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International Longshoremen's Association, Local 1526, AFL-CIO (Florida International Terminal, LLC) and Tony L. Williams and Lisa Datiste. 12–CB–299858 and 12–CB–320318

April 7, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On July 17, 2024, Administrative Law Judge Ira Sandron issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's Association, Local 1526, AFL–CIO, Fort Lauderdale, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to represent hiring hall users in their seniority claims for reasons that are arbitrary, discriminatory, or in bad faith.

¹ In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(b)(1)(A) by threatening members for filing charges with the Board and for participating in Board proceedings, and violated Sec. 8(b)(1)(A) and (2) by arbitrarily, discriminatorily, and in bad faith representing Tony Williams in his seniority claim. In adopting the judge's finding of the latter violation, we find it unnecessary to pass on the General Counsel's contentions, raised on exception, that the judge erred by failing to additionally and specifically find that the Respondent violated Sec. 8(b)(1)(A) and (2) by informing Williams that he would not receive seniority credit and by failing and refusing to credit Williams with seniority for the 2019–2020 contract year. In finding the violation related to Williams' seniority claim, the judge addressed the Respondent's entire course of conduct in representing Williams, including the specific actions raised by the General Counsel on exception. Moreover, the additional findings of violations sought by the General Counsel would not materially affect the remedy.

² We amend the judge's remedy to provide that the make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), rather than with *F.W. Woolworth Co.*, 90 NLRB 289 (1950). The *Ogle Protection* formula applies where, as here, the Board is remedying "a violation of the Act which does not involve cessation of employment status or interim earnings that would in the course of time reduce backpay." *Ogle Protection Service*, supra at 683; see also *Pepsi-America, Inc.*, 339 NLRB

(b) Threatening hiring hall users with retaliation because they file unfair labor practice charges with the National Labor Relations Board or participate in its proceedings.

(c) In any like or related manner 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) Make Tony Williams whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the failure to represent him in his seniority claim, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(b) Compensate Tony Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall and referral records, and any other records and documents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Fort Lauderdale, Florida union office copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and

986, 986 fn. 2 (2003). We have modified the judge's recommended Order and substituted a new notice to conform to the amended remedy and the Board's standard remedial language.

The judge ordered remedies consistent with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024). As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Chairman Murphy and Member Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

The General Counsel requests that we order the Respondent to issue a letter of apology to Williams. We deny this request because the General Counsel has not demonstrated that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices in this proceeding.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 12 signed copies of the notice in sufficient number for posting by employer-members of the Southeast Florida Employers Port Association, Inc., and by any other employers that use the Respondent's exclusive hiring hall, if they are willing, in all places where their notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 7, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to represent you in your seniority claims for reasons that are arbitrary, discriminatory, or in bad faith.

WE WILL NOT threaten you with retaliation because you file unfair labor practice charges with the National Labor Relations Board or participate in its proceedings.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL make Tony Williams whole for any loss of earnings and other benefits suffered as a result of our failure to represent him in his seniority claim, plus interest, and WE WILL also make him whole for any other direct or foreseeable pecuniary harms suffered as a result of our failure to represent him in his seniority claim, plus interest.

WE WILL compensate Tony Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1526, AFL-CIO

The Board's decision can be found at <https://www.nlr.gov/case/12-CB-299858> 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



Marinely Maldonado, Esq., for the General Counsel.
Laurence M. Goodman, Esq. (Willig, Williams & Davidson), for the Respondent.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. These unfair labor practice charges arise from an order consolidating cases and

consolidated complaint (the complaint) issued on November 28, 2023, based on charges filed against International Longshoremen's Association, Local 1526 (the Respondent, the Union, or the Local) by Tony L. Williams (Williams) and Lisa Datiste (Datiste) on July 18, 2022,¹ and June 21, 2023, respectively.

Pursuant to notice, I conducted a trial in Miami, Florida, on April 17 and 18, 2024, during which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

ISSUES

(1) Did the Respondent breach its duty of fair representation to Williams by failing and refusing to represent him in advancing his seniority claim for the October 1, 2019, to September 30, 2020, contract year for reasons that were arbitrary, discriminatory, and in bad faith?

