbe

The General Counsel alleges that Local 18 caused Respondents PMA and SSA (via the JPLRC) to remove Stubbe permanently from the ID Casual list, effectively discharging him in violation of Section 8(b)(2), and that its actions also violated its duty of fair representation to Stubbe. The General Counsel relies on several theories to support his allegations, each of which is premised on the assertion that Stubbe was considered the "ringleader" of the 2014 registration grievances. The General Counsel asserts that: (a) Local 18 officials caused X to file the 13.2 grievance; (b) Deed knowingly added false statements to her grievance in order to amplify the allegations against Stubbe; (c) before interviewing Stubbe or alerting him to the charges against him, Local 18 officials "prejudged" him, concluded he was guilty and communicated this to the PMA; (d) Farley failed to adequately represent Stubbe at his 13.2 hearing and refused to file an appeal on his behalf and (e) Local 18 implemented the area arbitrator's decision discharging Stubbe when it could have elected not to do so.

Local 18 argues that it provided Stubbe with adequate representation by Local 18, and that it neither solicited or amplified X's allegations. With respect to the General Counsel's claim that its officials "prejudged" Stubbe, Local 18 avers that, only after Stubbe had admitted to the conduct alleged by X, did Union officials conclude that he had violated 13.2 for purposes of providing X interim relief. Finally, Local 18, like the Employ-

[43] As noted, infra, I do not credit the testimony offered by the General Counsel's witnesses describing Union president Campbell threatening a group of 2014 registration grievants with a loss of work.

er-Respondents, argues that the parties' implementation of Arbitrator Holmes' award was not discretionary but mandated by the 13.2 guidelines.

(I) CREDIBILITY

Throughout the hearing, Stubbe's testimony and conduct did not convince me of his reliability as a witness. His recollection was frequently spotty and he admitted to having problems with his memory. By way of example, on the fourth day of the hearing, he was asked if he recalled certain testimony he had given the first day (5 calendar days earlier); he responded that he "did not recall much of what happened" on that day. More significantly, his memory at times appeared to fail when he perceived that a lack of recollection would work to his advantage. For example, he claimed not to be aware of the practice of posting a coworker as a "signal" not to enter the bathroom (although he had previously admitted such awareness in the 13.2 hearing). (Tr. 725) On other occasions, he appeared overly coy when answering straightforward questions.[44] For these reasons, when in conflict with the accounts given by other, more reliable witnesses (such as Farley), I give Stubbe's testimony little weight.

(II) THE GENERAL COUNSEL'S PRIMA FACIE CASE

As noted, to the extent that Local 18 "caused" Stubbe's discharge, it is presumed to have acted unlawfully, and it is not necessary to show that the Union knew with certainty that its actions would be successful. See *Caravan Knight*, supra at 5 (union's report of physical threat violated Section 8(a)(2) where union had reason to believe that "in all likelihood" it would lead to dissident's discharge); *Town & Country Supermarkets*, supra at 1430 (union caused discharge when it reported employee for threat of physical harm knowing employer's history of discharging employees for such threats); *Paperworkers Local 1048, (Jefferson Smurfit Corp.)*, supra at 1044 (union attempted to cause discipline when it reported employee for racial harassment to employer with a policy of strong discipline for violation of rules against racial harassment). In this case, Local 18's taking the position that Stubbe was guilty of a second sexual harassment offense made it highly unlikely that Respondents PMA and SSA (as potential defendants subject to Title VII liability for not addressing X's complaints) would take a different position and even more unlikely that an arbitrator would overrule both parties and exonerate him. Thus, simply because Stubbe's discharge was not a "sure thing," Local 18 could be guilty of causing Respondents PMA and SSA (albeit through an arbitration process) to strip him of his dispatch privileges. Thus, because Local 18 took actions that ultimately resulted in the implementation of Arbitrator Holmes' award, it is presumed that its actions were unlawful.

