

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20, SUBREGION 37**

**YOUNG BROTHERS, LLC**

**Employer**

**and**

**Case 20-RC-378244**

**INTERNATIONAL LONGSHORE AND WAREHOUSE  
UNION, LOCAL 142**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under Section 9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.

**I. INTRODUCTION**

Following the filing of the instant petition, a hearing was held before a hearing officer of the National Labor Relations Board (the Board) over four days from January 15 to 21, 2026. Through this petition, International Longshore and Warehouse Union, Local 142 (the Petitioner or Union), seeks to represent a unit of all full-time and regular part-time tugboat captains employed by Young Brothers, LLC (the Employer), but excluding all other employees including managers and supervisors as defined by the Act.

The record reflects that there are approximately ten tugboat captains in the petitioned-for unit. At the hearing, the Petitioner and Employer stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board,<sup>1</sup> and that there is no history of collective bargaining between the parties for the petitioned-for employees.

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<sup>1</sup> At the hearing, the parties stipulated to the following commerce facts:

Young Brothers, LLC, a Hawai'i corporation, with an office and place of business in Honolulu, Hawai'i, and [sic] has been engaged in the business of transporting cargo among the Hawaiian

## II. ISSUES AND POSITIONS OF THE PARTIES

Pursuant to an Order issued by the Acting Regional Director, dated January 14, 2026, the sole issue litigated during the hearing in this matter was whether the petitioned-for tugboat captains are supervisors within the meaning of Section 2(11) of the Act. The Employer takes the position that the petitioned-for tugboat captains are not an appropriate unit on the asserted basis that they are statutory supervisors and, therefore, that the petition must be dismissed. The Petitioner takes the position that the petitioned-for tugboat captains are not supervisors and therefore an election must be conducted.

For the reasons set forth below, and after careful consideration of the parties' arguments and the record, I find that the Employer has not met its burden of establishing that the petitioned-for tugboat captains are statutory supervisors. Accordingly, I conclude that the tugboat captains constitute an appropriate bargaining unit, and I am directing an election herein among those employees.<sup>2</sup>

## III. BACKGROUND

### *A. Employer's Operation*

The Employer has been in business for 125 years and provides shipping services between the various Hawaiian Islands with barges that are towed by tugboats. The Employer's main office is situated in Honolulu, where its vessels dock at Pier 21. Its other operations are located in the harbors of Hilo and Kawaihae on the Big Island, Kahului on Maui, Kaunapau on Lanai, Kaunakakai on Molokai, and Nawiliwili on Kauai.

The Employer has two distinct operations – Marine Operations and Terminal Operations. Terminal Operations involve the receipt and delivery of goods at the Employer's facilities, while Marine Operations involve the transport of goods between the islands via tugs and barges. The petitioned-for tugboat captains (also referred to as masters) and their crews are part of inter-island Marine Operations.

The Employer's President is Steen Christensen (Christensen). The Vice President of Operations is Chris Martin (Martin), who reports to Christensen. Megan Rycraft (Rycraft) is the Director of Marine Operations and reports to Martin. Port Engineers David Pojab (Pojab) and Robert Straub (Straub), Port Captain Mikkel "Mik" Roer (Roer), and Marine Personnel Manager Tressie Ostermiller report to Rycraft.

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Islands. During the past 12 months, a representative period, the Employer, in conducting its operations described herein purchased and received goods and supplies in excess of \$50,000 directly from suppliers located outside the State of Hawai'i.

<sup>2</sup> It is uncontroverted, and the record evidence establishes, that the tugboat captains are a readily identifiable group and share an internal community of interest. *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022).

During the hearing, Rycraft testified about the Employer's operations and the captains' duties. Rycraft has worked for the Employer for seven-and-a-half years and has twenty years of experience in the maritime industry.<sup>3</sup> Rycraft started working for the Employer as a Senior Manager of Health, Safety, Quality and Environment (HSQE). Rycraft then was promoted to Director of HSQE, in charge of the Employer's overarching programmatic elements of the Safety Management System (SMS) for both Terminal and Marine Operations. After about three-and-a-half years in that position, Rycraft became the Director of Marine Operations, which position she has held to date for approximately two years. As Director of Marine Operations, Rycraft is generally responsible for overseeing the Employer's day-to-day marine operations.

Ostermiller also testified on behalf of the Employer. Ostermiller has been the Marine Personnel Manager throughout her two-year tenure with the Employer and is responsible for Marine Operations' personnel. She oversees two Marine Operations administrators, one administrative assistant, and four dispatchers located on shore.<sup>4</sup> The captains communicate regularly with these dispatchers when they are onboard the vessel.

The port engineers are responsible for the Employer's overall vessel maintenance program. The port captain is responsible for vessel operations and logistics. The port captain and port engineers work from the shore, not on the vessels.

