Leo Marine Services, Inc., Olympic Tug & Barge, Inc., and Centerline Logistics Corporation and Olympic Tug & Barge, Inc. and Centerline Logistics Corporation and Leo Marine Services, Inc. and Centerline Logistics Corporation, Westoil Marine Services, Inc., and Harley Marine Financing, LLC *and* Inlandboatmen's Union of The Pacific and Centerline Logistics Corporation, Leo Marine Services, Inc., and Olympic Tug & Barge, Inc. and International Organization of Masters, Mates & Pilots, AFL–CIO. Cases 19–CA–273208 19–CA–273220, 19–CA–273226, 19–CA–273928, 19–CA–273985, 19–CA–273771, and 21–CA–273926

September 10, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On April 3, 2024, Administrative Law Judge Ira Sandron issued the attached decision. Respondents Leo Marine Services (LMS), Centerline Logistics Corporation (CLL), Olympic Tug & Barge, Inc. (OTB), Harley Marine Financing, LLC (HMF), and Westoil Marine Services (WMS) each filed exceptions and supporting briefs, and the General Counsel filed one answering brief to all of the Respondents' exceptions. Each Respondent filed a reply brief. Additionally, the General Counsel filed cross-exceptions and a supporting brief, and all five Respondents filed a combined answering brief, to which the General Counsel filed a reply brief. Charging Party Inlandboatmen's Union of the Pacific (IBU) also filed cross-exceptions and a supporting brief, and all five Respondents filed a combined answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.[3]

We affirm, on a different basis set forth below, the judge's finding that the Respondents violated Section 8(a)(5) and (1) by unilaterally transferring bargaining-unit work away from bargaining-unit employees. Additionally, we affirm the judge's finding that the Respondents violated Section 8(a)(2) and (1) by prematurely recognizing the Seafarers International Union (SIU) as the collective-bargaining representative of LMS employees.[4] In

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

We reject the Respondents' arguments, raised for the first time on exceptions, that Board members and administrative law judges are unconstitutionally insulated from removal, that the Board's adjudication of private rights and legal relief violates the Seventh Amendment of the Constitution, and that the Board's structure violates the separation of powers. The Respondents did not raise these arguments in any form before the judge. Consequently, these arguments are untimely and therefore waived. See *Nitro Construction Services*, 374 NLRB No. 120, slip op. at 1 fn. 1 (2026).

We affirm the judge's finding that all five Respondents are a single employer for purposes of the Act, as they all have common ownership, common management, centralized control of labor relations, and interrelated operations. See *Emsing's Supermarket, Inc.*, 284 NLRB 302 (1987), enfd. 872 F.2d 1289 (7th Cir. 1988). Whether or not a Regional Director's earlier Decision and Direction of Election finding that CLL, OTB, and LMS are a single employer precludes relitigating the issue as to those entities, see 2022 WL 4547946 at 1 fn. 2 (9/28/22) (denying review of the Regional Director's single-employer finding), the outcome is the same. On this record, which includes the record from the representation case, we would reach the same conclusion because it overwhelmingly demonstrates that those entities are a single-integrated enterprise that failed to engage in arms-length transactions. We disclaim reliance on the judge's alternative analysis finding that HMF is an alter ego of CLL and WMS, as such a finding is unnecessary in light of their single-employer status. Member Prouty agrees with the judge's finding that all five Respondents are a single employer for purposes of the Act and would further find that the Regional Director's earlier Decision and Direction of Election finding that CLL, OTB, and LMS are a single employer precludes the relitigation of the single-employer issue as to those entities. See Sec. 102.67(g) of the Board's Rules and Regulations (denial of a request for review precludes relitigating "any issue which was, or could have been, raised in the representation proceeding . . . in any related subsequent unfair labor practice proceeding"); see also *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Member Prouty additionally notes and relies upon the fact that, while invited by the judge to make an offer of proof as to the evidence it would adduce to contest the Board's single-employer finding in the representation case, the Respondents failed to do so.

[2] In the absence of exceptions, we adopt the judge's dismissal of the allegation that the Respondents violated Sec. 8(a)(1) by stating that they could not hire all of the union employees at one time.

[3] We have amended the judge's conclusions of law consistent with our findings herein. We have also amended the remedy and modified the judge's recommended Order consistent with our legal conclusions herein and the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[4] LMS argues that because the SIU and Starlight Marine Services (SMS)—which changed its name to LMS in early 2021—had a preexisting collective-bargaining agreement covering all West Coast employees, the new LMS/SIU collective-bargaining agreement signed in 2021 extended the 2019–2021 SMS/SIU collective-bargaining agreement following the name change. We recognize that only changing the company's name would not affect LMS's existing collective-bargaining agreement with the SIU, but that existing agreement's recognition clause specifically limited its scope to work performed in San Francisco and the

light of this unlawful recognition, we also affirm the judge's finding that the Respondents violated Section 8(a)(3), (2), and (1) by entering into a collective-bargaining agreement with the SIU containing a union-security clause and by imposing SIU membership and dues deductions on employees.[5] For the reasons set forth below, however, we reverse the judge's finding that the Respondents violated Section 8(a)(1) by announcing an unlawful unilateral change on December 9, 2020, when they informed IBU representatives that WMS had lost the Glencore work to OTB.

Unilateral Transfer of the Bargaining Unit Work and Resulting Layoffs

I. FACTS

On October 14, 2020, Respondent CLL (a marine petroleum transportation operator and parent company of the other four Respondents) and Respondent HMF (the "treasury center" of the other four Respondents) jointly initiated an internal bid process whereby CLL's various operating companies, including Respondent WMS, could submit bids for the "Glencore work"[6] in Los Angeles/Long Beach (LA/LB). WMS had been servicing the Glencore contract for over 20 years, and it accounted for a significant portion of WMS's work each year. None of the Respondents notified the IBU—WMS employees' exclusive bargaining representative—about the bid process at the time it was announced. On October 23, 2020, WMS Barge Operations Supervisor Brian Vartan submitted WMS's initial bid to retain the Glencore work.

After CLL told Vartan that WMS's initial bid was out of range, Vartan notified IBU Regional Director John Skow about the bid process for the first time and asked to discuss how WMS could submit a more competitive revised bid. Vartan claimed that the bid process was motivated by Glencore's requesting a significant reduction in cost, which the record shows was untrue. Vartan told Skow that a "memorandum-of-understanding" (MOU) allowing for cost-reducing measures would help WMS submit a competitive revised bid, so Skow began drafting an MOU. But just 4 days later—before Skow had even sent Vartan the draft MOU, and over 2 weeks before the final bid deadline—Vartan submitted WMS's final bid to CLL/HMF with no meaningful changes from its initial, rejected bid. Vartan did not, however, tell the IBU about this early (and unchanged) final submission, and he had multiple meetings with the IBU representatives in which he led them to believe he was working with them to lower operating costs and submit a more competitive bid, before eventually rejecting the IBU's proposed MOU without sufficient explanation or counteroffer. Skow continued reaching out to Vartan and other high-level managers at CLL/WMS to try and make further concessions, but Vartan told him it was a lost cause.

On December 9, 2020, CLL/HMF informed the IBU that they had awarded the Glencore work to Respondent OTB, a nonunion subsidiary of CLL. The Respondents' witnesses could not convincingly or consistently explain why they selected OTB, nor could they account for the blatant deficiencies in OTB's bid. Then, in late January 2021, CLL/HMF took the Glencore work from OTB (who had not yet started servicing Glencore's contract) and gave it to Respondent LMS, a subsidiary of OTB that never even bid on the Glencore work. The Respondents' witnesses also failed to satisfactorily explain this decision at the hearing.

On March 1, 2021, LMS officially took over the Glencore work in LA/LB that WMS had previously been per-

State of Washington, which is too narrow to establish a fleetwide unit encompassing any new locations outside of San Francisco and Washington that the company subsequently added. The parties also significantly altered the geographic language in the LMS/SIU 2021 agreement's recognition clause, further undermining the argument that the prior SMS/SIU agreement automatically encompassed any new locations the company might add. We further note that LMS's argument that it recognized the SIU simply because it believed the preexisting SMS/SIU agreement required LMS to recognize a fleetwide unit directly contradicts its initial, repeated assertions to applicants and employees that LMS was going to be a nonunion company. Therefore, we reject LMS's argument that the SIU's 2021 agreement with LMS was merely a lawful continuation of the 2019–2021 agreement.

[5] LMS argues that the judge should have analyzed the 8(a)(3) allegation under the burden-shifting framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). But *Wright Line* only applies in mixed-motive cases, and this is not. When a union lacks majority support, an employer entering into a collective-bargaining agreement with union-security and dues-checkoff provisions and requiring members to join that union is inherently discriminatory. See, e.g., *A.M.A. Leasing, Ltd.*, 283 NLRB 1017, 1023–1024 (1987) (finding an 8(a)(3) violation for entering into an agreement containing union-security and dues-checkoff provisions without any *Wright Line* analysis); *Hilton Inn Albany*, 270 NLRB 1364, 1366 (1984) (same). Given the plain language of Sec. 8(a)(3), which forbids "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization," the judge was right to forgo any *Wright Line* analysis, as LMS not only "encouraged" membership in a labor organization that lacked majority support but actually mandated it.

LMS further argues that its collective-bargaining agreement with the SIU did not violate the Act because in July 2021, it issued a memo informing employees that LMS and the SIU had agreed to indefinitely suspend enforcement of the union-security provision. Nevertheless, it was still a violation to initially include the clause in the agreement and to maintain the provision actively for several months. LMS also fails to address how "indefinitely suspending" the clause—in a memo that purported to speak for both parties to the agreement but was only signed by one—was sufficient to alleviate the issues associated with such a clause.

[6] As the judge explained, Glencore is a commodity trading and mining company, and a longstanding customer of CLL/WMS.

forming, and consequently, WMS laid off ten employees from their regular schedules and moved them to the non-scheduled "casual list." But losing the Glencore work also significantly reduced the amount of casual work that was available, and because the casual list operates based on seniority, moving the employees who used to be regularly scheduled to the casual list meant that those who had previously been on the casual list were bumped down. This resulted in some casual employees receiving less work than before, and those at the bottom of the list receiving no work at all.

II. ANALYSIS

The General Counsel alleges that the Respondents violated Section 8(a)(5) and (1) by failing to bargain in good faith before taking away bargaining unit work from WMS employees and giving it to another subsidiary, and by laying off WMS employees as a result of that work transfer. As an initial matter, we agree with the judge that taking work away from unit members and transferring it to another operating company is a mandatory subject of bargaining, as labor costs were at the center of the decision.[7] We also agree with the judge that the Respondents did not bargain to impasse, nor could the parties have bargained to a valid impasse when the Respondents engaged in such blatant bad-faith bargaining.[8]

The judge found an 8(a)(5) and (1) violation for the unilateral transfer of bargaining unit work under the "contract coverage" standard in place at the time he issued his decision. See *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 11 (2019) (applying "ordinary principles of contract interpretation" to determine whether a disputed change was "within the compass or scope" of any provision authorizing the employer's unilateral action). Since then, however, the Board issued its decision in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024), and returned to the clear and unmistakable waiver standard. Applying the clear and unmistakable waiver standard here,[9] we find that the record does not establish the IBU clearly and unmistakably waived its right to bargain over the transfer of the Glencore work.

The Respondents point to numerous pieces of evidence in an effort to show waiver, including statements the IBU made during previous bargaining negotiations and during the MOU "negotiations" throughout the Glencore bid process. But none of these statements constitutes a clear and unmistakable waiver of the IBU's right to bargain over the Glencore work, as the parties had never meaningfully bargained over transferring the Glencore work (or any other substantial component of WMS's work) away from unit employees or to another operating company. Indeed, all of the IBU's proposals were specifically designed to enable WMS to *retain* the Glencore work. There is also no credible evidence that WMS had a routine past practice of assigning LA/LB unit work to OTB or any other CLL operating company; and even if there had been evidence of this happening occasionally, it would not justify a decision to permanently transfer all Glencore work away from WMS.[10] Given the Respondents' bad-faith negotiations throughout the bid process, the IBU's MOU proposals—which the Respondents did not meaningfully respond to—also could not have constituted a valid waiver.

Additionally, the Respondents point to the CBA's Management Rights Clause, which states in relevant part:

> 5.2 Subject to the requirements of this Agreement, the Company shall have the sole and exclusive right, at its

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[7] In finding that this work transfer was a mandatory subject of bargaining, however, we do not rely on the judge's citations to subcontracting cases, and we instead rely on his alternative analysis regarding the transfer of unit work to nonunit members. See *Harris-Teeter Super Markets, Inc.*, 307 NLRB 1075, 1075 fn. 1 (1992) ("[A]n employer violates Sec[.] 8(a)(5) and (1) of the Act by reassigning work performed by bargaining unit employees to others outside the unit without affording notice or an opportunity to bargain[.]") (quoting *Kohler Co.*, 292 NLRB 716, 720 (1989)). Because all five Respondents are a single employer, this situation is similar to transferring work from one department that is in the bargaining unit (WMS) to another department that is not (OTB and, later, LMS).

[8] Because WMS and the IBU did not reach a valid impasse, the Respondents' reliance on *Milwaukee Spring Division*, 268 NLRB 601 (1984), is misplaced, as that case specifically relied on the parties having bargained to impasse.

[9] WMS and the IBU entered into the operative collective-bargaining agreement in 2018—before *MV Transportation* issued and while the clear and unmistakable waiver standard was still in place—so no "manifest injustice" will result from applying *Endurance Environmental* retroactively to this case. See *SNE Enterprises*, 344 NLRB 673, 673 (2005). Member Prouty adheres to his position in *Endurance Environmental* that the restored clear and unmistakable waiver standard should apply retroactively in all pending cases, including this case.

Chairman Murphy and Member Mayer apply the clear and unmistakable waiver standard set forth in *Endurance Environmental* as extant precedent, but they note that they were not members of the Board when that case was decided and take no position on whether it was correctly decided.

[10] We also reject the Respondents' contention that the 2015 arbitration opinion constitutes a waiver of the IBU's right to bargain. The arbitration opinion at issue dealt solely with WMS's right to unilaterally allow OTB to utilize a WMS barge for OTB's customers using its own employees. It did not address whether WMS could unilaterally reassign IBU bargaining-unit work to another CLL operating company or to nonunit employees. In fact, the arbitrator specifically found that OTB assigned the work on WMS's barge to IBU-represented employees. Furthermore, nothing in the arbitrator's opinion establishes that OTB historically performed bunkering work in LA/LB for WMS's customers or that the collective-bargaining agreement permits WMS to unilaterally reassign bargaining-unit work.

> own discretion, to exercise the following rights, which are not meant to be exclusive:
>
> …
>
> C. To install, change, discontinue or relocate, in whole or in part, methods, processes, services, procedures, barges, boats, equipment, operations or facilities. However, before implementing such a decision to distribute work which differs from the Company's past practice and results in a layoff of currently working bargaining unit Employees, the Company agrees to discuss the matter with the Union. The Company reserves the right to implement its decision after discussing it with the Union. However, the Union reserves the right to file a grievance in accordance with Section 10, Grievance Procedure and Arbitration, to determine whether the Company implemented its decision consistent with this Agreement.

Under the clear and unmistakable waiver standard, nothing about this provision is sufficient to grant WMS unilateral authority to transfer bargaining-unit work to another operating company, as the language is too broad and general and does not waive the IBU's right to bargain about this specific topic.[11] Therefore, we find that the Respondents violated Section 8(a)(5) and (1) by unilaterally taking the Glencore work away from WMS.

Because the layoffs were a direct result of the unlawful unilateral removal of the Glencore work, the judge correctly found that the layoffs also violated Section 8(a)(5) and (1).[12] See, e.g., *Stephens Media Group—Watertown LLC*, 371 NLRB No. 11, slip op. at 5–6 (2021) (finding that layoffs resulting from an unlawful unilateral change were unlawful); *Raven Government Services, Inc.*, 336 NLRB 991, 992 (2001) (clarifying that employers must make employees whole if it lays them off "as a result of its unlawful unilateral change[]"), enfd. 315 F.3d 499 (5th Cir. 2002).