I also find that the General Counsel met his prima facie burden under the *Wright Line* standard. While there is no record evidence to indicate that Stubbe was, in fact, considered the "driving force" behind the 2014 grievances, it is undisputed that he did file his own grievance and additionally that he had at least one conflict with Local 18 president Campbell at some time in the past. Moreover, while Stubbe's memory appeared to be quite foggy on some points, I credit his recollection that dispatcher Schaffer told him, prior to the incident with Ms. X, that he was "making enemies" at the Port. While the context Stubbe put this statement was undoubtedly confusing, that it went unrebutted by Local 18 leads me to conclude that Stubbe's dissident conduct was not held in high regard by the Union, which provides circumstantial evidence of animus against him.

(III) LOCAL 18'S BURDEN TO EXPLAIN ITS ACTIONS TOWARDS STUBBE

As noted, the burden next shifts to Local 18 to demonstrate that it had a legitimate, nondiscriminatory reason for role in X's grievance against Stubbe (under *Wright Line*) and that its actions were taken "in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole" (pursuant to its duty of fair representation). See *Caravan Knight*, supra at 5.

I find that the Union met these burdens by establishing, by a preponderance of the credible evidence, that it was motivated by a genuine belief that Stubbe had repeatedly engaged in sexual harassment at the Port. There is no serious dispute that effectively responding to workplace harassment is squarely encompassed within the category of conduct deemed "necessary to the effective performance of its function of representing its constituency," even when both accuser and alleged harasser are bargaining unit employees. See *Graphic Communications International Union, Local 1-M (Bang Printing)*, supra at 673 (citing *Operating Engineers Local 18*, supra.) Indeed, Respondents' 13.2 procedures appear devised to accommodate the inherent conflicts posed by such a situation, by allowing both the grievant and the accused to choose either a union officer or a representative of their own choosing. I credit Local 18's witness Campbell who—like PMA's Robinson—testified frankly about the potential liability that would be created by allowing Stubbe, a repeat 13.2 offender, to continue to work at the Port. Local 18's good-faith concern satisfies the burden under both the *Wright Line* and duty-of-fair-representation standards and shifts the burden to the General Counsel to demonstrate that this asserted reason is pretextual.

(IV) THE GENERAL COUNSEL'S ARGUMENTS AS TO PRETEXT

The General Counsel offers a number of pretext arguments. However, none of his theories regarding the circumstances leading to Stubbe's discharge was borne out by the credible record evidence. First of all, General Counsel's bare assertion that, but for the Union's encouragement, X would not have filed her 13.2 grievance went unsupported by the record; as X herself credibly testified, she made the decision alone and under no pressure from Campbell or Farley. The question remains whether any action taken by Local 18 officials in preparing or handling her grievance was aimed at retaliating against Stubbe as a Union dissident.

According to the General Counsel, Deed added false statements to X's grievance form regarding the "bathroom incident." (GC Br. at 13.) Specifically, while X testified that

[44] For example, when asked by Local 18's counsel if there were any witnesses he wanted to testify at his 13.2 hearing who were not called, he replied, "I'd have to think about that for a while."

Couch told Deed "there's someone in there," Deed added to the narrative portion of the grievance that Couch had prefaced this statement by saying, "be careful." It is certainly true that the Board has found Section 8(b)(2) violated where a union official reports a union dissident's misconduct in an exaggerated or "amplified" manner that causes the employer to discipline the employee. See, e.g., *Caravan Knight*, supra; *Security, Police & Fire Professionals of America Local 444,* 360 NLRB 430 (2014). In this case, however, I credit Deed's testimony that he took down, as best as he could, X's actual words. That he may have "spelled out" what Couch communicated (i.e., adding the words, "don't go in there") to me seems more stylistic than amplifying. The point was that, as Couch himself testified before the arbitrator, he warned Stubbe not to enter the restroom because a woman was present. I do not find that Deed's editorializing about this detail rises to the level of an "amplification" aimed at causing his discipline.