The Employer has nine unmanned barges that are towed by one of its eight towing tugs. Of the eight tugs, there are four Kapena class towing vessels, two Mount Drum vessels, and two lower tonnage vessels – the Hoku Loa and Manuokekai. Captains are qualified to operate all eight tugs. The Kapena tugs have seven-member crews (including the captain), and the remaining vessels have six-member crews (including the captain). The seven-member crews include the captain, chief (or first) mate, second mate, chief engineer, assistant engineer, AB (or able-bodied) crew member, and AB cook. The six-member crews include the same classifications, except that there is an unlicensed engineer instead of a chief engineer and assistant engineer. All the crew members, except the captain, are represented by the Inlandboatmen's Union of the Pacific, Hawaii Region (IBU) and are covered by a collective-bargaining agreement (CBA) in effect from July 1, 2023, through June 30, 2029. The crews onboard the tugs at issue are referred to as inter-island towing crews in the IBU CBA. According to Rycraft, there are about 100 employees represented by the IBU working in Marine Operations. Each crew is responsible for working 183 sailing days. Accordingly, each vessel has an "opposite" captain and crew; when one crew is off, the opposite crew is working on the vessel.

Each vessel has one or two lay days a week, during which time it is in port. Crews must still put in eight hours of work on these days, performing tasks that are normally not suitable while at sea. Lay days count toward the annual 183-day requirement. Rycraft testified that captains have the authority to release their crew early on these days or even give them the day off.

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<sup>3</sup> Prior to working for the Employer, Rycraft worked for Foss Maritime, a tug-and-barge company in Seattle. She started her career onboard a vessel as a third officer and worked her way up to become chief officer mostly on deep sea vessels. The record does not reflect that she worked as a captain.

<sup>4</sup> Inlandboatmen's Union represents the dispatchers.

According to Rycraft, the chief, or first mate, is the senior deck officer, obtains instructions from the captain and provides daily instructions to the AB crew members. The first mate is responsible for executing the captain's instructions. Rycraft testified that the second mate is the junior deck officer and is generally responsible for navigation.

Rycraft testified that on certain vessels a seven-member crew is required. Of these, regulations require the crew to include a chief engineer and an assistant engineer. On these vessels, the chief engineer is responsible for the engine room and engine maintenance. The assistant engineer provides the chief engineer with assistance as needed. On vessels requiring six-member crews, there is an unlicensed engineer. These types of engineers have similar responsibilities but work onboard vessels that are not required to carry a chief engineer. However, generally, an unlicensed engineer receives more support from the port engineer on shore than a chief engineer usually would.

The AB crew member conducts vessel rounds and stands watch as required. The AB cook performs the same tasks as the AB crew member but has the additional responsibility of shopping for groceries and cooking meals for the crew. Each captain is allotted \$4,000 per month for the AB cook to purchase food for crew meals.

Rycraft testified that vessel engineers are responsible for engine maintenance. Other crew members could be responsible for other aspects of the vessel's maintenance.

Of the eight vessels, the Mount Baker tug has a dedicated route involving stops at Kaunapau, Kaunakakai, and Kahului. Because these harbors have features that make them uniquely challenging, a captain and crew experienced with evolution<sup>5</sup> at these ports are preferred. The remaining five vessels rotate routes every week. This rotation is set forth in the tug-and-barge lineup issued by management. The Hoku Loa and Manuokekai are older vessels that are used as backup vessels when one of the other six vessels needs to be taken out of service, which happens frequently. A vessel is typically away from Honolulu for 24 to 48 hours. The longest route is from Honolulu to Hilo and takes approximately 60 hours. According to Captain Dane Goddard (Goddard), the routes are standard and there is also an autopilot system to navigate the ship.

The captains and crews follow the Employer's Safety Management System (SMS) Manual. It is a lengthy document consisting of several hundred pages, which is available electronically to all crew members through the Employer's Vessel Management System (VMS), known as MobileOps. The Employer's operation is governed by the U.S. Coast Guard and the American Bureau of Shipping.

According to Rycraft, captains require special licenses which are overseen by the Coast Guard. If a captain were to lose their license, the captain would be terminated. However, no licenses have been revoked since Rycraft has been the Marine Operations Director.

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<sup>5</sup> Evolution refers to entering and exiting port.

Captains are salaried employees paid on a biweekly basis every other Friday. Captains are also eligible to receive an incremental premium for days worked beyond 183 days per year, operational bonuses based on nonroutine occurrences, and discretionary bonuses.

According to Rycraft, there is also a three-member captains' steering committee, which provides input into operational changes. The record does not include the official nature of this committee or specific examples of actions that it has taken or effectively recommended be taken.

Captains also participate in quarterly meetings with management to discuss various matters, including personnel.