Announcing the Unlawful Change to Employees

On December 9, 2020, WMS Barge Operations Supervisor Vartan held a Zoom meeting with IBU Regional Director Skow and other IBU representatives (who were also WMS employees) to inform them that WMS had lost the bid for the Glencore work. The judge found that by announcing the unlawful change to them, the Respondents violated Section 8(a)(1).[13] Although the Respondents' removal of the Glencore work was certainly unlawful, we do not agree that informing the IBU that WMS lost the bid is its own separate 8(a)(1) violation in these particular circumstances. On the same day that CLL/HMF informed OTB it had won the bid, Vartan called the IBU representatives to inform them that WMS had lost the bid. There was nothing independently coercive or threatening about the announcement, and informing the IBU about the change on the same day that CLL/HMF announced its decision to the other bidders is inseparable from the 8(a)(5) and (1) unilateral change violation. Therefore, we dismiss the 8(a)(1) allegation.[14]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 9:

> By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act: unilaterally laid off employees from a regular schedule.

Delete Conclusion of Law 6 and renumber subsequent paragraphs accordingly.

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(5) and (1) by unilaterally removing bargaining-unit work, we shall order the Respondents to rescind that unlawful

[11] The Respondents also argue that Sec. 32.1 of the collective-bargaining agreement waived the IBU's right to bargain over a decision giving the Glencore work to a different operating company, but that clause only waived the parties' right to bargain over "any subject matter or matter referred to, or covered in this Agreement." The agreement, including the Management Rights Clause, is silent on the matter of transferring unit employees' work to a different operating company, which means that the "subject matter" was not "referred to, or covered in" the Agreement. Therefore, Sec. 32.1 also does not constitute a clear and unmistakable waiver of the IBU's right to bargain.

[12] As set forth below, we amend paragraph 9 of the judge's Conclusions of Law to remove his finding that the layoffs violated Sec. 8(a)(3). The Complaint does not make an 8(a)(3) allegation regarding the layoffs, the judge's decision does not analyze an 8(a)(3) allegation regarding the layoffs, and the General Counsel's brief does not argue that the layoffs violated Sec. 8(a)(3).

[13] Although the judge's decision was inconsistent in sometimes referring to the 8(a)(1) violation as being based on the December 9, 2020 Zoom meeting with the IBU representatives, and at other times suggesting it was based on the December 28, 2020 Zoom meeting in which the Respondents more broadly informed WMS employees of the unlawful change, he did ultimately clarify that December 9 was the operative date of the violation.

[14] Member Prouty would affirm the 8(a)(1) violation for announcing an unlawful change on December 9, 2020. He notes that a violation of Sec. 8(a)(1) does not require an explicit threat or coercion. The announcement of a unilateral change is itself unlawful. See *Finley Hospital*, 362 NLRB 915, 919 (2015), enf. denied on other grounds, 827 F.3d 720 (8th Cir. 2016).

change. Additionally, because the unlawful change resulted in the Respondents laying off from a regular schedule employees Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo, we shall order the Respondents to offer them full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful layoffs.[15] The Respondents must also make whole any casual employees who lost work, or were effectively laid off, for any loss of earnings and other benefits suffered as a result of the unlawful unilateral change.[16] Backpay 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).

In accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondents shall also compensate employees for any other direct or foreseeable pecuniary harms incurred as a result of the layoffs and loss of work, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[17] 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.

We shall also order the Respondents to compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file reports with the Regional Director for Region 21 allocating the backpay awards to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc*., 363 NLRB 1324 (2016). In addition to the backpay allocation reports, we shall order the Respondents to file with the Regional Director for Region 21 copies of employees' corresponding W-2 form(s) reflecting the backpay awards. *Cascade Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

[15] We reject WMS's argument that six of the ten employees who received formal layoff notices should have their names removed from the remedy. WMS contends that these six employees were actually laid off not because of the transferred Glencore work, but as the result of a completely separate transaction in which WMS sold some of its tugboats to another operating company, Saltchuk Marine. Its only support for this argument is the judge's general observation that some of the laid-off employees had worked on tugs that were sold to Saltchuk. WMS also failed to raise this argument at the hearing, and it never specifies which six employees were laid off due to the Saltchuk sale. Additionally, the record strongly indicates that the Glencore work transfer played at least some role in all of the layoffs, including of the WMS employees who worked on tugs sold to Saltchuk, so we find no merit in WMS's argument that these six employees should be excluded from the remedy at this stage of the case.

Additionally, WMS contends that Cris Sogliuzzo is not eligible for backpay because he took medical leave before ever being moved to the casual list and then refused an offered spot on the regular schedule when he returned. We defer this issue to compliance. See, e.g., *Santa Fe Tortilla Co.*, 360 NLRB 1139, 1139 fn. 2 (2014) (deferring to compliance the employer's contention that two employees were not entitled to backpay because they suffered no loss of work hours from their unlawful transfer).

[16] We grant the General Counsel's and the IBU's cross-exceptions regarding the judge's inclusion in the make-whole remedy of only the ten regular employees who received layoff notices, and not of the casual employees who also lost work as a result of the Respondents' unlawful reassignment of bargaining unit work. We agree with the General Counsel that regardless of whether a WMS bargaining unit employee received a formal layoff notice, any loss of work resulting from the Respondents' unlawful unilateral action must be accounted for in the remedy, even if the unnamed employees are not individually identified until the compliance stage of the case. See, e.g., *Uniserv*, 351 NLRB 1361, 1362 (2007) (ordering unnamed "unit employees" to be made whole for any loss of earnings and other benefits suffered as a result of the employer's unlawful unilateral action); *Brede, Inc.*, 335 NLRB 71 (2001), enfd. 315 F.3d 906 (8th Cir. 2003) (requiring a make whole remedy for "any employee who may have lost work" because of the employer's unlawful unilateral change).

[17] Chairman Murphy and Member Mayer note that in *Macy's, Inc. v. NLRB*, No. 25-627, the Board asked the Supreme Court to remand that case to the Board so that it could reconsider the *Thryv* remedy in light of subsequent court decisions that have rejected it. See, e.g., *Hiran Management v. NLRB*, 157 F.4th 719 (5th Cir. 2025) (holding remedy impermissible); *NLRB v. Starbucks, Inc.*, 159 F.4th 455 (6th Cir. 2025) (same); *NLRB v. Starbucks, Inc.*, 125 F.4th 78 (3d Cir. 2024) (same); but see *NLRB v. North Mountain Foothills Apartments*, 157 F.4th 1089 (9th Cir. 2025) (upholding *Thryv* remedial framework), citing *Macy's, Inc. v. NLRB*, 155 F.4th 1023 (9th Cir. 2025). Consistent with our representations to the Court, we will reconsider *Thryv* in a future proceeding. However, we agree to apply it for institutional reasons for the purpose of deciding this case.

Member Prouty notes that he did not agree with the Board's request to the Supreme Court in *Macy's*, supra, to remand the case to the Board to reconsider *Thryv*. He further observes that the Supreme Court denied certiorari in *Macy's* without granting the motion to remand. See *Macy's, Inc. v. NLRB*, 25-627, 2026 WL 1717973 (June 15, 2026). Member Prouty continues to believe that *Thryv* was correctly decided, is well within the Board's remedial authority, and is necessary to satisfy the Board's statutory obligation to provide meaningful make-whole relief. See *Macy's*, 155 F.4th at 1047–1053 (holding that the *Thryv* remedial framework "is within the Board's broad discretion of what can fairly be said to effectuate the policies of the Act, by restoring the situation, as nearly as possible, to that which would have occurred but for the violation. . . . Imposing such remedies, designed to respond directly to an unfair labor practice, falls squarely within the heartland of the NLRB's delegated powers.") (Internal citations and quotations omitted.)

Further, having found that the Respondents violated Section 8(a)(3), (2), and (1) by prematurely recognizing the SIU and entering into a collective-bargaining agreement containing dues deduction and union-security clauses, we shall order the Respondents to reimburse all present and former employees for any initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the dues-checkoff and union-security clauses in the unlawful LMS/SIU collective-bargaining agreement, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[18]

We agree with the judge, for the reasons set forth in the remedy section of his decision, that neither notice reading nor reimbursement of organizing expenses is warranted here.

ORDER

The National Labor Relations Board orders that the Respondents, Centerline Logistics Corporation, Harley Marine Financing, LLC, Leo Marine Services, Inc., Olympic Tug & Barge, Inc., and Westoil Marine Services, Inc., Seattle, Washington, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Granting assistance to the Seafarers International Union (SIU) and recognizing it as the exclusive collective-bargaining representative of Leo Marine Services, Inc. (LMS) employees at a time when the SIU does not represent an unassisted and uncoerced majority of the employees in the unit.

(b) Unilaterally changing the terms and conditions of employment of the Inlandboatmen's Union of the Pacific (IBU's) unit employees.

(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) Reimburse with interest all present and former employees for any initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the dues-checkoff and union-security clauses in the LMS/SIU collective-bargaining agreement in the manner set forth in the amended remedy section of this decision.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the IBU as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All Tankermen, Engineers, Boomboat Operators, Mate of Tow, Deckhand/Engineers, Ship Assist/Deckhands, Deckhand/Cooks, and Deckhands, employed by Respondent Westoil and Millennium Maritime, Inc. at its Long Beach/Los Angeles, California facility who work within the territorial jurisdiction of the Union's Southern California Region (Morro Bay, California to the Mexican Border); excluding all other employees, including office clerical employees, mates and captains, water taxi and ship's stores delivery crews, professional employees, guards, port engineers and supervisors as defined in the Act.

(c) Rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented on or about March 1, 2021.

(d) Within 14 days from the date of this Order, offer Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, Cris Sogliuzzo, and any adversely affected casual employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful transfer of bargaining unit work, in the manner set forth in the amended remedy section of this decision.

(f) Compensate the employees affected by the unlawful removal of bargaining-unit work for the adverse tax consequences, if any, of receiving a lump-sum award, and file with the Regional Director for Region 21, within 21 days of the date the award amount is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s) for each employee.

(g) File with the Regional Director for Region 21, within 21 days of the date the amount of the award is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each corresponding W-2 form(s) reflecting the backpay award.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director for Region 21

[18] LMS argues that ordering reimbursement for initiation fees, dues, and other moneys LMS employees paid under the unlawful collective-bargaining agreement is unwarranted because no such money was ever actually collected from employees. Nevertheless, we will order reimbursement as part of the standard remedy, and it can be determined at the compliance stage whether LMS's assertions are accurate.

may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, 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.

(i) Within 14 days after service by the Region, post at its San Pedro, California facility copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since February 17, 2021.

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

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

Dated, Washington, D.C. September 10, 2026

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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 grant assistance to the Seafarers International Union (SIU) and recognize it as the exclusive collective-bargaining representative of Leo Marine Services, Inc. (LMS) employees at a time when the SIU does not represent an unassisted and uncoerced majority of the employees in the unit.

WE WILL NOT unilaterally change the terms and conditions of employment of the Inlandboatmen's Union of the Pacific (IBU's) unit employees.

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

WE WILL reimburse with interest all present and former employees for any initiation fees, dues, or other moneys paid by them or withheld from them pursuant to the terms of the dues-checkoff and union-security clauses in the LMS/SIU collective-bargaining agreement.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the IBU as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All Tankermen, Engineers, Boomboat Operators, Mate of Tow, Deckhand/Engineers, Ship Assist/Deckhands, Deckhand/Cooks, and Deckhands, employed by Respondent Westoil and Millennium Maritime, Inc. at its

[19] 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."

> Long Beach/Los Angeles, California facility who work within the territorial jurisdiction of the Union's Southern California Region (Morro Bay, California to the Mexican Border); excluding all other employees, including office clerical employees, mates and captains, water taxi and ship's stores delivery crews, professional employees, guards, port engineers and supervisors as defined in the Act.

WE WILL rescind the changes in the terms and conditions of employment for unit employees that have been unilaterally implemented since March 1, 2021.

WE WILL, within 14 days from the date of this Order, offer Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, Cris Sogliuzzo, and any adversely affected casual employees whole for any loss of earnings and other benefits suffered as a result of the unlawful transfer of bargaining unit work, less any net interim earnings, plus interest, and WE WILL also make such employees whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful transfer of bargaining unit work, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate the employees affected by the unlawful removal of bargaining-unit work for the adverse tax consequences, if any, of receiving a lump-sum award, and WE WILL file with the Regional Director for Region 21, within 21 days of the date the award amount is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 21, within 21 days of the date the amount of the award is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each corresponding W-2 form(s) reflecting the backpay award.

CENTERLINE LOGISTICS CORPORATION, HARLEY MARINE FINANCING, LLC, LEO MARINE SERVICES, INC., OLYMPIC TUG & BARGE, INC., AND WESTOIL MARINE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/ 19-CA-273208 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.

Sanam Yasseri and *Thomas Rimbach, Esqs.,* for the General Counsel.
Christopher L. Hilgenfeld, Wes Foreman, and *Daniel Spurgeon, Esqs. (Davis Grim Payne & Marra),* for the Respondent.
Dimitri Iglitzen and *Sarah Derry, Esqs. (Barnard, Iglitzen & Lavitt, LLP),* for Charging Party IBU.
Jason Wojciechowski and *Sara Yufa, Esqs. (Bush Gottleib, A Law Corporation),* for Charging Party MMP.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. The case arises from a consolidated complaint issued on March 17, 2022, based on charges that Inlandboatmen's Union of the Pacific (the IBU) and International Organization of Masters, Mates & Pilots (the MMP) filed against Centerline Logistics Corporation (Centerline), Leo Marine Services (Leo Marine), Olympic Tug & Barge (OTB); Westoil Marine Services (Westoil), and Harley Marine Financing (HMF); and Seafarers International Union (the SIU).

Pursuant to notice, I conducted a hearing by Zoom on August 2, 8–12, and 29–31, and September 1–2, 2022; and in person in Los Angeles, California, on October 17–21, 2022, and January 23–27, February 8–10, and March 13–15, 2023, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Counsel for the General Counsel (the General Counsel), the Respondents, and the IBU filed posthearing briefs on September 15, 2023.

Thereafter, the General Counsel filed motions to strike portions of the two briefs that the Respondents filed (one for HMF and Westoil, the other for Centerline), and the Respondents filed a motion to reopen the record and a request for judicial/administrative notice. They related to: (1) a Spring 2011 Internal Revenue Service bulletin; (2) a July 18, 2022, arbitration decision; and (3) Westoil's posthearing closure in April 2023 and the related severance agreement between Westoil and the IBU.[1] By orders dated November 22, 2023, I granted the General Counsel's motions to strike and denied the Respondents' motion to reopen the

[1] These would be compliance matters. Facts cited herein will be based on the evidentiary record before me.

record and their request for judicial/administrative notice.

Issues

The thrust of the General Counsel's case (GC Br. at 1) is that "[t]hrough a deceptive effort grounded in anti-union discrimination," Centerline, HMF, Westoil, OTB, and Leo Marine acted together as a single employer to take away the rights of IBU-represented Westoil employees in San Pedro, California, at the Los Angeles/Long Beach Harbor (Los Angeles).

Prior determination of single-employer status

Preliminarily, the single-employer status of Centerline, OTB, and Leo Marine was the subject of a 76-page Decision and Direction of Election (DDE) that the Regional Director of Region 21 issued on March 11, 2022, in Cases 21–RC–274874, et. al. (GC Exh. 89), on petitions filed by the IBU and the MMP, concerning Leo Marine employees in the San Francisco area and in Los Angeles.

After addressing in depth the Respondents' arguments against single-employer status, the evidence presented at the 6-day representation case hearing that finished on May 26, 2021, and applicable Board law, he concluded that these three entities constitute a single employer.

On August 1, 2022, I issued an order limiting evidence on single-employer status to preclude relitigation of the issues adjudicated by the Regional Director (GC Exh. 2(e)). I cited the well-established precept that a party in an unfair labor practice proceeding may not relitigate issues which were or could have been raised in a related representation case in the absence of newly discovered or previously unavailable evidence. *Krieger-Ragsdale & Co.,* 159 NLRB 490, 494 (1966), enfd. 379 F.2d 517 (7th Cir. 1967), cert. denied 389 U.S. 1041 (1968), citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941), rehearing denied 313 U.S. 599 (1941) ("[I]t was up to [the company or the union] to indicate in some way that the evidence they wished to offer was more than cumulative. Nothing more appearing, a single trial of the issue was enough."). The Board recently reaffirmed this principle in *Cognizant Technology Solutions U.S. Corporation*, Case 16–CA–326027 (Jan. 3, 2024).