I take special issue with the General Counsel's claim that Local 18 pronounced Stubbe "guilty" before even notifying him that he had been accused of harassment. By my reading of the record, Farley clearly and credibly testified that *prior to* the December 20 JPLRC meeting at which the Union offered its assessment of Stubbe's conduct, Stubbe *admitted* to both Farley and Campbell that he had, in fact, committed the conduct of which he was accused.[45] This admission, Farley explained, convinced him that Stubbe was, in fact, likely to be found guilty of a second 13.2 violation, warranting interim relief for X. (Tr. 2112.)[46]

Nor can I find fault in Local 18 deciding that Farley, who had significant experience in defending 13.2 grievances, was the best representative for Stubbe. Despite the fact that he was defending a repeat harasser who showed little remorse for his conduct, Farley spent many hours preparing for Stubbe's hearing.[47] The arbitration hearing transcript as a whole suggests that Stubbe presented to the arbitrator as an unremorseful and unsympathetic accused. Nonetheless, Farley made procedural arguments, as well as arguments for leniency, on Stubbe's behalf. Under the circumstances, I cannot find that Farley's representation of Stubbe, or his failure to appeal the arbitrator's order, was either arbitrary, unfair or discriminatory. See *Fountain v. Safeway Stores, Inc.*, 555 F.2d 753, 756 (9th Cir. 1977) (union's refusal to process what it considered a meritless case not arbitrary but rather "most reasonable and in fact essential to the grievance and arbitration system") (citing *Vaca v. Sipes*, 386 U.S. at 191, supra).

Accordingly, the complaint allegations against Local 18 regarding Stubbe's discharge are dismissed.

a. Allegations regarding Couch

Following Couch's failure to appear at Stubbe's 13.2 hearing, the area arbitrator ordered the JPLRC to fashion an appropriate penalty for his nonappearance. While there is no dispute that Couch in fact failed to appear at the hearing (as noted, supra, he ended up testifying via telephone), the parties disagree as to how and why this came to be. Essentially, the General Counsel alleges that Local 18's Farley misled Couch into thinking that he would not have to appear at the hearing and then seized on his nonappearance as a pretext to discipline him for his protected, dissident conduct. Local 18 denies this version of events, and additionally argues that it only agreed to the discipline in question (a loss of 14 shifts, with 7 suspended pending further misconduct), after being instructed by the arbitrator to formulate an appropriate penalty for Couch's failure to appear.

I agree with Local 18. First, the record as a whole indicates that Couch knew well that he was expected to appear at the hearing, and that Local 18 made no effort to "sand bag" him into not showing. Farley and Couch each told Couch that his testimony would be required, and, as noted, Couch's account appeared untidily refashioned to excuse his nonappearance. The General Counsel's remaining witnesses (i.e., Couch's family and girlfriend) did little to shed light on what really happened; in an apparent effort to exonerate Couch, they contradicted themselves, as well as Couch himself. Thus, insofar as the General Counsel claims that Local 18 "caused" Couch's discipline by engineering his nonappearance, I find that the credible evidence cannot support such a claim under either Section 8(b)(2) or 8(b)(1)(A).

I next examine whether the Union's role in determining a remedy for Couch's nonappearance amount to violated either Section 8(b)(1)(A) or (2) of the Act. Applying the *Wright Line* standard, there is no dispute that Couch engaged in protected conduct by filing a 2014 registration grievance. I find, however, that there has been no showing of animus against him, which is fatal to the General Counsel's prima facie case. Other than testimony by Couch and Biancini, which I have discredited, the General Counsel offers mainly conjecture regarding Local 18's conduct. For example, he argues that I should interpret as animus the fact that Farley, as a "material witness" against Couch regarding his failure to appear at Stubbe's 13.2 hearing, nonetheless "participated in the [JPLRC's] deliberation of the penalty to be assessed" at its June 2, 2015 meeting. (GC Br. at 14.) I disagree. While the record is unclear whether Farley actually participated in the deliberations, even assuming that he did, I cannot read animus into such conduct. Indeed, because the committee had been ordered to assess a penalty based, in part, on what had occurred at the 13.2 hearing, *every* JPLRC member present at that hearing became a "material witness." The General Counsel's would seem to suggest that the very fact that the JPLRC met before assessing a penalty to

[45] While the General Counsel suggests that Campbell somehow "tricked" Stubbe during this conversation by not disclosing he was in fact representing X, there is again no evidence to support such a claim. Farley clearly recalled Campbell disclosing his representative status, and Stubbe simply could not recall whether he mentioned it or not.