Captains are subject to annual review by the port captain.

### ***B. Captains' General Duties***

Rycraft testified that captains' primary duties are to ensure the safety of the crew and vessel, as well as to protect assets and the environment. Goddard testified that the captains' duties are to inspect the boats for safety, and check the equipment, and that the rest of the crew does similar things as set forth by the SMS Manual, IBU CBA, MobileOps, and other documents. MobileOps prompts crew members to perform necessary tasks daily.

According to Rycraft, captains are responsible for ensuring that a job safety analysis (JSA) is completed and documented before certain tasks are performed. The JSA identifies the hazards prior to taking on a task. Captains are also the vessel's chief safety officer.

Rycraft testified that captains are required to ensure the crew undergoes regular drills and training. The captains are responsible for scheduling these training sessions based on the availability of their crew.

SMS Manual, Section 5.01, entitled "Master's Responsibility and Authority" sets forth the captain's responsibilities, authority, and expectations. According to the SMS Manual: "The Master shall have the overriding authority and responsibility to make decisions with respect to safety and pollution prevention conditions or activities. Nothing stated in any agreement, contractual or otherwise, shall reduce this authority." The SMS Manual also states that all departments fall under the direct jurisdiction of the captain, including the engine department where the engineers work.

Among other things, the SMS Manual indicates that the captain is responsible for:

- Compliance with the Safety, Quality and Environmental Policy;
- Safe operation of the vessel and for preventing pollution;
- Preventing injury to crew and other persons, protecting the vessels and preventing property damage, and preventing pollution from the vessel;
- "Ultimate work authority" to stop or approve any work on the vessel that impacts the safety of the crew and vessel, including resumption of activities after a "stop work" decision;

- Issuing standing and night orders, using a template set forth in the SMS Manual;
- Supervising deck and engine crews' performance of job safety analysis, and ensuring that they operate in accordance with that analysis;
- Performing annual crew evaluations;
- Ensuring that all crew read and understand the SMS Manual and comply with its provisions; and
- Ensuring all policies and procedures are followed

The SMS Manual also states that the captain may deviate from the SMS Manual when necessary. However, Captain Patrick Price (Price) testified that he contacts the port captain if there is deviation from the SMS Manual.

The Employer also maintains a separate job description for the Tugboat Master and Tugboat Coverage Master.<sup>6</sup> The "Job Purpose" states that the captain is "responsible and accountable for safe operation of the vessel. First order is for the safety of the vessel, second order is for the welfare of the crew, and third the safety of the tow." Among the "Essential Duties/Functions" listed are:

- Directs crew in all aspects of vessel operations;
- Determines work schedules and establishes routines;
- Directs crew in deployment and recovery of working gear, other traffic, prevailing weather conditions, vessel's craft, maneuverability, tug handling characteristics, and maneuvering room;
- Supervises, guides, and monitors performance of crew in matters of training, safety, seamanship, maintenance, navigation, and all aspects related to the day to day activities and mission of the tug;
- Processes employee evaluations in a timely manner; and
- Directs, motivates, and develops employees for maximum performance

#### **IV. FACTS AND ANALYSIS**

##### ***A. Legal Standard***

Section 2(3) of the Act excludes from the definition of "employee" any individuals employed as supervisors. Section 2(11) defines supervisors as:

. . . [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An individual possessing just one of these specified powers will be considered a supervisor as long as that authority is held in the interest of the employer and exercised with

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<sup>6</sup> Tugboat Coverage Master appears to refer to a part-time captain.

independent judgment. *Golden Crest Healthcare Ctr.*, 348 NLRB 727, 728 (2006). An individual who also effectively recommends any of the supervisory indicia referenced above also meets the definition of “supervisor.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). To be effective, the recommendation must be followed with no independent investigation by a superior. *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982), enf. denied 712 F.2d 40 (2d Cir. 1983). Evidence that a recommendation is ultimately followed is insufficient to establish that a recommendation is effective. *Id.*

An individual acts with independent judgment if the individual acts, or recommends actions, free from the control of others and forms an opinion or evaluation based on data and with discretion that is more than routine or clerical in nature. Judgment is not independent if it is controlled by detailed instructions, if there is but one obvious choice, or if it is done to equalize workloads. *Oakwood Healthcare*, 348 NLRB at 693-94.

The burden of establishing supervisory status falls on the party asserting it. In this instance, the burden is entirely the Employer’s to bear. Supervisory status must be proven by a preponderance of the evidence, and any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 (1999); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). Conclusory statements, inconclusive or otherwise conflicting evidence are insufficient to meet the burden. *Phelps Community Med. Ctr.*, 295 NLRB 486, 490 (1989); *UPS Ground Freight, Inc.*, 365 NLRB 1123 (2017). Moreover, supervisory status will not be construed broadly because a supervisor is denied rights the Act is intended to protect. *Chevron Shipping Co.*, 317 NLRB 379, 380-81 (1995). “Paper authority” is also insufficient to demonstrate supervisory status absent additional evidence. *Lucky Cab Co.*, 360 NLRB 271, 272 (2014).