I pointed out that a long line of Board decisions and court cases have consistently followed this principle, citing, e.g., *Dycora Transitional Health & Living*, 367 NLRB No. 22, slip op. at 4–5 (2018); *Leisure Chateau Care Center*, 330 NLRB 846, 846 (2000); *McCullough Environmental Services,* 297 NLRB 546, 546 (1990)*; The Bakery, Inc.*, 259 NLRB 766, 767 (1981); *NLRB v. Tennessee Packers, Inc.*, 379 F.2d 172, 179–180 (6th Cir. 1967), cert. denied 398 U.S. 958 (1967); and *NLRB v. B. H. Hadley, Inc.*, 322 F.2d 281, 286 (9th Cir. 1963).

Accordingly, I stated that I would not allow relitigation of the single-employer issue as it relates to Centerline, OTB, and Leo Marine but would only permit the Respondents to present any newly discovered evidence or changed circumstances in their relationships since May 26, 2021. I pointed out that my order did not apply to litigation of the relationships between those three Respondents and the other two Respondents, Westoil and HMF, the status of which the Regional Director did not decide.

Consistent with my order, I stated on the first day of hearing that I would admit the DDE and any underlying evidence from the representation case proceedings that any party wished to offer.

On September 28, 2022, the Board issued an order, reported at 2022 WL 4547946, denying the Respondents' request for review of the DDE. The Board stated (at fn. 2):

> [W]e agree with the Regional Director's conclusion that Centerline, Leo Marine, and Olympic Tug & Barge constitute a single employer within the meaning of the Act. Even assuming that evidence of centralized labor relations is neutral among all three entities, we find that the remaining factors under the Board's single-employer test—common ownership, common management, and interrelated operations—provide strong support in favor of finding single-employer status, for the reasons explained by the Regional Director.

Issues before me

As set out in the General Counsel's brief (GC Br. 9, et. seq.; see also GC Br. 620–621 (proposed notice)), the issues are:

(1) Do Centerline/OTB/Leo Marine and HMF and Westoil constitute a single-integrated business enterprise and a single employer within the meaning of the Act?

Although the single-employer status of Centerline, OTB, and Leo Marine has already been decided, their relationship with Westoil and HMF necessitates repeating certain overlapping facts.

(2) Is HMF an alter ego of Centerline and Westoil?

At trial, the General Counsel moved to amend the complaint to add this allegation. The Respondents objected. However, I allowed the amendment because the concept of alter ego is closely akin to the single employer allegation in the complaint, substantially similar evidence pertained to both, and the Respondents had a full opportunity to litigate the matter. See, e.g., *Rogan Bros. Sanitation, Inc.*, 362 NRB 547, 549 fn. 8 (2015), enfd. 651 Fed.Appx. 34 (2d Cir. 2016).

(3) Did Leo Marine render unlawful assistance and support to SIU by the following:

(a) On about February 17, 2021, prematurely granted recognition to, bargained with, and executed a collective-bargaining agreement with, the SIU that contained a union-security clause when the SIU did not have majority support?

(b) On the same date, voluntarily recognized the SIU at a time that the SIU did not have majority status among Leo Marine Los Angeles employees?

(c) In late February 2021, informed applicants that they were required as a condition of employment to join the SIU, a minority union, when no valid collective-bargaining agreement existed?

(4) Related to (3)(c), did Leo Marine Operations Manager Brian Vartan (Vartan), on about February 23, 2021, direct employees to sign SIU union dues-deduction authorization cards as a condition of employment?

(5) Did Centerline and/or HMF, on about October 14, 2020,

initiate a course of conduct in which Westoil acquiesced, designed to take away Westoil's Glencore work and assign it to another Centerline subsidiary, in an effort to undermine the IBU's representation of Westoil's employees?

(6) Did Centerline, HMF, and/or Westoil, on about December 9, 2020, unilaterally reassign bargaining unit work that Westoil performed for Glencore to non-bargaining unit employees?

(7) Did the Respondents engage in the conduct described in paragraphs 5 through 7 without affording the IBU prior notice and an opportunity to bargain?

(8) As a result of the Respondents' conduct, did Westoil, on March 1, 2021, implement a reduction whereby 10 employees were taken off a regular schedule and placed on the casual (or on-call) list?

(9) Did Vartan, on about February 8, 2021, tell an applicant that he could not hire all union employees at one time?

Witnesses and Credibility

The General Counsel called:

(1) IBU officials: Jay Ubelhart (Ubelhart), president; and John Skow (Skow), regional director, Southern California Region.

(2) Antonio Amalfitano (Amalfitano), MMP employee and former Foss employee.

(3) Leo Marine employees: Cesare (Chez) Bristol (Bristol), former Westoil employee; and Jason Pieniazek (Pieniazek), former Foss employee.

(4) Cris Sogliuzzo (Sogliuzzo), Westoil employee.

(5) Nicholas Buzard (Buzard), employee of Westoil Tug Services (Westoil Tug), a Centerline subsidiary, and former Westoil employee.

(6) Glencore employees: Andrew McNamara (McNamara) and Vijayapriya Thangaraj (Thangaraj).

(7) Matthew Godden (Godden), Centerline chief executive officer, under Section 611(c).

The Respondents called:

(1) Centerline employees:

a. Godden.

b. Douglas Houghton (Houghton), senior vice-president of West Coast Operations.

c. Stephen Parry (Parry), vice president of accounting and administration.

d. Jennifer Beckman (Beckman), sales and chartering manager.

e. Michael Castagnola (Castagnola), port engineer.

(2) Sven Titland (Titland), OTB general manager.

(3) Vartan.

(4) Chris Hilgenfeld (Hilgenfeld), the Respondents' attorney.

(5) Dr. John Pearce (Pearce), as an expert witness.

Initially, I cite the following precepts that apply to credibility resolution.

Firstly, '[N]othing is more common in all kinds of judicial decisions than to believe some and not all' of a witness' testimony." *Jerry Ryce Builders,* 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). 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, 787–799 (1970).

Secondly, "[T]he testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests." *Flexsteel Industries*, 316 NLRB 745, 745 (1995), enfd. mem. 83 F.3d 419 (5th Cir. 1996). Thus, current employee status may serve as a "significant factor," among others, on which reliance can be placed in resolving credibility issues. *Avenue Care & Rehabilitation Center,* 360 NLRB 152, 152 fn. 2 (2014); *Flexsteel,* ibid. I take this into account in evaluating the credibility of Bristol, Buzard, Pieniazek, and Sogliuzzo, all employees of Centerline subsidiaries, who testified on the General Counsel's behalf.

Bristol and Pieniazek have been tankermen for Leo Marine since it began operations in Los Angeles on March 1, 2021. Before that, the latter worked as a tankerman for Foss Marine (Foss), from late 1999 until February 28, 2021, when Centerline purchased Foss equipment. Sogliuzzo has been a deckhand and tankerman for Westoil since April 2014.

Buzard, who is a captain for Westoil Tug, was previously a deckhand engineer for Westoil from April 2008–March 1, 2021, and a deckhand engineer and then a captain for Leo Marine. Buzard was a very credible witness. He has worked for Centerline subsidiaries since April 2008, was promoted to captain for Leo Marine, and then transferred as a captain to Westoil Tug. Captains are considered managerial employees.[2]

All these witnesses appeared generally credible, were reasonably consistent, and made no apparent efforts to slant their testimony in favor of the General Counsel and against the Respondents. Accordingly, I find that their testimony was generally reliable. In reaching this conclusion, I take into account that many situations and events occurred over a long period of time and/or involved many details, making precise recall difficult. I note that the fact that Sogliuzzo has been an IBU shop steward since November 2020 does not in itself establish that he skewed his testimony or was not credible. See *Pacific Intermountain Express Co.,* 264 NLRB 388, 397–398 (1982). In this regard, he readily conceded his lack of full knowledge on certain matters because he was on medical leave from August 2021–August 2022, and at times volunteered information that was not necessarily favorable to the General Counsel's case.

Thirdly, neutral third-party witnesses with no stake in the

[2] Sogliuzzo at Tr. 1058; Beckman at Tr. 2752.

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. 2008), revd. sub nom. on other grounds, 562 U.S. 86 (2011), 555 U.S. 1126 (2009), 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). This applies to McNamara and Thangaraj.

Turning to other witnesses, Amalfitano is now a full time MMP employee. He was a tankermen for Foss from 2006 until he was laid off on March 1, 2021. He was an MMP shop steward from 2006–2017 and a part-time (paid) MMP representative from 2017–March 1, 2021. His testimony was credible and consistent with that of other witnesses of the General Counsel and other evidence of record. His status as a former union steward and current MMP employee does not ipso facto establish bias or lack of credibility. See *Pacific Intermountain Express Co.,* above. On cross-examination, he changed his direct testimony on a couple of points when he was refreshed by his affidavit, but the discrepancies were insignificant and did not undermine his overall credibility.

Skow testified in considerable detail on a number of subjects, including his numerous communications with Houghton or Vartan, and he had a good recall of dates. On the other hand, his testimony on those communications was contradicted on several points by his affidavit, and he could not recall certain details. Ubelhart was more removed from the day-to-day relationship between IBU and the Respondents. His testimony was therefore more limited but did not contradict Skow's.

Despite his imperfect testimony, Skow was generally more credible than either Houghton or Vartan. Houghton was a jovial but unreliable witness. On cross-examination, in particular, he continually gave evasive and convoluted answers to simple questions; professed ignorance of certain subjects that I would expect he would know as a high-level manager; contradicted himself numerous times; gave conflicting statements in a prior declaration in another legal matter; and, most damaging to his credibility, on several key matters was contradicted by other Respondents' witnesses and/or documents. Vartan appeared defensive and he, too, was evasive in answering certain questions and gave testimony that was contrary to a prior sworn statement.

Godden contradicted himself on certain matters; was vague in describing certain events, such and why Leo Marine was formed; and gave inconsistent and confusing testimony on why he decided to transfer the Glencore contract, but not the Minerva and Peninsula contracts, from Westoil to Leo Marine. Moreover, his testimony on the bid process did not fully align with Beckman's account.

Titland seemed candid in answering questions regarding the nature of OTB, his role in OTB and Leo Marine, and OTB's relationship with Centerline, but he appeared noticeably uncomfortable when talking about his conversations with Godden, and he related them in very conclusionary language. This leads me to believe that he was reticent in fully describing them. I note, too, that Houghton and Beckman also gave conclusionary accounts of their conversations with Godden, causing me to believe that they did not give a complete picture of them.

Similarly, I am not satisfied that Titland gave a full and accurate picture of the genesis of Leo Marine as an OTB subsidiary or his communications with the SIU. They were recent events, occurring in late December 2020 and thereafter, and yet his testimony about them was bare-boned and lacking in meaningful detail.

In sum, based on the above, I am not satisfied that the Respondents' witnesses presented a full and accurate picture of the process that led Westoil to lose Los Angeles work, first to OTB and then to Leo Marine.

Taking all the above considerations into account, as well as the documentary evidence, I generally credit the General Counsel's witnesses where their testimony differed from that of the Respondents' witnesses.

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, the Respondents, and the IBU filed, I find the following.

At all times material, Centerline, the parent company of Respondents HMF, OTB, and Westoil, has been a Delaware corporation with its principal place of business in Seattle, Washington, engaged in marine petroleum transportation throughout the United States. Board jurisdiction as alleged in the complaint is admitted, and I so find.

Terminology

Following are descriptions of terms in the industry referenced in witness testimony.

A vessel is either a tugboat (tug), which is self-propelled, or a barge. They sometimes operate as a single unit, depending on customer requirements.

Types of work performed include:

(1) Bunkering—delivering fuel to a vessel from a barge.

(2) Lightering—removing from a barge product that is not for propulsion but for revenue.

(3) Ship assist—a tug assisting a ship coming into a harbor to maneuver.

(4) Terminal-to-terminal or cross-harbor transfer—filling a product at one terminal or berth and taking it to another terminal or berth for discharge.

Types of contracts with customers include:

(1) Bareboat charter—a financial instrument wherein a vessel is leased to another operator without any Centerline-provided crew members.

(2) Contract of affreightment—a contract between a vessel owner or operator and a customer providing that from a pool of vessels, an amount of petroleum barrels be moved over a period of time.

(3) Spot charter—a single movement of a customer's product from one point to another.

(4) Time charter—a commercial contract between a vessel owner or operator and a customer for a specific vessel, either short-term (under 6 months) or long-term (over 6 months)

In addition, opco is Centerline's shorthand for a subsidiary that directly operates vessels.

Name changes

Through the years, several entities have changed names:

Chemoil to Glencore.

Harley Marine Services (HMS) to Centerline in approximately January 2021. Nothing changed other than the name.

Millenium Maritime, Inc. (MMI) to Westoil Tug Services (Westoil Tug).

Starlight Marine Services, Inc. (Starlight) to Leo Marine on February 2, 2021. See GC Exh. 30. The right to use the name Starlight Marine was conveyed from Centerline to Saltchuk. Prior to the name change, Starlight was a bunkering transportation operator that operated out of a single facility in Alameda. In the months preceding the change, Starlight did not operate any bunker barges or employ any tankermen in Los Angeles. The Respondents produced no articles of incorporation or bylaws for Leo Marine in response to the General Counsel's subpoena. Starlight now operates in San Francisco under Saltchuk.

Union representation

IBU

The IBU represents approximately 2600–2800 employees, primarily of tug, barge, and ferry companies from Alaska to Los Angeles, as well as Hawaii. President Ubelhart oversees all seven administrative regions, each of which has an elected regional director who manages day-to-operations. Skow is the regional director for Southern California, which represents a little over 200 employees.

The IBU has represented Westoil employees since approximately 2000. The most recent collective-bargaining agreement (CBA) (GC Exh. 28) was effective between both Westoil and MMI/Westoil Tug and the IBU from July 30, 2018, through November 30, 2022. Houghton signed on behalf of both companies. The bargaining unit consists of tankermen, engineers, boomboat operators, mate of tow, deckhand/engineers, ship assist/deckhands, deckhands/cooks and deckhands working out of Los Angeles.

The parties later agreed to extend the CBA to at least January 2, 2023. Skow was informed on December 28, 2020, that the MMI brand and its ship assist contracts were sold to Saltchuk as part of an asset sale between the two companies. However, Westoil Tug, which became a successor to MMI, is signatory to the contract and supported Westoil by providing tugs for barges under the contract.

MMP

Foss Maritime (Foss), a subsidiary of Saltchuk, and the MMP had a CBA that covered Foss' barge crew tankermen, who numbered approximately 30 on about March 1, 2021, when they were all laid off due to an asset swap between Centerline and Foss, as I will later describe. Foss' primary customer in Los Angeles was Chevron.

As per the DDE previously referenced, the MMP represents Centerline, OTB, and Leo Marine employees in Los Angeles. See GC Exh. 91.

Employee classifications

Tankermen, with the assistance of deckhands, primarily load, unload, or transfer petroleum products on barges.

Deckhands and ship-assist deckhand ("third man") primarily work on tugs. Deckhand engineers perform regular deckhand duties and have additional maintenance duties in a tug's engine room. Licensed engineers, who receive that designation from the United States Coast Guard, are assigned to tugs but can perform work on barges. Tugs are also crewed by captains, also called masters of the vessel. They oversee a barge when it is tethered to a tug, and the crew on the barge must follow his directions.

Centerline corporate structure

General Counsel's Exhibit 169 is a corporate ownership chart showing that Centerline is owned by three holding companies and has 10 subsidiaries:

(1) Harley Marine Holdings, LLC (HM Holdings), of which HMF and Harley Marine Special Leasing, LLC are its two subsidiaries. See also R. Exh. 73(b).

(2) OTB, of which Leo Marine is one of two wholly owned subsidiaries.

(3) Westoil.

(4) Westoil Tug.

(5) Harco Marine LLC.

(6) Harley Marine Gulf LLC (HMG), which performs bunkering transportation in Houston and New Orleans.

(7) Harley Marine Intellectual Property LLC.

(8) Harley Marine New York, Inc. (HMNY) is the largest subsidiary. It provides ship assist and miscellaneous transportation services on the East Coast and Puerto Rico, with Gulf operations. Some of its employees are represented by the SIU.

(9) Pacific Coast Maritime, Inc. is Alaska-based and provides ship assist and dry boat container transportation.

(10) Pacific Terminal Services, Inc., which is based out of Portland, Oregon and performs terminal services.

See also General Counsel's Exhibit 186, a more detailed view of the equity ownership in Centerline of the three holding companies.

It is undisputed that Westoil and MMI were a single employer and that Westoil and Westoil Tug are a single employer.

The 2018 securitization

On July 31, 2017, HM Holdings, the parent company of HMS (now Centerline), formed HMF as a limited liability company under the laws of Delaware. (R. Exh. 35.) Godden signed on behalf of both entities.