(2) Did Local President Johnnie Dixon (Dixon), in about April and May or June 2022, and on about March 26, 2023, threaten to retaliate against hiring hall users² for filing unfair labor practice charges or testifying against the Respondent at Board hearings?

WITNESSES AND CREDIBILITY

The General Counsel called:

- (1) Williams.
- (2) Datiste.
- (3) Elice Dixon (E. Dixon),³ fund administrator, ILA Pension and Welfare Fund (the pension fund), a joint employer-union
- (4) Taft Hartley plan.
- (5) Dixon as an adverse witness under Section 611(c).
- (6) Moya McLean (McLean), union member, as a rebuttal witness.

The Respondent called:

- (1) Dixon.
- (2) Francisco Rovirosa (Rovirosa), Vice-president in Port Operations, Florida Stevedoring.
- (3) Anthony Gross (Gross), the Union's financial secretary.
- (4) Dexter Jones (Jones), Nolan Swans (Swans), and Stanley Williams (S. Williams), union members.

In assessing witness credibility, the trier of fact must consider the plausibility of a witness' testimony and appropriately weigh it with the evidence as a whole. *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 799 (1970).

Applying to E. Dixon's and Rovirosa's testimony, neutral third-party witnesses with no stake in the proceeding have no reason not to testify truthfully, and their testimony is therefore normally accorded greater weight. See *Richter v Hickman*, 578 F.3d 944, 958 (9th Cir. 2009), revd. sub nom. on other grounds, 562 U.S. 86 (2011), quoting *Williams v. Washington*, 59 F.3d 673, 682 (7th Cir. 1995) ("[I]n a credibility contest, the testimony of neutral, disinterested witnesses is exceedingly important."); see also *Pavel v. Hollins*, 261 F.3d 210, 223 (2d Cir. 2001). Their testimony was consistent with other witnesses and the documents of record, and I have no reason to doubt their

reliability as witnesses.

Williams was a credible witness. He answered questions directly, unequivocally, and consistently, both on direct and cross-examination, and made no apparent efforts to exaggerate his communications with Dixon concerning his situation. Gross, Jones, Swan, and S. Williams testified that they regularly attended monthly Local meetings and hiring hall roll calls in 2022, and never heard Dixon make the statements that Williams attributed to him, but that does not rule out that they did not hear or were not present when Dixon made them.

Datiste is the girlfriend of Darryl Payne (Payne) and the mother of his daughter, raising the question of potential bias against Dixon because Payne ran against Dixon in the union election held in December 2019. However, neither this nor the fact that she has a pending charge against the Respondent preclude her from being found credible.

Datiste testified about two incidents that she had with Dixon, on November 10, 2022, and on about March 26, 2023, at different locations. Her testimony about what Dixon said on the first occasion was corroborated by McLean, the statements that Datiste attributed to Dixon comported with those that Williams ascribed to him, and she made no apparent efforts to overstate what Dixon said to her. For these reasons, I do not believe that she fabricated these incidents. Moreover, she answered questions directly and without hesitation.

In contrast, Dixon was not a credible witness. Most notably, he first testified that at the seniority board meeting at which Williams appeared on February 8, 2022, he did not vote to deny Williams a year's seniority credit, but his affidavit and later testimony were to the contrary. Dixon was frequently evasive or vague in his responses to questions, in particular his communications with Williams. For these and other flaws in his testimony, which I will later describe, I credit Williams and Datiste over Dixon where their accounts differed.

Gross' limited testimony essentially paralleled that of Williams and E. Dixon concerning the events pertaining to Williams' seniority and was credible.

FACTS

Based on the entire record, including testimony and my observations of witness demeanor, documents, stipulations, and the thoughtful posttrial briefs that the General Counsel and the Respondent filed, I find the following.⁴

At all material times, Florida International Terminal, LLC (FIT), a Florida limited liability company with an office and place of business at Port Everglades in Fort Lauderdale, Florida (the port) has been engaged in the business of loading and unloading freight and providing other stevedoring services and engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Southeast Florida Employers Port Association, Inc. (SEFEPA) has been an organization composed of various employers in the stevedoring and maritime industry,

¹ All dates hereinafter occurred in 2022 unless otherwise indicated or clear from context.

² Hereafter, in the interest of simplicity, I will use "member" and "hiring hall user" interchangeably.