### ***B. Transfer, Lay Off, Recall***

Crew are usually assigned to a particular vessel. Rycraft testified that once or twice a year a crew member assigned to one vessel may be transferred to another vessel, and that it is usually initiated by captains in consultation with the Marine Personnel Manager. However, there is little detail in the record as to the process and considerations in making such transfers between vessels.

There is no record evidence that captains possess the authority to independently lay off, recall, or transfer their own or other captains’ crew members. There is also no record evidence that captains have effectively recommended the layoff, recall, or transfer of employees.

### ***C. Hire or Promote***

There is no evidence that captains exercise authority to hire or promote employees. The job descriptions for the Tugboat Master and Tugboat Coverage Master do not refer to hiring or promoting employees as one of the captain’s duties. The SMS Manual excerpts in the record also do not reflect that captains possess such responsibility. The record evidence relates to whether the captains have the authority to effectively recommend that the Employer hire or

promote individuals. I find that the evidence is insufficient to establish such effective recommendation.

Captains are asked by the Employer about their opinions of various applicants for promotion. While applicants reviewed favorably by most captains are promoted, there is insufficient evidence to establish that they are hired without further consideration by the Employer and based solely on the recommendation of the captains. Rycraft testified that there were times when the Employer did not accept a captain's recommendation, which is consistent with Price's and Goddard's testimony that their recommendations have not been followed in the past. While Ostermiller also testified that most promotions are approved without interviews, that alone does not establish that the Employer accepts promotion recommendations without further consideration.

Captains must evaluate their crew annually and the record contains several examples of such evaluations. (Employer Exhibits 20, 21 and 22). However, Rycraft testified that she instructs the captains on how to score the evaluations. There is insufficient evidence to establish whether and how the captains' evaluations have impacted the crew in terms of promotions. While Rycraft testified that the evaluations play a role in promotion decisions and affirmed in conclusory fashion that a bad review "could" lead to someone not being promoted, the record does not reflect promotion decisions that were materially affected.

The record reflects that, on one occasion, a captain became irate at a crew member and reported the crew member to the Employer. (Employer Exhibit 23). Rycraft testified that this crew member blamed that captain for the crew member having missed out on a subsequent promotion, but the evidence was insufficient to show that the captain's report was the deciding factor in the Employer's decision not to promote the crew member.

Accordingly, I find that the Employer has not met its burden to establish that captains possess the authority to hire or promote employees, or to effectively recommend the same.

#### ***D. Reward***

The evidence does not establish that captains have the authority to reward or effectively recommend that employees be rewarded. The record shows that captains nominated employees in the past for a safety recognition program and, if chosen, the employees might have received some type of coin as a prize.<sup>7</sup> However, the evidence is vague as to the value of the coin, the criteria for selection, and the individuals who ultimately chose the winner. Rycraft testified that she never rejected a nomination made by a captain. Whatever the process may be, Rycraft testified that she has no knowledge of nominees for the last few years. There are no details as to the frequency of the awards or evidence as to whether Rycraft or the decision maker performed

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<sup>7</sup> Captain Goddard's testimony was confusing. He could not specifically recall nominating anyone for a coin but allowed that maybe he did in passing but then recalled that crew was recommended to receive coins but never received them. There were no specifics. (Tr.490) Captain Price testified that he heard about the coins but never saw anyone receive one. (Tr. at 600)

an independent assessment of the nominees. In addition, the testimony is conflicting – and therefore does not meet the evidentiary burden.

As for the testimony concerning the approval of extra time off and occasionally treating the crew to an expensive meal paid for by the Employer, the testimony lacked sufficient detail to establish that the captains possess the authority to provide these types of rewards using independent judgment. Rycraft provided one example of such an occurrence in mid-2025 when crew were treated to an expensive meal after recovering a barge, but she did not explain who made the decision or how it was reached.

I conclude that the Employer has not met its burden to demonstrate that captains have the authority to independently reward employees or to effectively recommend rewarding employees.

#### ***E. Adjust Grievances***

The record does not contain specific evidence of the captains' authority to adjust employee grievances. The IBU CBA sets forth a detailed grievance process, as well as an alternative adjustment process through the JLRC. The record does not include evidence of captains ever having resolved grievances on their own through either process. While Rycraft gave conclusory testimony about grievances progressing to the JLRC if captains do not resolve an issue before then, her testimony lacks sufficient detail to show that the captains exercise authority to adjust grievances on their own using independent judgment.