The relationships between Centerline, its operating companies, and HMF are governed by the terms of a May 14, 2018, restructuring securitization that took place as an alternative to filing for bankruptcy due to the hundreds of millions of dollars of debt that HMS had incurred. See GC Exh. 186; see also R. Exh. 73(a), a diagram of the securitization transaction. The securitization involved approximately $455 million.

A special purpose vehicle (SPV) is a company formed for the purpose of being bankruptcy remote; it cannot be pledged or put into bankruptcy. Pursuant to the securitization, HMF was created as an SPV, structured as a publicly traded bond-structured entity, to hold all the tangible assets of HMS, including customer contracts, vessels, and certain intellectual property rights. The operating companies continued to operate but sold or assigned their customer contracts and assets (including tugs and barges) to HMF, which assumed their debts. HMF owes duties to a special purpose vehicle with a defined set of governing documents that are different from the traditional corporate structure. It is responsible to rating agencies, securities, the SEC, and public investors.

Customer contracts transferred to HMF included time charters, contracts of affreightment, and bareboat charters.

On May 14, 2018, pursuant to the securitization, several agreements were executed:

(1) HMF, HMS, and U.S. Bank entered into a base indenture agreement that set out their respective roles in the securitization. (R. Exh. 38.) HMF would be responsible for owning the assets and for debt repayment of the series of publicly traded senior secured notes that would be issued, and for making periodic reports to U.S. Bank. HMS would serve as "manager" and have the day-to-day responsibility for operating and managing the assets.

(2) HMF and HM Holdings entered into an amended and restated limited liability company agreement, setting out the governance and operations of HMF. (R. Exh. 36.) The principal business office of HMF was (and remains) a post office box in Seattle. Godden signed as chief operating officer (CEO) of HM Holdings, and Albert Fioravanti (Fioravanti) signed as an independent director/special member on behalf of HMF.

(3) HMF and HM Holdings entered into an amended and restated limited liability company agreement, setting out the governance and operations of HMF. (R. Exh. 36.) The principal business office of HMF was (and remains) a post office box in Seattle. Godden signed as chief operating officer of HM Holdings, and Fioravanti signed as an independent director/special member on behalf of HMF.

(4) HM Holdings as purchaser and the following operating companies as sellers entered into an asset sale and purchase agreement: ATB ASSETCO3, LLC; HMG; HMNY; Harley Marine; MGI Towing, Inc.; MMI Maritime, Inc; OTB; Pacific Coast Maritime, Inc.; Starlight; and Westoil. (R. Exh. 43). The address for notice and CEO for all sellers with two exceptions was HMS' Seattle address, 910 SW Spokane Street (Spokane Street). Godden signed for HMF and all the operating companies.

Exhibit B lists the assets sold by each operating company. Westoil's sales included time charters with Aegean Bunkering (vessel Dale Frank Jr.) and Peninsula Petroleum California, Inc. (vessel Anne Elizabeth); marine transportation agreement and contract of affreightment with Chemoil Corporation (Glencore); and contracts of affreightment with Peninsula, and Aegean. Customers of all operating companies consented to assignments of their contracts to HMF.

(5) HMF entered into a management agreement with HMS. (R. Exh. 39). Pursuant thereto, HMS would manage and administer all aspects of the operation, crewing, use, maintenance, marine documentation, preservation, insurance, and inspection of vessels and the conduct of marine services business of HMF. Accounting and human resources services were included. In additional, HMS would prepare and file tax returns and reports for securitization entities (the operating companies) and be reimbursed for the costs of the services it would provide. Godden signed as manager of HMS and as chief operating officer of HMF.

(6) HMF entered into a jointly furnished services agreement with a number of subsidiaries, including HMG; Harley Marine Special Leasing, LLC; Pacific Coast Maritime, Inc.; HMNY; Pacific Terminal Services, Inc.; Westoil, and MMI. (GC Exh. 188 aka R. Exh. 44.) Godden signed as an officer of HMF and all the subsidiaries.

(7) HMF entered into a jointly furnished services agreement with Harley Marine Special Leasing, LLC; OTB; and Starlight (later Leo Marine). (R. Exh. 41.) Godden signed as an officer for all of them.

Both jointly furnished service agreements provided that notice to HMF and all the subsidiaries was to be to HMS, Seattle. Pursuant to the agreements, cashflow from the operations of the subsidiaries in terms of customer payments would go directly to HMF, which would reimburse the subsidiaries, through HMS, for their costs in providing marine services, including payroll expenses.

Respondent's Exhibit 45 is a list of the vessels, primarily tugs and barges, that HMF owned as of December 2019.

Officers and directors

General Counsel's Exhibit 231 shows the directors and officers of Centerline, HMF, Leo Marine, OTB, and Westoil as of January 1, 2022:

The directors for all five entities were Godden, Tobias Bachteler (Bachteler), and Stephen Kadenacy (Kadenacy). In addition, Fioravanti was an independent director and special board member of HMF.

The officers for all five entities were Godden, president; Houghton; and Kelly Moore (Moore), senior vice president of East and Gulf Coast. In addition, John Saltzman (Saltzman) was vice president of finance for Centerline only.

Since then, Gregg Nelson (Nelson) became an officer of Centerline, as vice president of engineering; and Saltzman became an officer of HMF, as vice president of financing.

Godden became president and CEO of HMS in approximately July 2019 and continued in those roles since the name changed to Centerline. He is paid solely by Centerline. He is also the secretary and on the board of directors. He is president and CEO of Leo Marine, OTB, and Westoil. He is HMF's president and CEO.

In his role as Centerline president and CEO, Godden oversees Centerline and all its subsidiaries. As president and CEO of Leo Marine, OTB, and Westoil, he manages their business affairs. As Centerline secretary, he organizes board meetings and oversees corporate recordkeeping.

Centerline's operations

Centerline and its subsidiaries employ approximately 700 employees, of whom approximately 60–70 work for Centerline itself and are paid directly by Centerline. Pursuant to the securitization agreement, Centerline, as the designated securitization manager, is responsible for managing customers, vendors, contracts, and equipment (primarily vessels), and for providing accounting, HR, and IT support for the opcos.

Seattle

Centerline's corporate headquarters are at Spokane Street. Godden, Parry, and Beckman work there.

Parry, Centerline's vice president of administration and human resources, reports to John Saltsman (Saltsman), who in turn reports to Godden. Parry is responsible for overseeing accounting and employment policies for Centerline and its subsidiaries. Parry and HR Manager Sally Halfon (Halfon) establish employment policies for Centerline.

The General Counsel moved to amend the complaint to allege Parry as supervisor and agent of Centerline, HMF, and Westoil. The Respondents admitted his 211(c) status with Centerline and that he may or may not act as agent for HMF, depending on the circumstances, but denied he has 2(11) or 2(13) statuses with Westoil.

Reporting to Parry are the following Centerline managers.

1. Corporate Controller or Comptroller Jeffrey Mustonen (Mustonen), who oversees accounts payable and receivable. He has two direct reports, managers, to whom three staff accountants report. Nancy Moua (Moua), the accounts receivable manager, provides support for the opcos and HMF.

2. HR Manager Halfon supervises two direct reports. HR reviews job descriptions that operating companies prepare, processes new hires and terminations, conducts background checks on applicants, handles required reports, creates "sea time" letters that the Coast Guard mandates, and reviews benefits such as 401(k) for nonunion operating companies. For unionized subsidiaries, Leo Marine, Westoil, HMNY, and Pacific Coast Maritime, some benefits may be governed by the applicable CBA.

3. Payroll Manager Bobbie Garneau has two full-time and one part-time direct reports. They handle payroll for Centerline and all its subsidiaries.

Moua gave her title as AR manager for HMF in correspondence with Glencore concerning Westoil in January 2020, 2021, and 2022. (GC Exhs. 170, 172, and 173, respectively.) Godden denied that was her official designation but could not explain why she used it. I find it wholly inconceivable that Moua could have mistakenly identified herself and that no one higher up in management would not have picked up such an error before 2022. Similarly, I find unbelievable the testimony of Parry that in the January 2020 letter, Moua gave herself that title "on her own" and that it was a clerical issue.[3] Furthermore, I find wholly unbelievable his testimony that he saw Moua's 2021 correspondence but "didn't even notice" that she put HMF at the bottom.[4] I cannot believe that Parry, as vice president of accounting and administration, would have been so careless. I reject as farfetched the premise that Moua made an error in her title 3 years in a row and that no one in higher management corrected her after the first or second time; neither Godden, Parry, nor Houghton, who had jurisdiction over the Glencore contracts.

Based on the above documents, the General Counsel moved to amend the complaint to allege Moua as AR receivable manager of both Centerline and HMF and as a representative of Centerline, HMF, and Westoil. The Respondents admitted that she is a 2(11) supervisor for Centerline and may, depending on circumstances, act as an agent for HMF, but denied that she is a supervisor or agent of Westoil.

The Respondents stipulated to the authenticity and admission of General Counsel's Exhibits 170 and 173 but objected to the admission of General Counsel's Exhibit 172, on the grounds that it was a draft document never furnished to Glencore, not a business record, unauthenticated, and hearsay.

I overruled those objections. The Respondents produced it to the General Counsel pursuant to subpoena, providing implicit authentication. See *U.S. v. Lawrence*, 934 F.2d, 868, 871 (7th Cir. 1991), cert. denied 502 U.S. 938 (1991); *U.S. v. Brown*, 688 F.2d, 1112, 1116 (7th Cir. 1982). Nothing on the face of the document indicates it was only a draft. To have accepted the Respondents' arguments that it was a draft and hearsay would have been to reward it for not calling Moua—an admitted Centerline supervisor—as a witness, which was properly the Respondents' burden and not the General Counsel's.

This conclusion comports with, the well-established "missing witness" rule that allows a judge to draw an adverse inference against a party that fails to call a witness who is under the control of that party and is reasonably expected to be favorably disposed towards it. *Natural Life, Inc.,* 366 NLRB No. 53, slip op. at 1 fn. 1 (2018), citing *Electrical Workers IBEW Local 3 (Teknion, Inc.),* 329 NLRB 337, 337 fn. 1 (1999); *Reno Hilton,* 326 NLRB 1421, 1421 fn. 1 (1998), enfd. 196 F.3d 1275 (D.C. Cir. 1999).

Beckman, Centerline's sales and chartering manager, generally works with HMF concerning placement of vessels, its contracts with customers, and the activities of the opcos. Her main role (60—70 percent of her time) is to interact with customers, primarily on the West Coast, and fulfilling their needs. About 20 percent of her time, she is directly involved in negotiating contract terms with them. In dealing with customers, she orally represents herself as a Centerline employee. She has interacted with Thangaraj, a Glencore scheduler.

Both Godden and Beckman testified that she is supervised by Houghton, senior vice president of operations, who works out of Centerline's San Pedro facility. I note here that their testimony contradicted Houghton, who, when asked if Beckman reports to him, testified "not anymore."[5] He professed not to know when this changed. Indeed, when asked the length of time that she

[3] Tr. 3702.

[4] Ibid.

[5] Tr. 4152–4153.

reported to him, he testified, "I can't confirm for sure if she did."[6] Such professed ignorance of his relationship with Beckman defies belief.

Beckman does not keep track of her hours performing work for HMF or for the individual opcos. In performing her duties for HMF/the opcos, she uses the same office, computer, computer network, and common area for office supplies and equipment that she uses for Centerline.

Bill Backe (Backe) was in charge of financial management until he left Centerline in approximately early 2021. He reported to Saltsman, who was Centerline's vice president of financing and is now Centerline's current vice president and CFO. Backe analyzed the financial performance of HMF and participated in bid processes for HMF by supplying metrics.

San Pedro

Centerline, OTB, Leo Marine, and Westoil all operate out of the same one-story office complex at 1610 Barracuda Street, San Pedro and an associated dock at Berth 301. Houghton, Centerline Port Engineer Castagola (Castagola), Leo Marine General Manager Vartan and Westoil General Manager Matt Hathaway (Hathaway) have offices located in the same area of the building. Westoil and Leo Marine pay an apportioned amount for office space rent, shop supplies, car rentals, and equipment and vessels that they operate.

Employees of Centerline, Leo Marine, and Westoil use the same restrooms and lunchroom, and the same clock-in station located at the entrance to the building. The same dispatchers assign work to Leo Marine and Westoil tankermen (and sometimes OTB barges) from the same dispatch area. The facility also has a dock, areas for supplies and maintenance, and a workroom for welding/fabrication, all used by Centerline, Leo Marine, and Westoil. All companies use the warehouse, where supplies and equipment are stored. There are no designated parking spots for any particular tugs or barges because they are shuffled back and forth, and no designated parking for Leo Marine or Westoil employees. Both Leo Marine and Westoil tankermen and engineers drop their paperwork off at the same place and use the same timeclock to punch in and out. Castagnola and other maintenance staff service all vessels: tugs, barges, and tenders (boats used for crew changes). Centerline, Leo Marine, and Westoil all use the same tenders, which are not company designated. The same shoreside mechanics service both Leo Marine and Westoil.

Sometimes, three barges are attached, and on a frequent basis, Leo Marine and Westoil barges are attached side by side. There are no rules on whether a Leo Marine barge can be connected to a Westoil barge, and this occurs daily. There are also no rules on whether a Leo Marine barge can be connected to a Westoil tug or other tugs.

Leo Marine and Westoil employees interact with each other on a regular basis. At least daily, up to three or four times, Leo Marine and Westoil crews handle each other's lines and help to tie up or tether tugs and barges; a Leo Marine engineer may come up on a Leo Marine barge and help with Westoil lines, and vice versa. Sometimes, Leo Marine tugs will move Westoil barges, and vice versa. When a tug tethers to a barge, they become one unit under the control of the tug's captain, who is responsible for the barge and its tow. The dispatcher will direct where the tethered vessels will go.

Captains are usually assigned to a company but can be shifted from Leo Marine to Westoil, and vice versa. Sogliuzzo recalled a recent occasion when a Leo Marine captain was shifted over to Westoil when Westoil Captain Buzard was out.

Houghton has been senior vice president of West Coast operations since 2019 and. oversees the various opcos on the West Coast. He is paid solely by Centerline and reports to Godden. He was previously Centerline's vice president of California operations from the end of 2018. Before then, he was Westoil's general manager. He filled out no job application for the vice-president position.

General Counsel's Exhibit 295 is Houghton's job description, which includes responsibility over the revenue and profitability of the opcos. Monthly financial recs of all entities are reviewed by Parry and his staff. Finance compiles yearend budgets for each of the opcos, and Houghton reviews those under his jurisdiction. Houghton periodically sends out safety communications to all Centerline opcos. See, e.g., GC Exh. 281. For incidents involving any opco, Houghton is the designated individual.

Houghton's direct reports are Don Morrison (Morrison), West coast vice president of marine operations; and Anthony Lobro, (Lobro) director of barge logistics, who schedules both Westoil and Leo Marine barges.[7] General Counsel's Exhibit. 300 shows the job descriptions of the positions directly reporting to him.

When Houghton was asked on cross-examination if Titland reports to him, his answer was convoluted: "I believe he goes through, I don't know the exact thing, but I believe it goes through Dan Morrison. But I could be wrong on that."[8] Such professed ignorance coming from a long-term high-ranking management official is wholly unbelievable.

Houghton testified that as Centerline vice president he has no responsibility for discipline, hiring, labor relations, or setting wages rates for Leo Marine, OTB, or Westoil employees and has not been involved in their labor relations. However, he conceded that at times in 2020, Vartan as Westoil's operations manager asked Houghton for guidance on disciplinary issues regarding Westoil employees. He gave a convoluted and nonresponsive answer when asked on cross-examination if Vartan continues to seek such guidance as Leo Marine operations manager: "Not that I recall, but I mean, there's—there may be, you know, we converse every now and again. So, there may be a question on many topics on a rare occasion that he may seek– seek advice."[9]

On cross-examination, Houghton testified that he exercises no supervisory authority over Westoil employees but only supervisory authority over the operations manager, but this was contradicted by what he stated in an October 7, 2022, declaration in another legal matter:

"[S]enior management for Westoil, presently myself, has

[6] Tr. 4154.
[7] Lobro is an admitted 2(11) supervisor for Centerline.
[8] Tr. 4137.
[9] Tr. 4145.

provided and continues to provide all supervisory authority, disciplinary authority, and firing/termination authority over Westoil's employees."[10]

Houghton testified that Westoil crewing assignments are done by the operations manager and the dispatcher and that in October 2022 and now, he has not been "typically" responsible for making Westoil crewing assignments. However, the same declaration states: "Responsibility of Assigning Work. . .. Throughout my time with Millennium, Westoil, and Centerline, the senior management of Westoil, which is presently me, has been, and continues to be responsible for making crewing assignments . . .."[11]

On redirect, the Respondents' counsel read into the record lines from a November 17 supplemental declaration of Houghton that since working at Centerline, he has had no involvement in any Westoil personnel matters, including hiring, firing, disciplining, demoting, setting schedules, or handling grievances; and has not negotiated any contracts on Westoil's behalf, including any labor negotiations with the IBU. However, as the General Counsel pointed out, this did not directly retract the earlier statements about his having authority in those areas. In any event, the supplemental declaration strikes me as self-serving and an obvious attempt to walk back what he had stated earlier. Accordingly, I am convinced that the original statements were more accurate and find them to be factual.