³ No relation to Johnnie Dixon.

⁴ I grant the General Counsel's unopposed motion to correct the transcript and exhibits, filed May 16, 2024.

including FIT, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreement with labor organizations, including the Respondent.

At all times material, FIT and other employer-members of SEFEPA have authorized SEFEPA to represent them in negotiating and administering collective-bargaining agreements with the International Longshoremen's Association (ILA) and its local unions, including the Respondent, with respect to the rates of pay, wages, hours of condition, and other terms and conditions of employment of employees performing longshore work at southeast Florida ports, including the port.

SEFEPA is a member of the United States Maritime Alliance, LTD (USMX), which has maintained and enforced a series of master contracts with the ILA, the most recent of which is effective by its terms from October 1, 2018, through September 30, 2024. (Jt. Exh. 2 and R. Exh. 1, same excerpts.)

The current local collective-bargaining agreement (CBA) between SEFEPA and several ILA locals, including the Respondent, provides that the hiring hall administered by the Respondent is the exclusive source of referrals of employees for employment by FIT and the other SEFEPA employer-members at the port. (Jt. Exh. 1, excerpts.)

Hiring hall procedures are set out in Art. 17 of the CBA. (Ibid at 4, et. seq.). Pertinent provisions are:

- (1) Persons shall be classified in April of each year (based upon the records of the past qualifying year) in the highest classification to which they are entitled (AAA, AA, A, B, C or U) in accordance with their previous work record. All persons shall be assigned work within their respective "gangs" on the basis of their classification, with classification "AAA" persons being given first preference, "AA" persons second preference, etc.
- (2) The term "Contract Year" means the period from October 1–September 30 of each respective year.
- (3) Any longshore person engaged in actual longshore work in the Southeast Florida Ports area that by reason of injury or illness has been unable to discharge his duty as a longshore person, shall be given credit for such time lost by reason of such illness, injury toward their seniority.

The CBA sets forth the following seniority classifications based on the members' creditable years worked (Jt. Exh. 1 at 5): AAA—over 25, AA—21–25, A—16–20, B—11–15, C—5–10, and U—1–5.

The Managed Health Care Trust Fund (MILA) is a joint labor-management Taft Hartley trust fund created by the master contract and administered by MILA trustees. Members gain seniority and receive health care insurance benefits through MILA for the following year by performing 700 hours of qualifying work performed between October 1 and September 30. (See GC Exh. 9.) While on workers' compensation (WC), members are credited with 27 hours of work per week for both health insurance benefits and seniority upgrades. Seniority upgrades become effective January 15 of each year, with the Respondent issuing updated computer-generated cards based on documentation received from the pension fund.

The Respondent represents about 1000 hiring hall users, of whom about 700 are union members. Available work is posted

at the hiring hall or on the Respondent's website, or users can call in. An average of seven roll calls or shape-ups are held daily at the hall at different times. Interested users show up, and work is announced by category and filled in order of seniority.

A joint management-labor seniority board (the board), typically composed of five representatives from each side, decides members' issues relating to seniority if they cannot be resolved by a local. The same individuals sit on the labor relations committee, which hears grievances. The trustees for both entities are the same persons. Since COVID, the board has met at least three times a year. It reaches decisions unanimously.

On October 1, 2020, in response to the COVID-19 pandemic, ILA President Harold Daggett announced to members an agreement with USMX that MILA healthcare coverage they had in calendar year 2020 would continue in calendar year 2021, provided that they worked or received credit for 1 hour during the 2019–2020 contract year. (GC Exh. 6.)

Also, in response to the pandemic, the pension fund's board of trustees decided to make members whole by allowing them to keep the same status they had as of September 30, 2019, for the fiscal year ending September 30, 2020, regardless of whether their hours as of September 30, 2019, were physically worked or from WC. This was termed the "Mulligan year" (Mulligan).

On January 13, 2021, E. Dixon forwarded two lists from the pension fund office to Gross (R. Exhs. 3 and 4; GC Exh. 12), listing the individuals who qualified for upgraded seniority and those who qualified for the Mulligan credit. Individuals whose names appeared on either list would receive upgraded seniority classifications for 2021. Williams' name was not on either list, so Gross did not increase his credited years of seniority.