The record includes communications from one captain to Rycraft and Roer informing them of mold aboard his vessel, which seemed to be impacting his crew. (Employer Exhibit 18). However, the correspondence suggests that the captain was acting as a conduit to management, rather than the person responsible for remedying a grievance.

I therefore find that the Employer has not met its burden of proving that captains possess the authority to adjust grievances or effectively recommend such adjustments.

#### ***F. Suspend, Discharge or Discipline***

The evidence regarding the captains' authority to discipline employees or to effectively recommend discipline is conflicting. Therefore, the Employer has not met its burden to prove that captains exercise these supervisory indicia.

There is no evidence that captains have the authority to suspend or discharge other employees. There are also no examples of captains effectively recommending that employees be suspended or discharged.

However, the Employer's witnesses testified that captains possess the authority to issue oral and written warnings to crew members. To confer supervisory status based on the authority to discipline, "the exercise of disciplinary authority must lead to personnel action without the independent investigation or review of other management personnel." *Veolia Transportation*, 363 NLRB 1879, 1884 (2016). Warnings that bring substandard performance to an employer's

attention without recommendations for future discipline are reportorial, not supervisory. *Id.* Authority to issue verbal reprimands without more is also too minor to invoke supervisory authority. *Id.* If an ostensibly progressive system is not consistently applied, progressive discipline has not been established. *Id.* Here, there is conflict between Rycraft's and Ostermiller's descriptions of the disciplinary system. Rycraft described a three-strike system, while Ostermiller described a four-strike system with the potential for multiple written warnings. Taken together, it appears that whatever system is in place is not consistently applied.

Further, most of the disciplinary actions in the record were issued by captains who did not testify about the basis for the disciplinary actions or who authorized them. For example, Employer Exhibit 34 involved a captain admonishing a crew member as requested by management. The captain at issue retired and was not called to testify. Employer Exhibit 36 consists of two written warnings issued by Captain Christopher Hubbard to two crew members for missing watch. Hubbard was not called to testify at the hearing. Accordingly, there is insufficient evidence to establish that he issued those disciplines on his own using independent judgment. As for the written warning issued by Captain Price to an AB cook (Employer Exhibit 35), the evidence is conflicting as to whether Captains Price and Barnaba decided to issue the written warning of their own accord using independent judgment or whether they were advised and authorized to do so by the port captain.<sup>8</sup> When faced with conflicting testimony, the Board prioritizes "the testimony of those witnesses who occupy the alleged supervisory role at the time of the hearing." *Matson Terminals v. NLRB*, 728 Fed. Appx. 8, 10 (D.C. Cir. 2018). See also *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006).

Finally, Captain Goddard recalled Rycraft informing him about a month before the instant petition was filed that he could admonish crew members and issue them written warnings. However, this authorization is insufficiently precise to establish that captains possess the authority to discipline employees on their own or that it would require the exercise of independent judgment.

Consequently, I find that the Employer has not met its burden to show that captains possess the authority to discipline, suspend, or discharge employees using independent judgment or to effectively recommend that such actions be taken.

### ***G. Responsibly Direct***

When an individual may decide what job shall be undertaken next or who shall do it, that person is a supervisor if such direction is responsible and given with independent judgment. To be responsible, that individual must be held accountable for the task's performance. *Brusco Tug & Barge*, 359 NLRB 486, 490 (2013), incorporated by reference 362 NLRB 257 (2015). The

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<sup>8</sup> Employer Exhibit 35 involved Captains Price and Barnaba issuing a written warning to an AB cook. However, Price testified that he was told by the port captain to document incidents involving that AB cook and was given the form to use by the port captain. Port Captain Roer confirmed that he told the captains they needed to document the AB cook's poor performance, but he denied directing them to issue a written warning and testified that he did not see the written warning until after the captains issued it.

party with the evidentiary burden must show that the purported supervisor could suffer adverse consequences if the task is not performed. *Id.* However, in this case, there is insufficient evidence to establish that captains are held accountable for their crew's failure to perform assigned tasks. The testimony consists of conclusory assertions without concrete examples of a captain ever being held accountable for their crew's shortcomings, if any there were. For example, captains are responsible for AB cooks preparing nutritious meals for the crew, but the evidence does not demonstrate that a captain has been held responsible for any failures in this regard. Captain Price testified that a well-balanced diet involves common sense determinations, which does not require the exercise of independent judgment.

Rycraft testified that she informed captains that they would be written up if their crew vandalized the pier, but it never came to pass. Rycraft also testified generally that crews must be subject to recall within an hour, and that captains are held responsible if their crew does not report back in an hour. However, Rycraft testified that this only happened on one occasion and she informally counseled the captain.