Castagnola has been Centerline's port engineer since about late February or early March 2021. He reports to Tom Larsen, Centerline's director of engineering, who is based out of the Leo Marine facility in Alameda, California. Castagnola has a crew of four employees, including Vartan, and is responsible for all repairs and preventive maintenance of vessels in Los Angeles operated by OTB, Leo Marine, Westoil, and other opcos stopping in the port. Castagnola was port engineer for Westoil for approximately 6–7 years before assuming his current position. In that capacity, he exercised supervisory authority over Westoil employees.

Centerline and its subsidiaries

Centerline, as the designated securitization manager, is responsible for managing customers, vendors, contracts, and equipment (primarily vessels), and for providing to the opcos various administrative services, including accounting, engineering, human resources, information technology, and payroll to its subsidiaries. They pay for those services to Centerline through HMF, as I will later describe.

The Centerline domain name is used by Westoil, OTB, and Leo Marine. The Centerline website has customers pages for Westoil, OTB, and Leo Marine. HMF has a separate website through U.S. Bank. The Centerline website has a page in which job openings are posted for Centerline, Leo Marine, Westoil, and other opcos. (GC Exh. 195.) They include job title and description, the operating region, and other relevant information. Depending on the region, a position can be for either Leo Marine or Westoil.

Centerline, HMF, and the opcos have their own business identification in Centerline's accounting system. They maintain their own books and records, but Centerline maintains financial records for all of them. Centerline does not maintain transactional accounting for services that it performs for a particular opco. The Centerline accounting department issues invoices for payments to the opcos, which payments are remitted to HMF. See, e.g., GC Exhs. 227–229. The department is also responsible for entering all opco transactions into a centralized data system.

Centerline maintains general yearly ledgers for each opco that show revenues and costs. Revenues include intercompany revenue when one opco performs a service for another. Direct costs are generally tied to vessels. Various costs include payroll; crew travel; fuel and lube; inspections, licenses and fees; repairs and maintenance; physical and drug testing; subcontracting; shop costs; office supplies, postage, registration and professional fees; company vehicles utilities; leases; and telephone. See GC Exhs. 242–283 and R. Exhs. 70, 70(a), 158, and 158(a), Excel spreadsheets; Jt. Exh. 5, the legend that applies to all general ledgers in the record. In sum, Centerline maintains detailed records of all an opco's revenue and expenses.

Each opco is responsible for the insurance on its vessels. Opcos are responsible for any repairs or maintenance under \$10,000; expenses over \$10,000 must be approved by Morrison or Centerline Vice President of Engineering Nelson and are paid by HMF as capital expenditures.

Centerline maintains its own financial records and a general expense ledger containing costs related to administrative staff, personnel, logistics, and professional fees unrelated to the securitization, including legal fees related to the opcos.

Requests for new vendors for opcos must be approved by Centerline's accounting department. Centerline applies for credit lines with new third party vendors on behalf of itself and the opcos. See, e.g., GC Exh. 298. All vendors must go through Centerline. The opco is responsible for payments to a vendor.

Centerline tracks the jobs performed by all the subsidiaries, with two exceptions not relevant here, through a web dispatching schedule. Dispatchers enter their dispatching schedules, including locations, dates, and vessels. The billing department bills off that work schedule once a job is completed.

Centerline's anti-discrimination policy (R. Exh. 159) is kept on Centerline's ADP payroll processing site, on which all policies are maintained. It applies only to Centerline employees (in Seattle and San Pedro), but opcos' managers have the discretion to adopt it. The same holds true for Centerline's policy for employees' computers, emails, and voicemail use. (R. Exh. 163.)

Centerline's consent to submit to drug testing for employees who come under the Department of Transportation (DOT) (R. Exh. 164) is included in pre-hire packets for employees for Centerline and the opcos. For non-DOT employees, the policy (R. Exh. 165) applies to employees of Centerline and "highly probabl[y]" to its nonunion subsidiaries.[12]

The Centerline handbook (GC Exh. 131, the latest version in the record) covers employees of Leo Marine, OTB, and Westoil, and other subsidiaries, with specific language added depending

[10] Tr. 4147.
[11] Tr. 4149.
[12] Parry at Tr. 3423.

on the state in which they are doing business and whether employees are covered by a CBA.

The unionized opcos, including Leo Marine and Westoil, handle grievances that are filed. Centerline pays the opcos' legal expenses for labor relations matters, including those in the instant case.

Centerline and the opcos use one travel agency, with each opco having its own travel coordinator.

Centerline has an email system that all the various opcos utilize. Centerline has a distribution group of all approximately 40–50 managers (see, e.g., GC Exh. 147); of all vessels and captains (see, e.g., GC Exh. 187); and of all shoreside personnel (see, e.g., GC Exh. 67).

Centerline files consolidated Federal and State tax returns for itself, HMF, and the opcos, through Moss Adams, an accounting and auditing firm; the opcos do not file such returns individually. See GC Exhs. 236 and 241, Centerline's Federal and State tax returns for all the Respondents for 2020 and 2021, respectively. They do file payroll taxes for their employees.

OTB

As I earlier noted, the single-employer status of Centerline, Leo Marine, and OTB has been previously litigated and found by the Board, and I will not revisit the issue. However, there remains the related issue of whether Centerline, HMF, Leo Marine, and OTB are a single-integrated enterprise.

OTB's offices, out of which Titland operates, are located on the third floor of Spokane Street, in the same building in which Centerline's headquarters are located. OTB pays for its utilities and other services and use of equipment.

OTB is a nonunion company that operates 25 tugs and approximately 32 barges at ports on the West Coast, Alaska, and Hawaii. It employs approximately 300 crewmembers and about 12 other employees and performs three main types of petroleum transportation services: (1) bunkering, fuel for consumption to propel; (2) terminal-to-terminal transfers; and (3) lightering, a barge holding product for revenue, not consumption. A majority of OTB's work in San Francisco and Los Angeles consists of terminal transfers, with occasional or sporadic bunkering. OTB currently has core, long-term charters with primary customers that include Chevron and Minerva. It also performs offshore work for Glencore, among others.

HMF owns all OTB's vessels and long-term contracts and provides OTB with revenues based on the work it performs. OTB enters into bareboat charters to lease a vessel. OTB provides services to other companies, including Centerline subsidiaries such as Westoil, and charges for those services.

OTB has its own business ID, own books and records, responsibility for profits and losses. Centerline's Finance Department maintains OTB financial records.

Titland, who started with OTB in January 2012, has been its general manager for about 3 years. He reports to Centerline's Morrison. As general manager, Titland oversees Centerline's West Coast ports and their managers. His responsibilities include involvement in personnel matters; communicating with the Coast Guard and with customers; and overseeing engineering, vessel equipment maintenance, scheduling of equipment, and dispatches of personnel and equipment.

He plays an advisory role to Vartan, general manager of Leo Marine in Los Angeles, and Chris Baduin (Baduin), general manager of Leo Marine in San Francisco, who consult with him about once every 2 weeks. Vartan directly reports to Titland, whereas Baduin directly reports to Bowman Harvey (Harvey), in San Francisco, who in turn reports to Titland.

Centerline and HMF

Pursuant to the securitization agreement, HMF owns all Centerline vessels and the contracts with customers. HMF maintains its own post office address and U.S. Bank post office lock box, to which customers send payments. See R. Exh. 71, a remittance letter. It has no other physical address. However, HMF State of Washington annual filing in October 2020 and its current filing in September 2021 gave HMF's principal office and mailing address as 910 SW Spokane Street, Seattle. (GC Exhs. 97 and 98.) Godden testified that this conflicts with the governing documents of HMF. However, it is difficult to believe that an error in the filing would have been made twice, and I conclude that these documents indicate a single-employer relationship between Centerline and HMF. I note Parry's testimony that he did not know if a correction was ever filed and that there have been occurrences when Centerline employees use Spokane Street for HMF.

Centerline and HMF have separate bank accounts, based on the securitization guidelines. None of the opcos have separate bank accounts; their expenses are tracked through daily transactions and monthly reports that Centerline maintains.

In Centerline's role as manager, it maintains HMF's books and records and produces them to third parties such as U.S. Bank. See, e.g., R. Exh. 68, a monthly income statement for HMF for December 2020 that Centerline produced. Centerline, on behalf of HMF, issues invoices for work that the operating companies perform. See, e.g., R. Exhs. 80–82. Centerline and HMF have separate bank accounts and lockboxes. See R. Exh. l69. Centerline staff make payments from HMF's bank account.

Centerline equipment and its IT system are used to perform HMF functions, and Centerline's accounting department prepares monthly reports for HMF, as it does for the opcos.

Centerline does not keep track of its employees' hours spent performing HMF work.

Centerline maintains on a regular basis a "Centerline Consolidated" income statement that encompasses Centerline, HMF, and the opcos, to form one overall financial statement. See GC Exh. 240, notes to the December 2020 consolidated income statement; see also GC Exhs. 194, 239. Moss Adams annually performs a comprehensive audit of Centerline, the opcos and HMF (which has separate auditing requirements). See GC Exh. 235, the audit report of May 31, 2022.

The Respondents called Dr. Pearce as an expert witness in support of its contention that Centerline and HMF are not a single employer. Pearce's expertise is in the area of the laws regarding the creation and operation of SPVs in the corporate or commercial arena, and the "separateness" doctrine as it applies to the relationship between an "originator" (Centerline) and an SPV (HMF). The General Counsel disputed his status as an expert witness for purposes of this hearing and the relevance of his testimony. As I stated on the record, the separateness doctrine applicable in the commercial world, which Pearce testified largely relates to corporate structuring to afford bankruptcy protection, is not necessarily equivalent to the Board's inquiries regarding single-employer status. Indeed, Pearce conceded that he is not familiar with the NLRA or with the responsibilities that companies, including SPVs, have under the Act.

In any event, in reaching his conclusions on the separateness of Centerline and HMF (R. Exh. 308), Pearce relied only on what Centerline provided to him: (1) securitization and other documents; (2) declarations from Godden, Houghton, and Beckman; and (3) a position statement. (Ibid, Appendix C.) He also testified that he had but one conversation with Hilgenfeld and Godden, who gave him background information. He had no other conversations with anyone in Centerline, HMF, or any of the subsidiaries concerning factors on which the Board relies in deciding single-employer status.

Accordingly, although academically interesting, Dr. Pearce's testimony was of minimal value.

Westoil-Glencore contract

As way of background, Chemoil (later Glencoe) and Westoil entered into an amended and restated marine transportation agreement on June 13, 2013, for Westoil to provide bunkering services in Los Angeles, including internal transfers and lightering barging services. (GC Exh. 76 and R. Exh. 3.) The term of the amended contract was January 1, 2015, through December 31, 2020. See also GC Exh. 199. Chemoil had an option to extend the contract for two additional 5-year periods. The contract provided that Chemoil would guarantee a minimum of 400,000 barrels (bbl) a month, regardless of the actual number of barrels moved, thereby ensuring Westoil a certain minimum revenue. Chemoil was a 100-precent subsidiary of Glencore; starting in 2015, Glencore took over the contract from Chemoil. (GC Exh. 77.) Glencore and Westoil entered into a consent agreement on April 30, 2018, providing that all payments from Glencore for Westoil services would be made to HMF. (GC Exh. 78.)

Emilio Heredia (Heredia) was a senior trader for Glencore until sometime in 2021. Thangaraj has been an operator for Glencore for the last 3 years with responsibility for the Los Angeles/Long Beach port. Her supervisor is McNamara, head of U.S. operations for Glencore. As operator, she receives orders that are system generated and then schedules loading and delivering fuel oil for bunker jobs.

Houghton was the Respondents' representative in dealings with Heredia in 2020. Heredia is no longer employed by Glencore and did not testify, so Houghton alone testified about their interactions. As the following reflects, Houghton was an unreliable witness in describing them and therefore cannot be fully credited.

Houghton first testified that prior to October 2020, he had no knowledge how often Glencore did not meet the 400,000 bbl minimum but then testified, "It was quite often."[13]

According to Houghton, in May 2020, Heredia called him and requested a 30-percent reduction in the barrel minimum due to COVID and its impact on cruise ships. However, both Godden and Parry contradicted Houghton by testifying that Houghton informed them that Glencore was seeking a 10-percent discount.

Godden then made the decision that Houghton could offer Heredia a temporary 10-percent discount or reduction. On May 27, Houghton emailed Godden and Parry that, as they had discussed, Westoil would agree to give Glencore a 10-percent discount for May–July. (R. Exh. 5.)

Shortly thereafter, Houghton testified, he advised Heredia of this decision, and Heredia expressed disappointment. However, based on Parry's testimony and the language in the email, it appears that Heredia got what he had requested. They reached a verbal understanding that the discount would be extended for the remainder of the year if conditions for Glencore did not improve.

The contract provided that Chemoil/Glencore had the option to extend it for up to two additional 5-year terms. In approximately August, Houghton Called Heredia and asked what Glencore intended to do. Heredia responded that Glencore would not extend the contract and wanted a 50-percent reduction. They agreed to work together and start negotiations.

Houghton testified inconsistently on his subsequent phone conversations with Heredia. He first testified that he had about six phone calls in September–December but later testified that the first call was in about August, and the second probably in September. In the second call, Houghton testified, "That was when it kind of got real[sic] serious for us" because Heredia brought up Vane Brothers' interest in competing for the work.[14] However, from Houghton's testimony about his conversations with Heredia starting in May, Houghton had to conclude that the situation was "serious" far earlier than September insofar as Westoil retaining Los Angeles work.

In late September, shortly after the second call, Houghton initiated a meeting with Heredia in a restaurant near Heredia's house in the San Francisco area. Houghton's description of their conversation was generalized and lacking in specifics. He testified that Heredia continued to want a 50-percent reduction. Houghton responded that it was infeasible. He suggested reducing the number of barges and the terms and conditions, but Heredia refused. That was the first time that Houghton raised the possibility of a reduction in the number of barges.

Respondent's Exhibit 6 consists of the following emails. On October 5, Houghton emailed Parry, stating, "Can you send us last 17 monthly volumes. We need to start negotiations." (R. Exh. 6 at 3.) When asked about the second statement, Houghton explained, "It means we need to start in earnest looking at getting a deal done to get a renewal or an extension or a new contract with Glencore.[15] However, that explanation was inconsistent with the plain language of the text, as well as his testimony that he and Heredia began negotiations in September. When asked about the first statement about 17 volumes, he responded, "I—I don't know. I seen[sic] that in there. It was probably a typo. I probably put 16 or 18 or something, but a 17's just a—maybe there was a method behind it, but I don't know what it could pos-

[13] Tr. 4163.
[14] Tr. 4010.
[15] Tr. 4009.

sibly be. It's an odd number."[16] His own testimony therefore undermines the premise on which the ultimate 325,000 bbl minimum was based.

That day, Parry provided Houghton with that information and what Centerline revenues would look like based on various barrel minimums. Godden and Parry agreed the following day that Centerline would need to target a minimum of 325,000 bbl. Backe weighed in on October 7 that the 325,000 volumes might work if Centerline provided two barges and less than a full tug. I note that Houghton's testimony contradicted Godden's testimony that he did not believe that Westoil could operate at its current expenses at the 325,000 bbl minimum and Godden's testimony that Houghton made the final decision on that amount.

After that, Houghton had several calls with Heredia every week or so, in which "we would start negotiation[sic]."[17] Again, his testimony on them was generalized and lacking in specifics, making it impossible to reconstruct them individually in any meaningful manner.