Williams' Employment Through the Hiring Hall

Williams is an equipment operator and laborer. On February 16, 2018, when his seniority classification was B-13, Williams was injured on the job while working for Florida Stevedoring. He was out on WC from February 16, 2018, until his release on January 7, 2020. (GC Exh. 5 at 3, Department of Labor Form LS-208.) While on WC, he was credited 27 hours a week and was able to meet the 700 hours requirement to maintain his benefits and continue to advance in seniority. After his release, he still had medical issues, and Florida Stevedoring agreed to release him from working for it. Shortly after his release, the COVID-19 pandemic hit, as a result of which there was a drastic reduction in available work through the hiring hall.

In July 2020, Williams called Dixon and asked about the volume of work and members' maintaining their medical benefits and seniority rights. Dixon gave him an update on work and said that the Union's position was that members be kept whole. Williams mentioned that he had come off WC. Dixon said that Williams would be good because the Union would take care of its members.

Due to family matters, Williams did not return to work until October 2020. Before that, he contacted Local Financial Secretary Terrance Smith (Smith) and stated that he was returning to work and needed an updated card. Smith responded that Williams would need a copy of his Form LS-208 showing when he was out on WC. Williams' attorney provided the document to Smith.

On October 15, 2020, Smith provided Williams with his union card, which had a B-15 classification. When Williams received his new card in mid-January 2021, it still had the B-15 classification. He went to see Gross, the new financial secretary, in his office, and asked why his seniority had not gone up to A-16. Gross replied that he would talk to Dixon. Williams called Dixon within a week and asked the same question. Dixon told him not to worry, he would talk to Gross and take care of it.

Williams called Dixon later in January 2021 and said that Gross had not told him anything. Dixon responded that Williams would have to go before the seniority board but not to worry, it would be good.

Thereafter, at various monthly meetings and at the hiring hall, Williams asked Dixon about appearing before the board. Dixon reassured him that it would be good and not to worry about it and that Dixon would give him the date to appear.

On January 19, 2021, after updated seniority cards were issued, Corliss Sellers of the pension fund sent Dixon a report showing the hours that Williams worked each year through 2020/2021. (R. Exh. 5.) On February 2, she sent him a Form LS-208 for Williams and stated that in the year ending September 30, 2020, he had 14 weeks at 27.0 hours per week (WC), giving him 378.0 credit hours. (R. Exh. 6.)

Dixon incredibly testified that he could not recall requesting either document from her. Furthermore, he testified that he could not recall having any conversations with her before she sent him the first email. I cannot believe that she *sua sponte* communicated with him regarding Williams.

Williams continued to raise the matter of his seniority, as reflected by the minutes of the union meeting held on May 12, 2021.⁵

On June 8, Dixon emailed E. Dixon and requested a seniority hearing for Williams. (R. Exh. 7.) On June 13, 2021, Dixon called Williams and stated that he needed Williams to provide him with something in writing to give to the board in reference to his case. On June 21, Williams emailed him a letter addressed to the board (R. Exh. 8), which Dixon forward the same day to the trust fund manager and two representatives of SEFEP, including Eddy Montoto, who handled scheduling of grievances and seniority hearings. (R. Exh. 9.) On June 29, Montoto sent Dixon a list of grievance hearings scheduled for June 30, which included Williams' seniority hearing. (R. Exh. 10.)

I do not credit Dixon's testimony that immediately after he received that email, he called Williams and informed him that his case was scheduled the next day and that Williams responded it was too short a notice and he had no time to get there. It is wholly implausible that Williams, who had continually pursued getting seniority credit since October 2020, would have so given up such an opportunity to address the board. Rather, I credit Williams and find as follows.

During the July 4, 2021 weekend, Williams ran into Dixon at the union hall. Dixon approached him and said that the board had met on June 30. Williams asked how that had happened and said that he was never given any information about the meeting. Dixon replied not to worry, that Williams would be good and

that he would get Williams before another board meeting.

A board meeting was held on February 8, 2022. Williams was not on the original schedule of seniority cases to be heard, but by email on the afternoon of February 7, Dixon added his and Marilyn Martin's cases. (GC Exh. 11.) However, the Local was able to resolve Martin's seniority issue before she had to address the board.