The record contains one performance evaluation of a captain performed by the port captain, in which the captain was assessed as meeting expectations. (Employer Exhibit 24). The evaluation contains certain categories, such as accountability and leadership, but does not detail specific instances where the captain was held responsible for the actions of the crew, nor does it detail other specific exercises of Section 2(11) authority. The record also does not indicate whether the captain was given a material benefit or suffered some adverse action due to the evaluation. Consequently, that evaluation is insufficient evidence by itself to establish that the captain is held responsible for the actions of his crew. See *Golden Crest Healthcare Ctr.*, 348 NLRB at 731 (evaluation insufficient to demonstrate purported supervisor was held accountable where no material impact demonstrated).

The record reflects that captains issue standing and nightly orders when they are not available, but the record does not reflect when a captain has ever been held accountable for their crew failing to adhere to those orders.

Captains are authorized by the Employer and Coast Guard to sail their vessels while short staffed ("short sailing") and thereby to direct crew to continue working. However, that circumstance also appears governed by maritime regulations and practices, which do not require the exercise of independent judgment. First, Rycraft testified that the type of vessel dictates when short sailing is possible based on the crew member who is missing. For example, for Kapena class vessels, which normally require a seven-member crew, it is possible to short sail without one deck officer or an assistant engineer or an AB crew member. For the six-member crew vessels, it is possible to sail without a deck officer or an AB crew member.<sup>9</sup> According to Rycraft, captains can decide whether to sail or not without a crew member, but they must notify the port captain. If a crew member has a license for the position, the captain can have the crew member fill in and the vessel will short sail.

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<sup>9</sup> Although it is possible to short sail without an unlicensed engineer, Rycraft testified that this is not typically done.

Contrary to Rycraft's testimony, Captain Goddard testified that captains have no authority to short sail. Rather, if a crew member is not available to fill a watch, the captain will discuss it with the crew as to how to split up the work among the remaining crew. According to Captain Price, captains decide whether it is safe to short sail in consultation with their crew. Captains do this because any crew member has the authority to stop work if the individual believes there is an unsafe condition. The SMS Manual also authorizes anyone to stop work due to unsafe conditions. Price also testified that captains seek approval from the port captain or Rycraft to short sail. Based on the above testimony, a captain's discretion to short sail appears limited, at least in part, by defined options, such as the type of vessel and the position that needs to be filled. Furthermore, the captains discuss the decision whether to short sail with their crew to gain consensus, and there is no record evidence that any captain has ever been held responsible for a crew member refusing to short sail. Although the testimony is conflicting as to the captains' authority to decide on their own to short sail and direct their crew to work shorthanded, prioritizing the captains' testimony results in a finding that the captains have not been shown to responsibly direct their crews as contemplated by Section 2(11) of the Act. *Matson Terminals v. NLRB*, supra.

Finally, there is also record evidence of captains informing management of safety conditions, weather conditions, and harbor conditions affecting their vessels' work and performance. The captain is responsible for safety of the crew and vessel and protecting the environment. The record generally reflects that the captains consider mechanical issues, necessary repairs, weather, and other factors in meeting their responsibilities. However, these responsibilities do not convert the captains to statutory supervisors.<sup>10</sup> Cf. *Capital Transit Co.*, 98 NLRB 141, 145 (1952) (employees were not supervisors when they were responsible primarily for equipment); *Graham Transportation Co.*, 124 NLRB 960, 962 (1959) (responsibility for maintenance of physical property does not establish supervisory status without more); *Pantex Towing Corp.*, 258 NLRB 837, 842 (1981) (responsibility for crew safety insufficient to establish supervisory status).

#### ***H. Assign***

The Board defines assignment as "the act of designating an employee to a place, such as a location, department, or wing; appointing an employee to a time, such as a shift or an overtime period; or giving significant overall duties to an employee." *Brusco Tug & Barge*, 359 NLRB at 490, incorporated by reference, 362 NLRB 257 (2015). Ad hoc instructions to perform discrete tasks do not constitute assignment. *Id.*

Here, the evidence is insufficient to establish that captains have the authority to assign crew members overall duties using independent judgment. The testimony was conclusory in many respects, conflicting, or otherwise lacked details that would implicate independent judgment. For example, Rycraft testified that captains consider the skills and abilities of crew members to perform tasks, and that all crew members do not perform the same tasks. This

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<sup>10</sup> The Employer introduced a document authored by a captain that memorialized a safety condition that might justify cancelling the vessel's run due to a mechanical issue. (Employer Exhibit 19). However, the captain did not testify, and the document itself does not establish the exercise of supervisory authority.

testimony is too vague to establish that captains exercise independent judgment. See *Cook Inlet Tug & Barge*, 362 NLRB 1153 (2015) (employer fails to prove that instruction is anything more than routine when “testimony that captains play to individual deckhands’ strengths is vague and/or entirely hypothetical”). Rycraft also testified that captains send a deck officer to walk through barges and perform environmental checks. However, there is no indication what captains consider in designating a deck officer to walk through barges or perform environmental checks. Contrary to Rycraft’s testimony, Captain Goddard testified that the Employer’s MobileOps system prompts the individuals who log into the system to perform necessary tasks on daily, weekly, monthly, quarterly, semiannual and annual basis. For example, it will specify that the engineers have a specific amount of tasks to complete. Captain Price indicated that MobileOps directs the captain and crew on things that need to be done on a day-to-day basis. The conflicting testimony between Rycraft and the captains are resolved in favor of the captains’ testimony. *Avante at Wilson*, supra.