On November 11, Houghton advised Godden, Parry, and Backe that when he last met with Heredia, he gave Heredia a 350,000 bbl minimum but that Heredia was asking for 250,000 bbl minimum with an additional volume discount. (R. Exh. 8.) This appears to contradict the October emails that arrived at the 325,000 figures.

On December 14, Houghton notified Parry, Godden, Moore, and Saltsman that negotiations were concluded, and that Heredia had agreed to a 325,000 bbl minimum for 2 years, with the same terms and conditions, and 10-percent discounts in November and December.

(R. Exh. 9.) The 325,000 minimum was to go into effect on January 1. An addendum agreement incorporating those terms was executed in January by Houghton on behalf of HMF and McNamara on Glencore's behalf. (R. Exh. 12.)

On December 17, Houghton sent Heredia an email attaching an addendum to the 2013 marine transportation agreement. (GC Exh. 164 at 2–4.) He stated that Westoil Marine was the HMF operating company performing Glencore work. Houghton signed addendum on behalf of both HMF and Westoil.

On January 11, 2021, at Houghton's request, Lobro forwarded a revised addendum to Thangaraj for signature. (GC Exh. 211 at 1–2.) It omitted the reference to Westoil. On January 19, Thangaraj pointed out to Lobro that the reference to Westoil was missing. (GC Exh. 164 at 4; GC Exh. 211 at 2–3.)

Centerline first notified Glencore that Leo Marine, rather than Westoil, would be handling the Glencore contract by an email from Beckman to Thangaraj on March 8. (GC Exh. 75.) Beckman stated that this was effective March 1, 2021. Thangaraj was never given any reason for the change.

On March 21, Beckman confirmed to Thangaraj that payment for services rendered by Leo Marine would continue to be made to HMF and that the only change was in the opco. (GC Exh. 165 at 3.)

Both before and after Leo Marine assumed the contract, Thangaraj's main point of contact was Lobro of Centerline, and there were no changes in the vessels servicing Glencore, which continued to operate out of the same terminal that housed its storage tanks.

On March 23, HMF by Houghton as an officer of HMF negotiated new terms to the amended and restated marine transportation agreement with Glencore, which McNamara signed on March 24. (GC Exh. 192 and R. Exh. 43.)

Westoil's work in Los Angeles prior to March 1, 2021

Westoil work included bunkering, fueling, lightering, terminal transfers.[18] From October 2020–March 1, 2021, when Leo Marine began performing Glencore work, Westoil's primary customers there were Glencore, Minerva, and Peninsula, with Glencore being the biggest. Westoil had performed work for Glencore since 1998. Westoil also performed work for Marathon, PBF (Exxon Mobile), P66 (Phillips 66), and several oil customers with whom it did not have actual contracts.

Westoil operated six barges in Los Angeles and performed work for Glencore using barges Bernie Briere, Anne Elizabeth, David Fanning, and HMS 2608, one or two of which serviced Glencore on a daily basis. Dale Frank, Jr. generally serviced Minerva, and Lily Blair generally serviced Peninsula. Westoil also operated the tug Madeline B. Hamilton.

In December 2020, Westoil had about 30 regularly scheduled employees and about 30 casual employees. The former had a set, repeatable schedule with guaranteed hours (guaranteed 180 hours a month), as opposed to casuals, who filled in for scheduled employees.

On Westoil barges, the crew composition normally was one tankermen PIC (person in charge, who has a merchant mariner's credential) and a deckhand. Sometimes, there were two PIC tankermen as per the CBA. Just prior to March 2, 2021, the tankermen for the six barges were scheduled, whereas the deckhands were casuals.

Tug crews included a captain and a deck engineer and, on occasion, a deckhand. They normally worked 12-hour shifts, but 24 hours if they were on board. The third man or third deckhand requirement as per the CBA was to put an additional man on a tug moving over 40,000 barrels or escorting certain tankers.

Houghton was general manager of Westoil and MMI for over 15 years before being promoted to Centerline vice president in late 2018. In that role, his duties included safety compliance, labor relations, profit and loss, and some contract negotiations. He testified that he had independent authority to hire and fire and hired through the union hiring hall as per the CBA.

Vartan, as Westoil's barge operations supervisor, supervised barge operation transfers and oversaw the tankermen working on the barges, and conducted audits, site inspections to ensure compliance with Federal regulations, and training. Occasionally, he performed those duties for other Centerline subsidiaries in California. For example, he conducted site inspections for OTB approximately once or twice a year. He submitted weekly barge

[16] Tr. 4163. See also Tr. 4009 ("I don't know why I would do 17 months, that's strange I picked that number. . ..").

[17] Tr. 4019.

[18] As of 2022, Westoil continued to perform these same types of work.

operations reports to Houghton (either as Westoil general manager or later as Centerline vice president), Morrison of Starlight, and either Keith Barnes or Byron Peterson (Peterson) of OTB, showing operational events that transpired the previous week. See, e.g., GC Exh. 222, November 9, 2020. Toward the end of 2016, he first began assisting Houghton with Westoil's labor relations, which involvement increased as time went on. Those responsibilities included communicating with Skow and IBU stewards.

Centerline/Saltchuk asset transfer

Prior to the asset transfer, Foss had several customers on the shift assist side, but its main customer for bunker barges was Chevron. Its tugs and barges were used for shift assist and bunker work.

In early summer 2020, Centerline and HMF started negotiations with Saltchuk Marine for an asset transfer. On December 20, 2020, Centerline and HMF announced the transfer agreement with Saltchuk, although the actual physical operational transfer was not completed until the end of the first quarter of 2021.

In a December 28, 2020, Zoom call with MMP representatives in attendance, Foss General Manager Paul Hendriks informed the tankermen that Foss barges were being sold to Centerline and, in exchange, Foss was purchasing Centerline's tugs. As a result, the tankermen would be out of jobs on February 15. A tankerman asked if the employees would be going over with the equipment. Hendriks responded that they had asked Centerline to take them, but Centerline said no because they did not want a relationship with the Union. On the same date, Foss sent the tankermen written notifications of their layoffs. (GC Exh. 4.)

The layoff date was later postponed to March 1 because Centerline did not yet have all the transferred equipment. See GC Exh. 5.

On January 6, Captain Tim Saffle, MMP vice president, requested to meet with Houghton to discuss how to make the transition beneficial to both Centerline and MMP members. (GC Exh. 6.) No meetings were ever held.

As a result of the asset transfer, Starlight sold its tug assist vessels in California and the Pacific Northwest, as well as the name, brand, and equipment of Starlight and MMI to Saltchuk. In the exchange, Centerline/HMF acquired Saltchuk's bunkering business in California, operated through Saltchuk's subsidiary, Foss Maritime Marine, including Chevron contract work in Los Angeles and San Francisco.

The three Foss barges servicing Chevron—FDH-3, -4, and -5—were turned over to Centerline on February 28. See GC Exhs. 9, 10. Leo Marine took over Foss equipment that day and started doing tug work in Los Angeles on March 1, 2021, the same day that Westoil's Glencore work was transferred to Leo Marine. Most of the Starlight's shoreside staff went over to Saltchuk. Starlight continues to operate in the San Francisco area under Saltchuk.

Reduction in force of Westoil's scheduled employees

On February 18, Hathaway sent Skow 10 separate identical letters on Centerline letterhead (GC Exh. 48), stating that due to a reduction in force of scheduled employees, the named employees would be removed from a scheduled position in seniority order and returned to the casual call list on March 1. The 10 scheduled employees who were laid off as scheduled and made casuals or on-calls were Mark Aproda, scheduled tankerman; Raymond Blakeslee (Blakeslee), scheduled engineer; Buzard, scheduled engineer; John Costello, scheduled tankerman; Clay Holick (Holick), scheduled engineer; Matt Irvine, scheduled tankerman; Chad Milikan, scheduled engineer; Nolan Padilla, scheduled engineer Dain Schmit, scheduled engineer and Sogliuzzo. Many of them were engineers who worked on tugs and provided ship assists, which were sold to Saltchuk starting on about March 2.

All those employees were returned to the casual list on March 1, except for Sogliuzzo, who took the place of a scheduled employee who resigned. Previously, of about 60-unit employees, 22 were on schedule and the remainder on schedule; this changed to 12 scheduled and 48 casuals.

The 2020 bidding process and award of Los Angeles tug and barge work to OTB

For reasons I will state, I am not satisfied that the Respondents' witnesses gave a full and accurate account of the bidding process or the awarding of Los Angeles tug and barge work to OTB. Preliminarily, as I noted, Houghton, Titland, and Beckman all gave very conclusionary descriptions of the conversations that they had with Godden, leading me to conclude that they were reticent in fully describing them.

Godden testified that he considered issuing an invitation to tender bids (also called a request for proposals or an RFP) for at most several months before the third or fourth quarter of 2020, due to the COVID-19 pandemic and other changes in market conditions. He provided no specifics. In the third or fourth quarter, he made the decision to conduct bids for Centerline ports where customers had competitive options; in Los Angeles, Vane Brothers, Jankovich, and Maxum Petroleum.

Beckman testified that on about October 1, 2020, Godden directed her to prepare an RFP detailing what was to be included and to send it to managers of the different opcos to bid on crewing and equipment. She gave conflicting testimony on whether he told her why he selected the ports of Los Angeles, San Francisco, and New York/Philadelphia. She first testified that he did not tell her why but later testified that in their first conversation, he said that the three ports were the highest ports to operate. In any event, she understood that the purpose was to evaluate costs. This was the first RFP that she had done. Backe was to be available to assist the opcos in making their bids by providing financial and accounting support. Beckman and Backe were to be the sole contact persons for the bidders.

On October 13, Beckman provided Godden with a draft RFP packet for his review. (R. Exh. 15.) It met with his approval and became the final packet, which Centerline/HMF, by Godden and Beckman, issued the following day. (GC Exh. 133 and R. Exh. 17.)

The RFP was for Los Angeles—barge operation, Los Angeles–tug operation, San Francisco Bay–barge and tug operation; and New York/Philadelphia–barge and tug operation. Los Angeles tugs and barges were separated because at the time they were operated by separate companies (tugs–MMI; barges–Westoil); however, they were treated together for cost comparison purposes.

HMG, MMI, HMNY, and OTB were invited to submit bids. Starlight was not included because Centerline was already engaged in the asset swap with Saltchuk, nor was Pacific Coast Marine because of the small nature of its operations.

The selected opco were given deadlines of October 16 to submit a letter of acknowledgment and October 23 to submit a bid submission letter, schedule of rates, and qualifications or exceptions to scope of work.[19] Vessels were listed by location; six barges and six tugs in Los Angeles. The historic volume of work for each location was set out. The Los Angeles work included but was not limited to work that Westoil performed for Glencore. The IBU, which represented Glencore employees, was not notified in advance of the issuance of the invitation to tender.

I will address in particulars only the bids that Westoil, MMI, and OTB submitted. Westoil bid only on Los Angeles barges, MMI only on Los Angeles tugs, and OTB on Los Angeles tug and barge and all other locations. I do note that the Godden never explained to Beckman or offered any explanation at trial why HMG was not awarded the Los Angeles tug work and OTB was not awarded New York/Philadelphia even though they were the lowest bidders.

On October 26 or 27, Beckman asked managers of the bidding companies for clarifying information, in particular, whether their rates were fully burdened[20] and included shoreside support (all employees other than crew members). (R. Exhs. 25(a)—(e).) Backe, who did not testify, determined the burden rate for each operating company, with Beckman playing no role.

On November 9, she notified all companies whether their bids were within or outside the acceptable range and that they had an opportunity to submit another bid by November 30. (GC Exh. 150 at 6 and R. Exh. 25.) As set out below, OTB's bids were within the acceptable range for all locations; Westoil's bid for Los Angeles barges was outside the acceptable range, as was MMI's bid for Los Angeles tugs.

Beckman testified that Godden determined that unacceptable was 5 percent over the average bid for a particular location. She testified that the statement in her affidavit that bids more than 20 percent over the average were deemed unacceptable was an error and that the 20 percent referred to the combined MMI and Westoil bid for Los Angeles that was 20 percent over the lowest bid. Her testimony about the 5-percent formula is found in the Excel spreadsheet that is General Counsel's Exhibit 217. Godden's testimony about how he determined what was "unacceptable" was nonspecific.

Westoil's bids

General Counsel's Exhibit 45 at 5, et. seq. reflects the following.

Westoil's Vartan submitted an acknowledgment on October 15 and a first bid on Westoil's behalf for Los Angeles barges on October 23. See also R. Exh. 18. Regarding the rates he put down in his October 23 bid (GC Exh. 45 at 10), Vartan testified that the instructions were vague and that he took the current CBA rates for a tankerman and for a deckhand and multiplied them by estimated shifts and six barges, to come up with daily manning costs. He testified that he had no conversations with Backe prior to submitting this first bid. In the qualifications or exceptions portion, he gave a detailed recitation of Westoil's qualifications, including 30 years operational history servicing multiple petroleum customers in Los Angeles and its established relationship with customers, local oil terminals, and government agencies.

Beckman subsequently asked him by email on October 26 if his rates were fully burdened. (GC Exh. 45 at 12.) According to Vartan, he had no way of knowing this, so he contacted Backe, who provided him with a burden rate of 31 percent on top of wages. Vartan submitted an updated bid on October 27, adding a 31-percent burden rate, and he later advised Beckman that all crewing costs were fully burdened.

I find the following puzzling. Beckman testified that after the initial package was sent out, Vartan reached out to her in person and asked how he could get information on rates. She told him that he could call Backe if he needed rates, especially the burden rates. It is only logical to assume that their conversation occurred before Vartan submitted his first bid and that he spoke with Backe before he submitted it. However, burden rates were not included in Vartan's first bid. Backe provided Vartan with those rates in undated General Counsel's Exhibit 218, and Vartan did not testify when he received the document. Backe is no longer an employee of Centerline so I will not draw any adverse inference for the Respondents' not calling him as a witness. Nonetheless, I consider this unexplained anomaly as bearing negatively on Vartan's credibility.

Beckman notified him on November 4 that Westoil's bid for Los Angeles was deemed outside of the acceptable range. (GC Exh. 45 at 16). He did not know what she meant. Vartan informed the IBU of this notification. To Vartan's knowledge, this was the first time that the IBU was notified that the Glencore contract had been put up for bid.

On November 13, Vartan emailed Beckman a revised bid that provided an updated schedule of rates matrix aligning with Westoil's current manning approach instead of crewing for all six barges. It reflected utilization of scheduled PIC's along with casual employees. The crewing rates themselves were not changed. (GC Exh. 45 at 18, 20 and R. Exh. 27.) He did not notify the IBU before submitting this to her. Beckman testified that this revised bid contained no meaningful changes because the cost difference was very slight and that it was still outside the acceptable range. Neither she nor Godden testified about any conversations that they may have had about this bid.

Vartan was markedly evasive in explaining the timing of his November 13 bid and advanced no cogent reason for why he submitted it on November 13, even though the deadline was not until November 30, and he was still engaged in trying to seek economic concessions from the IBU. He simply gave the vague

[19] Beckman testified that this was to give bidders the opportunity to say why they were capable of doing the work, if they needed to deviate from the crewing, how they planned to crew, and to provide any additional information.

[20] Fully burdened labor cost adds associated employee benefits, including medical insurance, vacation, sick time accrual, PTO, and pension benefits, to the daily wage.

answer that it was in response to previous email correspondence in which he was asked to provide clarification on some information, citing Beckman's October 26 email. Vartan also made vague reference to discussions with the IBU about crewing going back for a couple of years and that the discussion of a memorandum of understanding (MOU) on November 9 was essentially a continuation of those discussions. Thus, he shed no light on the specific timing of his November 13 submission. He submitted no further bids.

On December 9, Beckman advised Vartan that his bid for barge crewing in Los Angeles was not accepted due to pricing and that the new vendor would start providing such manning services on January 29, 2021.[21] (GC Exhs. 45 at 21,135.) I do not credit Vartan's testimony that when he learned Westoil lost the bid, he did not know what the work at issue was. This testimony was contradicted by his declaration, the discussions he had with the IBU, and common sense.

Vartan testified that he first heard about Leo Marine when Houghton gave him an offer letter on February 16, 2021 (GC Exh. 226), in Houghton's office. Houghton stated that there had been discussion about Titland starting up a new company, Vartan was a good fit, and he was being offered a promotion to the position of Leo Marine operations manager. There was a form for him to fill out to resign from Westoil and accept the position with Leo Marine. The letter stated that he would keep his Westoil hire date of January 7, 1999, and that his accrued vacation and sick leave hours would be transferred over. Vartan never filled out a Leo Marine job application.