Dixon did not inform Williams that he was so scheduled because on the evening of February 7, Williams called Dixon and said that he had heard there was a board meeting the next morning. Dixon said yes and that Williams could come at noon. Later that evening, Williams texted him to find out exactly where the meeting would be held (GC Exh. 4), but Dixon never responded.

The next morning, Williams appeared at the office where the board was meeting and waited upstairs. At about 10:30 a.m., he observed Dixon going into the meeting room. Later, Williams saw Al Johnson, Jr., of the Union and told him why he was there. Johnson responded that Williams was not on the docket but that he should wait outside. Johnson called him into the meeting room at about 3 p.m. Dixon was present. Williams distributed to the board members copies of the following documents contained in General Counsel's Exhibit 5: (1) his identification, (2) his June 2021 letter, (3) his Form LS-208, (4) a statement from MILA of his coverage through December 31, 2021, and (5) a history of his pension contributions from 2004 through 2021. Williams was there for about 20 minutes. He was told that they would decide and then get back to him.

As I earlier noted, Dixon's affidavit contradicted his testimony that he did not vote against Williams getting credit for the year.

The seniority board denied Williams' seniority grievance that day because he had not worked at least 1 hour at Local 1526. (R. Exh. 2.)

After the meeting, Williams went to the union hall prior to the 5:45 p.m. shape-up. Dixon approached him. He stated that Williams had done well at the meeting until he said that he was good, and Roviroso referred to a settlement that Florida Stevedoring had reached with him after he was released from WC.⁶ Williams asked if he did not get his seniority, and Dixon replied that he did not but not to worry about it because Dixon would get him back before the board. Dixon did not advise Williams that he had the right to file an appeal of the decision. (See GC Exh. 10.) Nor did he mention the reason contained in the board's denial.

On February 10, Williams texted Dixon and asked to have the decision in writing. (GC Exh. 7.) Dixon texted back that it was not a problem. Williams sent him a second request on February 16. (Ibid.) On March 23, Williams texted Dixon with the board's denial. (Ibid.)

Williams thereafter asked Dixon at the for a hard copy of the decision on about three occasions, at a union meeting or in the union hall. Each time, Dixon said no problem, but Williams never received it in that form. Williams also repeatedly asked Dixon about going back before the board. Dixon always responded not to worry, that he was going to be good.

In late June, Williams called E. Dixon, explained that his WC

⁵ Tr. 320.

⁶ However, Roviroso said nothing about this in his testimony, shedding further doubt on Dixon's overall credibility.

credit was not being recognized to elevate his seniority for the October 1, 2019, to September 30, 2020 contract year, and asked for an updated pension statement. She told him that he should have been given that elevation in seniority through Mulligan because he was on WC during that period.⁷ She prepared an updated statement dated June 29, 2023, showing his WC credits (GC Exh. 2), which he picked up from her.

On July 7, 2023, Gross met with E. Dixon. They agreed that since Williams was made whole for pension purposes for his WC hours during the September 30, 2020 year, he was entitled to a seniority year as per Mulligan because he had 348 WC hours as of September 30, 2020.

On July 7, 2023, E. Dixon sent Williams an email stating that she had spoken to Gross, who had agreed that Williams was entitled to a seniority year based on the above. (GC Exh. 8.)

In the 3rd week of September 2023, Dixon called Williams and notified him that his seniority was corrected. Gross gave him a new card about a week later at the union hall, crediting him for 2021 and giving him an A-18 classification. On January 25, 2024, Williams' new card reflected this. (R. Exh. 4.)

Alleged Animus

In November or December 2019, Williams went to see Dixon, then the Local's financial secretary, in his office. Payne was the incumbent Local president at the time. Williams asked if Dixon was running for re-election as financial secretary and said that he would continue to support him; however, he would not support him for president because he felt that Payne was better qualified. Dixon did not respond. In the election held in December, Dixon defeated Payne.

Williams was a witness for Payne at an NLRB Zoom hearing held on July 19–20 and August 8–11, 2022, before Judge Keltner W. Locke.⁸ Datiste also testified on Payne's behalf. Dixon was found to have violated Section 8(b)(1)(A) and 8(b)(2) of the Act by reducing Payne's seniority because he had criticized Dixon while campaigning against him for Local president.