[46] I note that the complaint does not allege that the Union violated its duty of fair representation in failing to disclose to Stubbe its preliminary determination regarding his guilt. In any event, I find this case distinguishable from one in which a union representative affirmatively supplies substantive *evidence* of a represented employee's guilt to an employer. See, e.g., *Caravan Knight*, 362 NLRB No. 196, slip op. at 8 (2015).

[47] The assertion that Farley somehow attempted to "sabotage" Stubbe by deliberately having him arrive late for the hearing is simply not compelling; I credit Farley's testimony that he made an honest mistake about the starting time.

Couch demonstrates animus against him as a union dissident. I reject that notion and instead find that citing Couch and allowing him to explain himself in person before devising a penalty, as ordered by the arbitrator, in fact evinces a lack of animus on Local 18's part.[48]

I am also charged with evaluating Local 18's conduct under the duty-of-fair representation standard, which presumes a violation where a union is found to have "caused or attempted to cause" employee discipline. Here, to the extent that Farley provided the JPLRC with evidence regarding the circumstances of his nonappearance at Stubbe's hearing, it is fair to assume that Local 18 acted with knowledge that this evidence would cause the Employer-Respondents to agree to suspend Couch.[49] Thus, Local 18 must overcome the presumption that, as exclusive bargaining representative, its conduct was taken "in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole." *Caravan Knight*, supra at 5. I find that the Union has met its burden. Preserving the integrity of the parties' area arbitration procedure by agreeing to penalize an employee for failing to appear at a hearing is a legitimate interest and certainly necessary to the Union's representative function. Nor can I find that the penalty assessed Couch, under the circumstances, was arbitrary or unfair. As such, I would dismiss the allegations against Local 18 regarding Couch.

CONCLUSIONS OF LAW

1. Respondent International Longshore and Warehouse Union, Local 18 is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent SSA Pacific, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent Pacific Maritime Association is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. By maintaining a rule that states that "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked," Respondent International Longshore and Warehouse Union, Local 18 has engaged in unfair labor practices affecting commerce within the meaning of 8(b)(1)(A) of the Act.

5. By maintaining a rule that states that "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked," Respondent SSA Pacific, Inc. and Respondent Pacific Maritime Association have engaged in unfair labor practices affecting commerce within the meaning of 8(a)(1) of the Act.

6. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Employer-Respondents violated Section 8(a)(1) and Respondent International Longshore and Warehouse Union, Local 18 violated Section 8(b)(1)(A) of the Act, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In a typical case involving an unlawful workplace rule, the promulgator of the rule is ordered to rescind the unlawful provision and post an appropriate notice. Therefore, I shall require Respondents to rescind and cease giving effect to their "Rules for Identified Casuals" at the Port of Sacramento, insofar as they provide that identified casual longshore workers causing a disturbance at a dispatch hall or at any other job-related area shall have their dispatch privileges permanently revoked.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[50]

ORDER

A. Respondent SSA Pacific, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked."

(b) 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) Rescind the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked" and remove such rule from any and all employee publications or documents to which it is a party.

(b) Within 14 days after service by the Region, post at Respondents' joint dispatch hall at the Port of West Sacramento, California copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent SSA Pacific, Inc.'s authorized representative, shall be posted by Respondent SSA Pacific, Inc. 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 electroni-

[48] The General Counsel also alleges that dispatcher Deed showed animus against Couch by failing to assist him with his 13.2 grievance (filed months after his suspension) about women using the men's room. But the record contains no credible evidence that Couch asked for any such assistance; instead, Couch merely informed Deed that of the grievance, stating, "I know what I'm doing." (Tr. 556) I reject the suggestion that, by failing to force assistance on Couch under these circumstances Deed showed animus against him.

[49] That Arbitrator Holmes ordered that Couch be penalized in some matter does not insulate Local 18 from liability for its role in the process; arguably, it could have withheld Fawley's testimony and/or argued for a lesser penalty.