When I asked Vartan if he ever told the IBU directly that Westoil lost the Glencore work, he replied no, that he was not aware of it until Leo Marine took over operations in mid-February-early March 2021. However, he was aware in December 2020 that Westoil's bid for Los Angeles was unsuccessful, and in his April 19, 2021, Board declaration, he stated that in November and December 2020, he tried to initiate discussion with the IBU but the IBU did nothing during the time that "I submitted the Westoil bid for the Glencore work. . . ."[22] It is inconceivable that Vartan did not realize from the start that the bid for Los Angeles included Glencore, Westoil's largest customer there.

Houghton gave vague answers as when he learned that Westoil had submitted a bid and from whom—despite his testimony about how much he wanted to help Westoil keep Los Angeles work. As to date, he first said November 2020, then December, finally conceding that he was "all over the map."[23] When asked if he had any specific conversations with Vartan about making Westoil's bid more competitive after its first bid was rejected, he responded nonspecifically by answering that they just had "vague conversations" in which Houghton wanted to make certain that Vartan was trying to contact Skow.[24]

MMI's bids

MMI's Hathaway submitted a letter of acknowledgment on October 16 for tug work only in LA/LB. (R. Exh. 19 at 1.) A day or two before that, Hathaway asked Beckman how to figure out the burden rate, and she responded that Backe could help him with that. Hathaway submitted a bid on October 23 (ibid at 2, et. seq.). In the qualifications or exceptions to scope of work section, he stated that MMI had been providing deckhand engineers and ship assist deckhands for tugs in LA/LB since 2000 in cooperation with the IBU and that its crews were greatly experienced in servicing customers, maintaining tugs, crewing protocols, and scheduling procedures with MMI Dispatch. After Beckman received it, she asked him to confirm that the rates were fully burdened, and he said no. On October 23, he submitted a revised bid with fully burdened rates. (Ibid. at 6, et. seq.) Beckman notified Hathaway on November 5 that his bid was outside of the acceptable range. (R. Exh. 25 at 3.)

OTB's bids and creation of Leo Marine

Although Titland testified that he did not know for what work the bids were, he was aware at the time that he submitted them that Westoil was doing inland bunker work, terminal transfers, and lighterings for Glencore, Minerva, Peninsula, and others in Los Angeles. He testified that he did not know the differences in volume between customer contracts, but he stated in his April 19, 2021, declaration, "The primary [Westoil] work in Los Angeles and Long Beach areas was for a customer named Glencore."[25]

On October 14, 2020, Titland advised Beckman that he would be submitting bids for all locations, including separate bids for Los Angeles barge, Los Angeles tug, San Francisco, and New York/Philadelphia. (R. Exh. 20 at 1.) He submitted his first bids on October 23. (Ibid at 4, et. seq.)

Titland could only vaguely recall a phone call that he made to Backe in late October 2020 to get wage information. Backe put together an Excel spreadsheet with OTB wage averages and emailed it to him. The tug crew complement in Los Angeles was the same as other locations—mate, unlicensed engineer, and ordinary seaman(deckhand).

In making his bid, Titland got the average of wages from Backe. Titland took existing OTB shoreside tankerman and deckhand wages, came up with a work schedule and a daily rate for each individual, and plugged them into a total per day for Los Angeles. See R. Exh. 20 at 4.

He formulated a different bid for San Francisco (R. Exh. 20 at 6) because crews there live on board the vessels and work 2 weeks on and 2 weeks off whereas shoreside employees go home after 12 hours.

In the qualifications or exceptions portion of the bid, he put San Francisco and Los Angeles together and listed two dispatchers (he gave a supervisor and manager in New York). In contrast to Vartan and Hathaway, he said nothing regarding experience or qualifications. Moreover, when asked why he did not list OTB's safety record, he replied, "I didn't think it was relevant,"[26] testimony that conflicted with Houghton's and Godden's testimony about the importance of bidders' safety records. In-

[21] There was a delay in OTB's assumption of the barging work, and Westoil employees continued to deliver and load fuel at Glencore's terminal until February 28, 2021.

[22] Tr. 2023.

[23] Tr. 4176.

[24] Tr. 4180.

[25] Tr, 3288.

[26] Tr. 3289.

deed, Godden testified that the "predominant consideration" for awarding bids was safe operation.[27] Moreover, considering safety "irrelevant" runs contrary to common sense. Furthermore, he testified that Beckman never asked him to state OTB's experience or qualifications, and he never did so, leading to the inference that information contained in the bids did not provide the sole basis for Godden selecting OTB to perform Los Angeles work.

When Titland was asked why he did not include captains in his bid for Los Angeles work, he replied, "I don't recall. . .. It may have been a mistake, I—I can't remember."[28] This is another example of his inability to satisfactorily explain how he arrived at the labor cost figures that he set out in his bids—and their reliability.

After receiving Titland's bid, Beckman asked him to confirm that the rates were fully burdened, to which he replied no. On October 28, he submitted a reviewed bid with fully burdened rates (GC Exh. 150). On November 9, Beckman advised Titland that all his bids were within the acceptable range. (Ibid; R. Exh. 25 at 1.)

Titland submitted revised and final bids on October 28 (R. Exh. 31) that contained fully burdened rates and also revised the crewing description for Los Angeles barges to reflect that if work was slow, the total per day would go down because the barges would be idle (compare R. Exh. 20 at 4 with R. Exh. 31 at 1). Titland offered no explanation of why this was not factored in in his first bid or what prompted him to make the change. In the qualification's attachment, he changed management to one operations manager for both San Francisco and Los Angeles and one operations manager for New York. (GC Exh. 293.) Titland testified that at the time, he thought that one operations manager on site in Los Angeles could manage both locations. When asked what made him change his mind, he responded, "Well, that's a good question. I just think that I was incorrect."[29] He thus offered no meaningful explanation.

On November 9, 2020, Beckman notified Titland that all his bids were within the acceptable range. (R. Exh. 25 at 1.) He was never informed what the term meant. She notified him on December 9 that his bid for Los Angeles tug and barge crewing was accepted, with crewing to start on January 29, 2021. (GC Exh. 136.) After receiving the letter, he called her to find out what the work would be. He said he had heard rumors that Centerline was looking to purchase Foss equipment (barges in California that were under Chevron contracts). She confirmed that. He asked if OTB was being awarded that work, but she replied that she did not know.

On December 9, at Godden's direction, Beckman notified Titland that OTB had been awarded tug and barge crewing in Los Angeles starting on January 29. (GC Exh. 136.) The letter stated that the award was based on pricing, service history, crewing matrix, and shoreside support. Beckman testified that Godden solely determined that criteria and that she played no role therein. At the time, Leo Marine was in the process of being formed as subsidiary of OTB. Nothing was said in the letter about Westoil keeping Minerva and Peninsula work. Beckman testified that she had no discussions with Godden about what contracts would be included.

I credit Beckman that on December 9 or 10, Titland called her and asked if he would be crewing the new Chevron time-chartered pieces of equipment (barges) in Los Angeles (pursuant to the assets swap with Saltchuk). She replied that she did not know. She played no role in deciding after December 9 who would perform what work in Los Angeles.

Around the second week of December, Titland asked Godden whether OTB would perform the Chevron/Foss equipment purchase. Godden confirmed that Centerline was looking to purchase such equipment and said that if that work was acquired, it would be assigned to OTB. There was no discussion of Glencore.

Titland testified that he learned on December 28 that the Foss sale went through and that it was up to Chevron whether to use the barges that were now Centerline's.

In the third or fourth week of January 2021, Godden initiated a meeting with Titland and told him that OTB would be taking over the Glencore work in Los Angeles. Titland testified that this was the first time that he had heard mention of Glencore work. Titland said that he intended

to use Leo Marine for the inland portion of the Glencore work in Los Angeles, with OTB continuing to perform its coastal moves[30] and Godden responded fine.

On January 29, Godden issued a "follow-up to our award letter of December 9, 2020" to Titland, stating that it was agreeable for OTB to delay the start of work in Los Angeles until February 28. (GC Exh.138.) Titland testified that this was the first time he learned of this. I find this hard to believe considering Titland's integral role as OTB general manager.

Despite Beckman's award letter, the language in his January 21 letter that it was a follow-up to the award letter, and Godden's testimony that the decision to award OTB the Glencore work was made on December 9, Godden later testified that the final decision to award the work to OTB was not made until on about January 21, 2021. He testified that Beckman's December 9 award letter to OTB was not "wholly accurate" because there was further communication and correspondence.[31] It is inconceivable that Beckman would have unequivocally told Titland that

OTB was awarded the work without Godden's approval. Indeed, Beckman testified that the final decisions on the awards were made in December.

Godden testified that the December 9 award letter covered all work in Los Angeles, for not only Glencore but also for Minerva, Peninsula, and Chevron—directly contrary to his testimony about the decisions he made in his second meeting with Beckman, described below.

Godden testified that after December 9, HMF had the authority to change its decision awarding the bid to OTB but that

[27] Tr. 1751.

[28] Tr. 3283.

[29] Tr. 3280.

[30] OTB was already performing coastal Glencore work, and Leo Marine did not have the necessary equipment to perform it.

[31] Tr. 1749–1750.

Centerline did not, which I find unbelievable in light of his testimony that he made the decisions on the awards and his leadership role in both HMF and Centerline. He further testified that Titland made the decision to assign the Glencore work to Leo Marine. However, he also testified that neither Westoil nor OTB could unilaterally reassign Glencore work without HMF's approval.

Godden testified that OTB was selected because it was the largest operator that made bids, was competitive from a pricing standpoint, and had significant bargaining experience and decades of an excellent safety record in San Francisco. Godden conceded that Westoil had performed Glencore work for "a good number of decades" and had a good safety record.[32] In fact, Vartan testified that Westoil had an "exceptional" safety record, with only occasional and minor safety events, in contrast to Houghton, who testified that it was "only fair," with a high number of spills and accidents. I credit Vartan, who had firsthand knowledge, over Houghton, who appeared to consistently attempt to skew his testimony in favor of the Respondents' case.

Titland's testimony about the genesis of Leo Marine was vague. He testified that after his call with Godden (in about mid-December), he started to think about the idea of creating an OTB subsidiary in California, as a recruiting tactic and to divide inland and offshore work. He discussed with Peterson, OTB's director of West Coast barge operations, and David Hanshaw, OTB barge supervisor. Around the first week of January 2021, he introduced the idea to Godden, who responded favorably. Several weeks later, they spoke again, at which time Godden told him to go move forward. Titland testified that he could not remember specifics about the conversations, and he provided no details about them. Godden offered no testimony on any communications that they had on the matter.

I am skeptical of Titland's testimony that he did not give any thought as to whether Leo Marine should be union or nonunion, did not have an opinion on the matter, and never discussed the topic with Godden.

Godden's decision about assigning Los Angeles work

Godden testified to two or three Zoom meetings with Beckman after the initial bids were received. In the first, on November 4, she explained the format of the Excel spreadsheets that she had prepared (R. Exh. 23). Los Angeles was split between tugs and barges because Los Angeles historically had different operating companies for each.[33] They agreed that some clarifications were needed, and bidders were offered additional time to provide additional information or to adjust their rates.

Godden testified that they had a second meeting several weeks later, wherein they discussed updated spreadsheets that Beckman had produced and made the decisions on awarding the work, including assigning the Glencore work to OTB as of the termination of the Glencore contract (although negotiations between Houghton and Heredia were still ongoing, and an agreement was in fact signed on Jan. 11, 2021). Godden testified that he did not award either the Peninsula or Minerva work to OTB but kept those contracts with Westoil. As to Peninsula, he explained, "We felt it was important to keep Westoil having some work. . . and we did not want to award all the work to OTB and—do something inappropriate to Westoil."[34]

At another point, Godden testified, without providing any details, that in late January, the decision was made that Minerva and Peninsula would stay with Westoil after further discussion between HMF, Westoil Marine management, IBU, and other bidders. Beckman had no knowledge of how or why this decision was made. Nor did she have any knowledge of why the Los Angeles tug and barge work was assigned to Leo Marine.

Godden's testimony regarding why Glencore but not Minerva and Peninsula was taken from Westoil was contradictory and confusing. He first explained that Glencore had a contract that was coming up for termination whereas Minerva and Peninsula did not have contracts with the same pressure, and Glencore had asked for a very significant discount of 30 percent. However, he then testified that at least Minerva also had a contract that was renewing during that period but that Minerva was not seeking such a large concession.

The General Counsel brought up the statement in his Board declaration that he made the decision regarding Westoil retaining Minerva and Peninsula work because those customers did not have contracts expiring at the end of 2020. After testifying that he agreed with that statement, Godden then equivocated, testifying first that Minerva had a contract expiring at the end of 2020 that was renewed on an annual basis, but then, "I believe that that could be true.

I'm not specifically certain."[35] General Counsel's Exhibit 199 shows that the Minerva contract was expiring at the end of 2020. General Counsel's Exhibit 199, a November 30 email from Godden to Parry shows that as of November 20, the Glencore, Minerva, and Peninsula contracts for Los Angeles work were still being negotiated.

Leo Marine

On January 29, 2021, Titland assigned the Glencore work to Leo Marine. In the beginning of February Leo Marine was formed, and in the month of February performed work only in San Francisco. (GC Exh. 292). Initially, Titland oversaw Leo Marine, but Harvey and Baduin in San Francisco and Vartan in Los Angeles later assumed its management.

Leo Marine took over Foss equipment on February 28 and started operations in Los Angeles on March 1, 2021 (see GC Exh. 292), the same day that Westoil's Glencore work was transferred to Leo Marine.[36]

Vartan has been the Leo Marine operations manager in Los Angeles since February 16, 2021. Before that, he was with Westoil since January 1999 and its barge operations supervisor since 2016.

As Leo Marine operations manager, he oversees day-to-day operations and directly supervises deckhand engineers, licensed

[32] Tr. 1753.

[33] It was stipulated that MMI was the tug version and Westoil the barge version and that they are single employer under a single labor agreement.

[34] Tr. 1743.

[35] Tr. 1403.

[36] At the end of 2021, Peninsula left Los Angeles, and at the end of 2022, Minerva also left the port, leaving Westoil with none of its major contracts.

engineers, deckhands, and captains at the San Pedro facility. His responsibilities include hiring, scheduling, determining crewing, and training. At the Leo Marine facility in Alameda, his counterpart, Harvey, performs the same functions. Vartan's increased responsibilities as operations manager include payroll and interactions with the logistics department, HR, and ITT.

Hiring of Leo Marine employees

When Vartan was still Westoil barge operations supervisor, he participated with Titland in interviewing Leo Marine's initial employees for Los Angeles and Alameda. They discussed the applicants after the interviews, but Vartan testified that he had no knowledge of who made the hiring decisions.

In contrast, Centerline's port engineer, Castagnola, testified that Vartan asked for his assistance in hiring engineers for Leo Marine and that he participated in reviewing applications, interviewing, and making recommendations, but that Vartan was the final decision maker. In this regard, Castagnola was indefinite in answering whether Vartan rejected any of his recommendations for hires, stating that he could not recall. He also testified that Vartan accepted his recommendations that someone be rejected but could give no specific examples. In sum, I believe that Castagnola attempted to minimize the role that Centerline played in the hiring process.

In the initial interviews, Vartan told applicants that Leo Marine was nonunion if they asked. He offered conflicting testimony on what he told applicants about the SIU. He first testified that after he learned that in the Alameda area, the original group from Starlight had made arrangements with the SIU, he told applicants for both locations that a union shop was already established. However, he later testified that if an applicant asked about union representation, "I would have said that there were some ongoing negotiations between the SIU, but that hadn't pledged." In this regard, Vartan's testimony about the instructions he received from Titland regarding SIU recognition was wholly devoid of detail: "He just informed me that there was[sic] some talks going on up in the bay, and that was—that was it."

On about February 19, Ubelhart received screenshots of Westoil employees' phones showing that they were given employment offer letters from Leo Marine, stating that they would have to become SIU members and respond by February 22.

Between February 19 and 22, 2021, in letters electronically signed by Castagnola, Centerline made offers of employment for Leo Marine engineering positions. (GC Exh. 88 at 115, 126, 137, 145, 161, and 167.) Blakeslee, Buzard, Holick, Jeffrey Cole, Ryan Gill, Dillan Mickel, and Ryan Quintana were former Westoil scheduled engineers who were informed that they would keep their Westoil seniority dates. Two other individuals who had not worked for Westoil were also offered employment. Castagnola gave contradictory testimony on whether he reviewed the offer letters to Buzard and Holick before they were sent out, first testifying that he did but later testifying that he could not recall.