Statements by Dixon

To Williams

In April 2022, at a shape-up where over 30 members were present, Dixon took the podium. He referred to members filing charges with the Labor Board and then expecting the Union to fight for them. Payne walked in, and Dixon said, "I'm talking about you."⁹

At a Local monthly meeting in May or June 2022, with 25–30 members present, someone raised the numerous NLRB charges that members filed against the Union and asked Dixon his opinion of why there were so many. Dixon responded that members who filed charges did not respect the authority of the union leadership and cost the Union a lot of money, and that "those individuals will be dealt with."¹⁰

To Datiste

Outside the 10(b) period, on November 10, 2022, Datiste was in the foyer of the Local's office when Dixon said, "Lisa, I forgive you."¹¹ She did not respond, and he then said, "Lisa, I forgive you for testifying in that trial [on Payne's behalf]."¹² When she was working at the port on about March 26, 2023, Dixon approached her and stated, "Lisa, I forgive you," she did not respond, and he repeated, "Lisa, I forgive you for testifying in that trial."¹³ As he was leaving, he added, "I always get get-backs."¹⁴

On the date of the first incident, McLean was talking to Dixon about her work situation. When Datiste walked by, Dixon told her that "Lisa was the one who testified against him," and she heard him tell Datiste, "Lisa, I forgive you."¹⁵

Analysis and Conclusions

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization "to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Section 8(b)(2) makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section. . . ."

Dixon's Statements

As the Supreme Court has recognized, a fundamental policy of the Act is that "all persons with information about [unfair labor practices] . . . be completely free from coercion against reporting them to the Board." *Nash v. Florida Industrial Commission*, 389 U.S. 235, 238 (1967) (filing charges); *NLRB v. Scrivner*, 405 U.S. 117, 120, 122 (1972) (participation in an unfair labor practice investigation). "Any coercion used to discourage, retard, or defeat that access is beyond the legitimate interests of a labor organization." *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America, Local 22*, 391 U.S. 418, 424 (1968); see also *National Association of Broadcast Employees, Local 51 (ABC)*, 371 NLRB No. 15, slip op. at 5 (2021) ("[T]he Board has carefully safeguarded employees' right to file charges and access to its processes.").

In the context of the Respondent's operation of an exclusive hiring hall, the following language in *NLRB v. Robbins Tire & Rubber Co.*, 427 U.S. 214, 240 (1978), is apropos: "[D]ue to the peculiar character of labor litigation, the witnesses are especially likely to be inhibited by fear of the employer's or—in some cases—the union's capacity for reprisal and harassment." (internal quotations omitted).

Dixon's statements above conveyed the clear threat that the Respondent would retaliate against members who filed charges against the Respondent or testified against it at a Board hearing; in particular, his words that individuals who filed charges or so testified "would be dealt with," and "I always get get-backs."

⁷ She testified that he was entitled to the Mulligan benefit because he was in WC status, regardless of his number of WC hours.

⁸ *International Longshoremen's Assn., Local 1526 (Southeast Florida Employers Port Assn., Inc.)*, 373 NLRB No. 13 (Jan. 19, 2024).

⁹ Tr. 109.

¹⁰ Tr. 116.

¹¹ Tr. 117.

¹² Tr. 204.

¹³ *Ibid.*

¹⁴ Tr. 206.

¹⁵ Tr. 342.

Dixon therefore violated Section 8(b)(1)(A).

Williams' Seniority

In determining whether a union operating an exclusive hiring hall has violated Section 8(b)(1)(A) and 8(b)(2) by failing or refusing to refer an individual out for employment, the Board has applied both the analytical duty-of-fair-representation framework and the framework set forth in *Wright Line*.¹⁶ *Teamsters Local 735-S (Bemis Co.)*, 369 NLRB No. 97, slip op. at 5 (2020); *SSA Pacific, Inc.*, 366 NLRB No. 51, slip op. at 1 (2018); *Teamsters "General" Local 200*, 357 NLRB 1844 (2011), affd. 723 F.3d 778 (2013). The General Counsel need only succeed in one of these analyses to show a violation. See *Teamsters Local 100 (Wicked Films, LLC)*, 370 NLRB No. 15, slip op. at 1 fn. 1 (2020).