Crew members may be allowed to temporarily transfer to different crew positions. These temporary transfers (TTs) are determined by captains in conjunction with the Human Resources Office and are further restricted by the licenses possessed by the crew member under consideration, indicating that the selections are more routine, but there is also a lack of specificity as to what else is considered to determine whether a certain individual can “TT up.” According to Rycraft, watches are also determined based on a typical schedule, which demonstrates a lack of independent judgment.

The evidence is also insufficient to establish that captains assign crew with respect to time. While captains have some level of input into the review of crew members’ annual schedules, the precise level of input is conflicting, therefore I cannot find that it manifests the authority to assign or effectively recommend assignment. With respect to lay days, Rycraft testified that crew get paid for working eight hours, but captains have the discretion to release crew (all or some) for the entire lay day or part of the lay day and the crew would still receive pay.<sup>11</sup> Due to the absence of specific testimony from captains describing why they may choose to release employees, how they determine who to release, and for how long on lay days, the evidence is insufficient to establish that captains assign the crew using independent judgment. There is also some evidence indicating that captains may set the times for their crew to report to the vessel. However, the examples provided suggest that the times are dependent on the approval/cooperation of a manager (Employer Exhibit 17) and they lack specifics to show the use of independent judgment (Employer Exhibit 27).

The Employer introduced various work and rest hour logs into the record. (Employer Exhibit 48). However, it appears that while captains sign off on the logs at the end of the month, the crew members enter their own hours. The logs do not indicate how the schedule was determined and are insufficient to establish that the captains exercised any independent judgment.

The evidence is likewise insufficient to establish captains’ authority to assign employees as to location. The record contains evidence that captains request to have (or not to have)

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<sup>11</sup> Lay days refer to the one or two days a week that each vessel is in port instead of at sea.

specific individuals serve as AB cook onboard their vessels, but no evidence that the recommendations were routinely followed without further investigation or consideration. (Employer Exhibits 26, 40).

Rycraft testified that captains assign priorities to projects for the crew to perform, but this was too conclusory to support a supervisory finding. With respect to assigning crew opposites and vessels, while captains may have input into the process, there is insufficient evidence to establish the exercise of independent judgment free from management oversight.

In sum, I find that the Employer has not met its burden to establish that captains possess the authority to assign employees, or to effectively recommend the assignment of employees.

### ***I. Secondary Indicia***

The record reflects some secondary indicia of supervisory status. For example, attendance at quarterly meetings with managers, the captains' input during review of the SMS Manual, and the lack of a supervisor on board the vessel if captains are determined not to be supervisors under the Act. Nevertheless, secondary indicia cannot confer supervisory status in the absence of evidence to establish one of the primary indicia set forth in Section 2(11). See *Training School at Vineland*, 332 NLRB 1412 (2000). I note further that if an individual does not possess Section 2(11) statutory authority, the absence of a superior with such authority does not automatically confer it to that individual. *Buchanan Marine, L.P.*, 363 NLRB 523, 524 (2015).

### ***J. Conclusion***

Based on the foregoing, I conclude that the Employer has not met its burden of proving that the petitioned-for tugboat captains are supervisors as defined by Section 2(11) of the Act. Accordingly, I shall direct an election in this matter, as set forth in detail below.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. As stipulated by the parties, the Employer is engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. As stipulated by the parties, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time tugboat captains of the Employer.

**EXCLUDED:** All other employees, including managers and supervisors as defined by the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Longshore & Warehouse Union, Local 142**.

### **A. Election Details**

Both parties acknowledge that there is never a time when all captains are in port and available to vote. Nevertheless, the Employer requests a manual election spanning four hours on a Saturday, and it indicated that it “may be” willing to reschedule or cancel voyages to ensure all captains are available on that day. The Union requests a mixed mail-manual election with the manual portion to occur on a Monday over four hours, and mail ballots being sent to those captains who are not available that day. In the alternative, the Union requests a manual election over the course of two different days, but it did not specify the second day or polling times or explain how those two days would provide all captains with an opportunity to vote.