[50] 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.

cally, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent SSA Pacific, Inc. customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent SSA Pacific, Inc. 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 SSA Pacific, Inc. has gone out of business or ceased its operations at the Port of West Sacramento, Respondent SSA Pacific, Inc. shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent SSA Pacific, Inc. at the Port of West Sacramento at any time since Friday, February 14, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent SSA Pacific, Inc. has taken to comply.

B. Respondent Pacific Maritime Association, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked."

(b) 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) Rescind the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked" and remove such rule from any and all employee publications or documents to which it is a party.

(b) Within 14 days after service by the Region, post at Respondents' joint dispatch hall at the Port of West Sacramento, California copies of the attached notice marked "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent Pacific Maritime Association's authorized representative, shall be posted by Respondent Pacific Maritime Association and maintained for 60 consecutive days in conspicuous places including all places where notices to employees of Respondent SSA Pacific, Inc. 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 Respondent Pacific Maritime Association customarily communicates with employees of Respondent SSA Pacific, Inc. by such means. Reasonable steps shall be taken by Respondent Pacific Maritime Association to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Pacific Maritime Association has taken to comply.

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

C. Respondent International Longshore and Warehouse Union, Local 18, its officers, agents, and representatives, shall

1.Cease and desist from

(a) Maintaining the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked."

(b) 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) Rescind the provision located at item 12 of in the Sacramento Identified Casual Dispatch Rules that states: "[c]asuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked" and remove such rule from any and all employee publications or documents to which it is a party.

(b) Within 14 days after service by the Region, post at Respondents' joint dispatch hall at the Port of West Sacramento, California copies of the attached notice marked "Appendix C."[51] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent International Longshore and Warehouse Union, Local 18's authorized representative, shall be posted by Respondent International Longshore and Warehouse Union, Local 18 and maintained for 60 consecutive days in conspicuous places including all places where notices to members 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 Respondent International Longshore and Warehouse Union, Local 18 customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent International Longshore and Warehouse Union, Local 18 to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent International Longshore and Warehouse Union, Local 18 has taken to comply.

It is further ordered that the complaint allegations are dismissed insofar as they allege violations of the Act not specifically found.

Dated: Washington, D.C. September 13, 2016

[51] If this Order is enforced by a judgment of a United States court of appeals, the words in each of the notices referenced herein 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."

APPENDIX A

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 the National Labor Relations Act and has ordered us to post and abide by 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 benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain a rule for Identified Casuals at the Port of West Sacramento that states that you will permanently lose your dispatch privileges if you cause a disturbance in the discharge hall or any job-related area.

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

WE WILL modify our "**RULES FOR IDENTIFIED CASUALS**" in effect at the joint dispatch hall for the Port of West Sacramento by rescinding the provision that states that Identified Casuals who cause a disturbance in the discharge hall or any job-related area shall permanently lose their dispatch privileges.

SSA MARINE, INC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20–CA–151433 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.

APPENDIX B

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

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WE WILL modify our "**RULES FOR IDENTIFIED CASUALS**" in effect at the joint dispatch hall for the Port of West Sacramento by rescinding the provision that states that Identified Casuals who cause a disturbance in the discharge hall or any job-related area shall permanently lose their dispatch privileges.

PACIFIC MARITIME ASSOICIATION

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20–CA–151433 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.

APPENDIX C

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 the National Labor Relations Act and has ordered us to post and

abide by this notice.

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Choose representatives to bargain with us on your behalf

Act together with other employees for your benefits and protection

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WE WILL NOT maintain a rule for Identified Casuals at the Port of West Sacramento that states that you will permanently lose your dispatch privileges if you cause a disturbance in the discharge hall or any job-related area.

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

WE WILL modify our "**RULES FOR IDENTIFIED CASUALS**" in effect at the joint dispatch hall for the Port of West Sacramento by rescinding the provision that states that Identified Casuals who cause a disturbance in the discharge hall or any job-related area shall permanently lose their dispatch privileges.

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 18

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20–CA–151433 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.