Fair Representation Analysis

An exclusive bargaining representative has a duty of fair representation, to represent all employees in a bargaining union by "mak[ing] an honest effort to serve the interests of all those members without hostility to any." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953), citing, inter alia, *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 198 (1944). Thus, a union breaches its duty of fair representation toward employees when it engages in conduct affecting those employees' employment conditions that is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *Union de Obreros de Cemento Mezclado (Betteroads Asphalt Corp.)*, 336 NLRB 972, 972 (2001). This includes situations where a union's disposition of a grievance was "'motivated by ill will or other invidious considerations,'" *ibid*, quoting *Bottle Blowers Local 106 (Owens-Illinois, Inc.)*, 240 NLRB 323 (1979). These requirements apply when a union operates an exclusive hiring hall. See, e.g., *ILA*, above at fn. 8, involving the Respondent.

Here, the issue is how Dixon represented Williams in getting his seniority credit for the contract year from October 1, 2019, to September 30, 2020, since the Respondent bases annual seniority upgrades on the information that the trust fund furnishes to it.

In mid-January 2021, Williams first questioned the Respondent why his seniority had not gone up for the 2019–2020 contract year. Dixon told him at that time that he would talk to the Local's financial secretary and take care of it. However, shortly thereafter, Dixon told him that he would have to appear before the seniority board, even though the Respondent had the ability to resolve seniority grievances without a board hearing. The emails that Dixon received from Sellers of the pension fund on January 19 and February 2, 2021, at the very least would have put Dixon on notice that Williams might be eligible for the Mulligan seniority credit for 2019–2020 based on his WC status during that period, even though the trust fund inadvertently omitted him from lists of eligible employees that it initially provided to the Respondent.

With respect to the seniority board, Dixon also evidenced bad faith in representing Williams: he (1) failed to notify Williams of the first hearing on his case that was scheduled on June 30, 2021; (2) did not notify Williams of the second-scheduled board

hearing, on February 8, 2022, and failed to give Williams the exact location when he asked for it; (3) initially did not tell Williams the reason that the board denied his seniority grievance but advanced a reason that Rovirosa allegedly gave but to which Rovirosa did not testify; and (4) failed to advise Williams of his right to appeal the decision.

In fact, Dixon took no further action on William's seniority grievance, and it was not until nearly a year-and-a-half later, on July 29, 2023, that E. Dixon of the pension fund—only at Williams' initiation—confirmed that he indeed qualified for the Mulligan seniority credit.

I therefore find that the Respondent, through Dixon, violated Section 8(b)(1)(A) and 8(b)(2) by engaging in conduct that was arbitrary, discriminatory, or in bad faith.

Wright Line Analysis

Under *Wright Line*, as applied to unions, the General Counsel bears the initial burden of establishing that an employee's protected activity was a motivating factor in the union's adverse action affecting the employee's employment (here Williams' referrals through the hiring hall). *Wright Line*, above at 1089. The Board has held that the General Counsel can meet this burden by establishing (1) protected activity by the employee, (2) union knowledge of that activity, and (3) union animus against the employee for that protected activity. See, e.g., *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enf. 577 F.3d 467 (2d Cir. 2009).

Once the General Counsel makes out a prima facie case, the burden shifts to the respondent to show that the same action would have taken place even in the absence of the protected activity. *Wright Line*, above at 1089; *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996). To establish this affirmative defense, a union cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that it would have taken the same action even in absence of the protected activity. *East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 (2018); *Consolidated Bus Transit*, above at 1066.

Here, Williams testified against Dixon at a Board hearing, so protected activity and knowledge thereof by the Respondent are established. Express animus is demonstrated by Dixon's statements in March and May or June 2022, and on November 10, 2022, and about March 26, 2023. Moreover, animus can be implied from Judge Locke's decision finding that Dixon retaliated against Payne for running against him for president in the Local's election. I also take administrative notice of *International Longshoremen's Assn., Local 1525 (Florida International Terminal, LLC)*, 373 NLRB No. 22 (2024), in which Judge Brian D. Gee found that the Respondent sought to retaliate against a member for criticizing and filing internal grievances against Dixon and other Local officers.