Although the Board’s preference is for elections to be conducted manually, it has determined that mail-ballot elections may be directed in cases where any of the following conditions exist: (1) where eligible voters are “scattered” because of their job duties over a wide geographic area; (2) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. *San Diego Gas & Elec.*, 325 NLRB 1143, 1145 (1998). The Regional Director should also consider the parties’ positions, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and what would constitute an efficient use of Board resources. *Id.*

Here, a mail-ballot election is appropriate despite the parties’ preferences. The parties acknowledge that the captains are never present at a common location at common times. On any given day, some of the captains are at sea. This scenario exemplifies employees being “scattered” in terms of work schedules and geography. While the Employer indicated that it might be willing to reschedule vessels so that all captains could be available on a Saturday, I find it inappropriate to direct a manual election based on an equivocal assurance. Moreover,

rearranging employees' work assignments and altering its operations to facilitate a manual election would constitute an inappropriate departure from the norm. See e.g., *London's Farm Dairy, Inc.*, 323 NLRB 1057 (1997) (significantly altering employees' work schedules for purposes of a manual election might inconvenience them and affect their views of the election process). It could also be viewed as objectionable. The Board, in conducting elections, "must maintain and protect the integrity and neutrality of its procedures." *Alco Iron & Metal Co.*, 269 NLRB 590, 591 (1984). Neither the employer nor the union is permitted to control any aspect of the election process or convey the impression to eligible employees that it does so. The Board has thus overturned the results of elections when its agents have "delegate[d] nonminor official election duties to a party." *North of Market Senior Services v. NLRB*, 204 F.3d 1163, 1168 (D.C. Cir. 2000). The Board has, for example, overturned election results when a Board agent delegated the task of translating voting instructions to a union observer, on the grounds that "[t]he delegation of an important part of the election process to the Petitioner's observer conveyed the impression that the Petitioner, and not the Board, was responsible for running the election." *Alco Iron & Metal Co.*, 269 NLRB at 592. The United States Court of Appeals for the D.C. Circuit has reversed the Board for not overturning the results of an election when a Board agent asked union observers to go to employees' work stations and release them to vote. *North of Market Senior Services v. NLRB*, supra.

Although the Union proposed manual balloting over two days, that proposal lacked specificity and the Employer did not join in the proposal or identify a second day that would assertedly capture all the captains. Regarding the potential for a mixed manual and mail ballot election, it would not be an efficient or appropriate use of resources where the Board has long employed the use of mail ballots in situations like this. Additionally, the Board's Case Handling Manual, Part II- Representation Proceedings, Section 11335.2, suggests that it would be inappropriate in the circumstances presented here to conduct a mixed manual-mail election.<sup>12</sup>

Accordingly, I am directing an election by mail to be conducted pursuant to the following details.

The ballots will be mailed to employees in the appropriate collective-bargaining unit. At **12:00 noon (Hawaii-Aleutian Standard Time) on Monday, March 23, 2026**, ballots will be mailed to voters from the office of the National Labor Relations Board, Subregion 37. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will automatically be void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Tuesday March 31, 2026**, should communicate immediately with the National Labor Relations Board by either calling the Subregion 37 Office at (808) 541-2814 or the Agency's toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted by an agent of Subregion 37 of the National Labor Relations Board on **Monday, April 13, 2026, at 1:00 p.m. (Hawaii-Aleutian Standard**

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<sup>12</sup> Such elections are recommended when, unlike here, the two scattered voting groups are in distinguishable job classifications (and/or work at different locations) and the vast majority of voters cast manual ballots, with a smaller group voting by mail.

Time) at the National Labor Relations Board, Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-241, Honolulu, Hawaii.<sup>13</sup> Voters must return their mail ballots so that they will be received by the Subregion 37 Office before the ballot count begins.

### **B. Voting Eligibility**

Eligible to vote are all employees in the appropriate unit who were employed on **March 6, 2026**, the ending date of the last payroll period preceding by the date of issuance of this Decision and Direction of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail-ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. Additionally, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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

### **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Acting Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal e-mail addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Acting Regional Director and the parties by **March 12, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not serve the voter list.**

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<sup>13</sup> If the Acting Regional Director determines it is appropriate to do so, the ballot count may be rescheduled to occur over Zoom for Government videoconference. In that event, the parties will be notified well in advance and provided with all necessary information on how to participate in the ballot count.

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

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted at its facilities. The Notice must be posted at its facilities so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some and/or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees.

The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

However, a party shall be stopped from objecting to the non-posting of notices if it is responsible for the non-posting and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

## VII. RIGHT TO REQUEST REVIEW

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

**DATED** at Honolulu, Hawaii, this 10th day of March 2026.

DANIEL J. OWENS  
Acting Regional Director  
Region 20



BY: \_\_\_\_\_

MEREDITH A. BURNS  
Officer-In-Charge  
Subregion 37