Accordingly, the General Counsel has made out a prima facie case of unlawful discrimination. The Respondent has failed to rebut it: (1) on a repeated basis, Dixon expressed animus against

¹⁶ 251 NLRB 1083 (1980), enf. 662 F.2d 899(1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Williams, Datiste, and Payne for opposing his conduct as Local president; (2) despite Williams' repeated inquiries, he failed to even attempt to investigate with the pension fund Williams' eligibility for the Mulligan credit, which would have obviated the need for a seniority board hearing; (3) he failed to advise Williams of the first scheduled hearing; and (4) he gave Williams misleading information on why his seniority claim was denied. Significantly, the error in Williams not receiving his Mulligan credit was corrected only after Williams contacted the pension fund in July 2023, 2-1/2 years after Williams first brought up the issue to the Union.

Therefore, the Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act under a *Wright Line* analysis.

CONCLUSIONS OF LAW

1. Florida International Terminal, LLC (FIT) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. FIT is an employer-member of the Southeast Florida Employers Port Association, Inc. (SEFEPA), one purpose of which is to represent its members in negotiating and administering collective-bargaining agreements with labor organizations, including the International Longshoremen's Association (ILA).

3. ILA, of which Local 1526 is a constituent member, is a labor organization within the meaning of Section 2(5) of the Act.

4. Local 1526 operates an exclusive hiring hall or referral system pursuant to which it refers individuals for employment by SEFEPA employers.

5. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(b)(1)(A) and (2) of the Act: arbitrarily, discriminatorily, and in bad faith represented Tony Williams in his seniority claim.

6. By the following conduct, the Respondent has engaged in unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(b)(1)(A) of the Act: threatened members for filing charges with the Board or participating in its proceedings.

REMEDY

Because I have found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having failed to represent Williams in good faith, must make him whole for any losses of earnings and other benefits suffered as a result of the delay in his receiving seniority credit for the 2019–2020 contract year. Make-whole relief shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB

289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Pursuant to *Thryv, Inc.*, 372 NLRB No. 22 (2022), I further order that the Respondent compensate Williams for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, the Respondent shall compensate Williams for the adverse tax consequences, if any, of receiving a lump-sum payment award and to file a report with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years. *Advoserv of New Jersey, Inc.*, 363 NLRB 1324 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

The General Counsel requests (GC Br. 28) that in addition to a standard remedy, the Respondent be ordered to send Williams a letter of apology essentially restating what is in the notice to members. I find such additional remedy superfluous and decline to order it.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁷

ORDER

The Respondent, International Longshoremen's Association, Local 1526, Fort Lauderdale, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to represent hiring hall users in their seniority claims for reasons that are arbitrary, discriminatory, or in bad faith.

(b) Threatening hiring hall users with retaliation because they file charges or participate in Board proceedings.

(c) 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) Make Tony Williams whole for any loss of earnings and other benefits suffered as a result of the failure to represent him in his seniority claim, in the manner set forth in the remedy section of the decision.

(b) Within 14 days after service by the Region, post at its facility in Fort Lauderdale, Florida, copies of the attached notice marked "Appendix."¹⁸ Copies of the notice, on forms provided

¹⁷ 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.

¹⁸ If the Respondent's office involved in these proceedings is open and staffed by a substantial complement of employees and members, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019

(COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or

by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and members by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 12 signed copies of the notice in sufficient number for posting by employer-members of the Southeast Florida Employers Port Association, Inc., and by any other employers that use the Respondent's exclusive hiring hall, if they are willing, in all places where their notices to employees are customarily posted.

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

I dismiss the complaint insofar as it alleges violations of the Act that I have not specifically found.

Dated, Washington, D.C. July 17, 2024.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT restrain or coerce you in the exercise of these rights.

WE WILL NOT FAIL to represent you in your seniority claims for reasons that are arbitrary, discriminatory, or in bad faith, including your testifying against us in National Labor Relations Board hearings.

WE WILL NOT threaten you with retaliation because you file unfair labor practice charges against us with the National Labor Relations Board or participate in its proceedings.

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

WE WILL make Tony Williams whole for any loss of earnings and other benefits suffered as a result of our failure to represent him in his seniority claim, in the manner set forth in the remedy section of the decision.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1526

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/12-CB-299858> 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



posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read

"Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."