Respondent's Exhibit 220 is a list of the first 19 employees hired by Leo Marine, including Buzard, Ryan, and Brian Keate (Keate). At the outset of Los Angeles operations on March 1, 2021, only three were employed there.

General Counsel's Exhibit 11 is a Leo Marine crew list in mid-March 2021. Out of the 22 on the list, the following had worked for Foss, Bristol, Mike Aurella, Todd Bonsky, Giuseppe Di Maria, Anthony Marabella; Vincent Perazzola, Ricardo Sanchez, and Daniel Zufferey.

General Counsel's Exhibit 206 is a list of Leo Marine's employees in Los Angles that the Respondents provided on August 2, 2022, pursuant to the General Counsel's subpoena. The following individuals had their Westoil hiring dates from 2013–2019 carried over: Blakeslee, Cole, Quintana, Paul Jones, Brian Keate (Keate), and Jason Musgrave. Christopher Ryan transferred over from OTB and kept his OTB hire date. Joseph Sasso also transferred over from Westoil and kept his Westoil hire date. See GC Exh. 234, the employee list from the R case, with their prior opco affiliations.

The following witnesses testified about how they were hired for Leo Marine in 2021. They testified credibly and consistently, and I credit them as follows. Buzard and Bristol had worked for Westoil, and Pieniazek and Amalfitano for Foss.

Buzard, in mid-February, applied for a captain/desk engineer position in Southern California after seeing a Centerline advertisement. Whereas Buzard offered detailed and unequivocal testimony regarding his subsequent communications with Castagnola, the latter did not. In particular, Castagnola gave convoluted and contradictory descriptions of what Buzard asked about union representation and how he responded.

On about February 16 or 17, Castagnola called Buzard and said they wanted to offer him a deckhand-engineer position, working short-term in San Francisco and then coming back to Los Angeles. Buzard asked why he would be going to San Francisco when he applied for Southern California. Castagnola replied that it was so the IBU could not claim jurisdiction over the boats if they had a group of Westoil employees switch over and start working for the new company; therefore, Buzard would go to San Francisco for 2 or 3 months and then come back to Southern California.

On February 19, Halfon emailed him an offer of employment with Leo Marine as an engineer deckhand, effective March 1 or to be determined. (GC Exh. 23.) She stated that Leo Marine had an agreement with the SIU and that he would be required to join SIU within 30 days of his initial hiring date. He would keep his original Westoil hire or seniority date of September 5, 2009, and his current accrued and unused PTO hours would be cashed out.

Buzard texted Castagnola on February 20, with questions regarding his schedule and whether he would live aboard. Castagnola responded that San Francisco would be short term, a shift or two, that he would live aboard, and that he would then go to Los Angeles once the company was up and running there. (GC Exh. 24.)

Buzard signed and mailed an acceptance on about February 22 or 23. On March 2, Castagnola called him and said that he had to formally resign from Westoil because there were two different unions. Buzard did so. (GC Exh. 25.)

On about March 6, Castagnola called him and said that they were going to keep in him in Los Angeles for Leo Marine and not send him to San Francisco because they were short-handed on experienced or competent engineers in Southern California.

Buzard started with Leo Marine as a deckhand engineer on March 6 or 7. When he switched over from Westoil to Leo Marine, his supervisor, work location, clocking-in procedure, payroll procedures through Centerline's payroll office, yearly training through Centerline's ADP, paid time requests through ADP, and dispatch procedure (with one minor exception in method) did not change. His job duties also stayed the same except that he no longer performed shift assist work but exclusively bunker barge work. There was no change in the Glencore work.

Buzard was promoted to a Leo Marine captain in May 2022. In approximately April 2023, he was transferred to Westoil Tug as a captain, his current position. He had expressed an interest in the latter but did not fill out an application.

Pieniazek, in mid-January contacted Kimberly Cartagena (Cartegena), of Centerline's HR, and Vartan about employment with Centerline. There was a job posting on the Centerline website for tankerman, LMS, San Pedro (MMP Exh. 1), in response to which he submitted an online application prior to January 29. See GC Exh. 19. In about late August, Cartagena and Vartan interviewed Pieniazek, and he was hired by Leo Marine as of September 2. (R. Exh. 304). His job duties remained the same as they were at Foss.

Bristol, in January, applied for the position of tankerman in Seattle through the Centerline website. On January 20, Cartegena asked if he would like to have a Zoom interview over the following day or two. He participated in such an interview on January 21 (see GC Exh. 12), which Cartegena, Vartan, and two OTB managers conducted. Bristol stated that he wanted to stay in Los Angeles but was open to any position. Vartan responded that they were looking at all regions.

Titland called Bristol on about February 8 and introduced himself as a Centerline representative. He offered Bristol a full-time position in Los Angeles, which Bristol accepted. The same day, Bristol emailed Halfon a series of questions about the position. Approximately an hour later, Vartan called him. Vartan introduced himself as the incoming Leo Marine bunker barge manager and confirmed that the position would be in Los Angeles. Bristol asked if the position would be union or nonunion, and Vartan replied the latter. Vartan also informed him that his start date would be pushed to March 1 because the equipment would not be ready until then.

On February 8, Halfon sent Bristol a written offer, signed electronically by Titland, for the position of tankerman with Leo Marine with a start date of February 16. (GC Exh. 14.) That was the first Bristol heard of Leo Marine. During his initial weeks as an employee with Leo Marine, Bristol performed the same work as he did with Foss, working on barges FDH-3, FDH-4, and FDH-5 for Chevron.

Amalfitano, on about January 11, saw an opening posted on the Centerline website for a tankerman position in Los Angeles, and he submitted his application the following day. He followed up with a call to Centerline on about January 20 and spoke with Cartegena, who scheduled a Zoom interview with him on about the following day.

At the interview, Cartegena, Titland, Vartan, Harvey, and Centerline Safety Manager Ben Kotin participated. They asked him about his general experience and his specific experience with how Foss serviced the Chevron contract.

On about February 4, Titland called Amalfitano, stating that he worked for OTB. He offered Amalfitano a position with OTB in Seattle, and stated he would send a formal job offer. Amalfitano asked why he was not offered a position in Los Angeles. Titland replied that Amalfitano would be in Seattle for only a few months, after which he would return to Los Angeles. Titland informed Amalfitano that OTB was nonunion. On February 4, Halfon sent him a written offer from Peterson to start with OTB on February 28. (GC Exh. 7 at 2, et. seq.) He was given until February 10 to accept.

Vartan's wife and Amalfitano's sister were friends, and Amalfitano called Vartan on about February 8 and stated that he really wanted to work in Los Angeles because of his personal situation. Vartan responded that after only a couple of months, Amalfitano would be back in Los Angeles. Vartan added "You just have to understand I can't hire all the Union guys at one time." Amalfitano asked Vartan for an extension of time to respond, which Titland subsequently approved to February 17. See GC Exh. 8. On February 17, Amalfitano declined the offer. (Ibid.)

On February 19, Vartan called Amalfitano, said that there had been a sudden change, and they could use him in Los Angeles, and gave him until the next morning to decide. Amalfitano texted him the next day, declining the offer.

On February 22, Amalfitano initiated a meeting with Vartan at a Starbucks. Amalfitano informed Vartan that he was becoming an MMP representative and in that capacity wanted to discuss having MMP members come over to Leo Marine. He emphasized that they were a good crew. Vartan acknowledged that, stating that there were only about two crew members that he was told not to hire but that "they" had just signed a contract with SIU (without specifying who "they" were). Vartan further stated that pledge cards were signed, and the contract negotiated, voted on, and ratified. He added that he was told not to hire any of the IBU members, but that he had pushed management to let him hire two that he felt were good.

Vartan denied telling Amalfitano that he could not be offered a job with Leo Marine, Los Angeles due to his union affiliation but did not otherwise offer any specific denials of statements that Amalfitano attributed to him during their conversations.[37]

Today, Leo Marine has about 10–20 percent more employees than the number in General Counsel's Exhibit 206, with about 45–50 employees in Los Angeles. Leo Marine currently operates two tugs (Brooks Hamilton and Darryl Hiatt) and six bunker barges (Anne Elizabeth, David Fanning, Lily Blair, and FDH-3, -4, and -5). It services two primary customers in Los Angeles and also operates in the ports of San Francisco and Oakland under Bowman. Several of the Los Angeles barges are not assigned to any individual customer but are available for spot work for other companies. Leo Marine vessels have been transferred between Los Angeles and San Francisco when needed, approximately several times in a 6-month period.

[37] Presumably because Amalfitano was meeting with Vartan as an MMP representative and not as an applicant or employee, the General Counsel does not allege as violations Vartan's statements in their conversation. Tr. 2216.

Westoil and the IBU (the Union)

Houghton, Skow, and Vartan all testified about their interactions concerning Westoil, Glencore, and the bid process. As I stated earlier, I find Skow to be a generally more reliable witness than either Houghton or Vartan, and Skow's testimony about what was said at meetings with Houghton and/or Vartan was substantially corroborated by Ubelhart and Sogliuzzo.

However, on particular matters where Houghton and Vartan testified with certainty and Skow had no recall, I will credit their essentially unrebutted testimony. I again refer to the precept that a witness may be found credible on some but not all matters.

Skow recalled that his first discussion about the Glencore contract was in early November 2020, when Vartan called and said that he wanted a meeting because Centerline was requiring all its subsidiaries to submit bids for all contracts (including Glencore) that were expiring at the end of the year. Vartan stated that he had put in a bid, which had been rejected, and he wanted the Union's help in getting more competitive. The conversation ended with Skow saying that he would get back to him with dates to meet.

On November 6, Skow and union stewards, including Sogliuzzo, had a Zoom meeting with Vartan and Houghton. Houghton stated that competitors in the business, specifically Vane Brothers, Sause Brothers, and Kirby, were interested in taking Centerline's work in Los Angeles. He repeated that Centerline was requiring all its subsidiaries to submit bids and that Vartan and Hathaway had one more chance to submit another bid by the end of November, and he asked the Union's help in coming up with a more competitive bid from Westoil. The meeting ended with the understanding that Skow would get together with Vartan.

Skow's notes of the meeting (GC Exh. 158) are not inconsistent with his testimony. However, Skow testified on cross-examination that Houghton did not mention any contracts by name, contrary to the statement in his affidavit that the discussion primarily focused on the Glencore contract. Moreover, Skow testified on cross-examination that he could not recall Vartan stating at the meeting that the manning and crewing requirements were not working for Westoil, but his affidavit states that Vartan did so.

Skow and his stewards and Vartan next held another Zoom meeting on November 9. Vartan stated that Westoil had additional crewing costs that other companies did not have, and he described his concerns with the union contract: crewing, overtime, and double-time, and supplemental schedules. See also R. Exh. 26, Vartan's notes of the meeting. Vartan explained that he was having a hard time getting crews to come in to work on tugs on nights and weekends, and that the engineers were holding out for overtime or mandatory double-time. He clarified that he was asking for flexibility, not pay cuts. Skow disagreed with Vartan's position that under the contract, the Company could put supplementals on without being at standard crewing levels.

In November 2020, Westoil was operating with 12 tankermen and 10 engineers and no deckhands, not at the standard level of 14 tankermen, 10 engineers, and two deckhands. Employees on standard crewing are afforded a 10-day layoff notice, whereas supplemental crewing can be laid off with 24 hours' notice at the end of the month. Adding supplemental schedules, instead of having to call in casuals who might hold out for overtime or mandatory double-time, would reduce labor costs. For example, a casual employee accepting a callout for overtime would receive overtime wages every hour worked, whereas a supplementally scheduled employee would receive 8 hours straight time and only 4 hours of overtime.

Skow responded that they could address Vartan's issues with an MOU, and Vartan replied that would go a long way. Skow suggested training some of the deckhands as engineers, but Vartan responded that he was trying to cut costs, not increase them. He told Skow that he had until November 30 to submit another bid. Skow stated that he would have an MOU for Vartan to consider that would cover all areas that Vartan had raised except for crewing, which Skow would have to discuss with employees.

Skow's notes of the meeting (GC Exh. 159) are not inconsistent with his testimony. He agreed with the notation in Vartan's notes of the meeting (R. Exh. 26) that Vartan discussed crew change, overtime, and manning issues.

Shortly after the meeting, Westoil employees were informed that the Glencore contract was being put up for bid.

After input from the bargaining unit members, Skow sent Vartan an MOU on November 23 that proposed changes in the CBA mostly regarding tugs but a few relating to barges. (GC Exh. 33.) Skow testified that the following provisions benefitted Centerline/Westoil.

The MOU agreed to accept 12 tankermen and 10 engineers and no scheduled deckhands as the standard staffing level. Removing two tankermen from the full-time schedule would have given the Company flexibility to put two engineers on a supplemental schedule, as Vartan had wanted. Removing the two deckhand positions from the standard crewing levels and filling the positions with casuals would have resulted in cost savings by reducing overtime costs, as stated above. The MOU further provided that the last two qualified nonscheduled employees in any classification were obligated to accept a supplemental-schedule assignment. This was meant to address Vartan's concern that he could not get people to come in and take work at regular pay. The MOU was to be for a period of 90 days, subject to renewal in 90-day increments. The MOU did not address the third-man requirement or voluntary callouts.

Vartan avoided giving a straight answer when asked by the General Counsel whether the Union's MOU addressed the concerns that Vartan had expressed about supplemental schedules, instead saying that the Union sought additional conditions that were not viable. He did concede that the MOU proposal requiring the last two qualified nonscheduled employees to accept a supplemental schedule was something for which the Company had been asking; by forcing some engineers to take a scheduled position, it would have had some impact on overtime costs.

Vartan responded by an email of November 25, simply stating, "This does not help us." (Ibid.) Skow called him the same day and asked what was wrong with the Union's proposal, saying that he thought it addressed all Vartan's concerns. They went through each proposal in the MOU. Vartan stated that he was good with the way the MOU set the standard crewing levels but that the 90-day period was too short and that he wanted to continue the practice of offering positions in seniority order. Vartan reiterated that he had a problem with crewing and needed flexibility. They disagreed on whether the MOU addressed these concerns. Skow stated that he had met with his committee and had done all he could for now. Vartan provided no counteroffers. See GC Exh. 159 at 3, Skow's notes of their conversation.

On November 29, Skow and Houghton communicated by email (GC Exh. 35.) Skow stated that he had been working with his group to attempt to help the crewing issues. He asked if there could be any compromise on the duration of the MOU. He stated that the members did not trust Vartan and that he was trying to get the stewards to back him. He stated that he was trying to get their support for setting the standard crewing levels at 12 tankermen and 10 engineers, and an MOU duration of 60 days. Houghton replied that he would follow up the next day.

However, Houghton never responded to the MOU, offering the ludicrous justification, "Nor do I think he was looking for a response. He was just sharing it."[38]

General Counsel's Exhibit 36 is an email chain between Skow and Vartan from November 30–December 1. On November 30, Skow stated that he had met with the group but unfortunately could do nothing more because they felt that they had made a good offer. He stated that the Union was still open to talking about any company proposals. Vartan responded, no, that the Company had to move jobs around and pay double time to get work covered, and "It's a lost cause." (Ibid. at 3.) Skow replied by stating that the Union was willing to look at any suggestions from the Company.

Vartan stated that the Company had come to Skow and informed him that the current manning requirements, crewing matrix, and the overall operating costs under the current CBA were not competitive in Los Angeles due to the nonunion companies that had set up operations there. He said that without the Union's cooperation with alternative crewing options and other cost-cutting measures, Westoil would not be a competitive option for Centerline in Los Angeles. Vartan further stated that in their initial talks, the Company had said that the Union's acknowledging the Company needed flexibility in supplemental schedules would have shown an effort to move forward in reducing operational costs. He also said that in the over 6 weeks since then, the IBU had not been able to cover the work and the Company had to move around assignments, sell work, and pay out voluntary and mandatory callouts because employees refused to be available for work at straight-time rates. He further stated that the 90-day proposition did nothing to alleviate crewing issues, curtail operational costs, or provide any stability moving forward. He concluded by stating that he did not know if Westoil would be given another opportunity to adjust its costs since all bids were due the previous day but that IBU should have considered real cost-cutting measures such as a reduction in hourly rates, benefits, eliminating third-man position, covering with a deckhand and/or switching to the Company's medical plan.

The Company had not previously mentioned any of these specific cost-cutting measures. On the contrary, at the November 9 meeting, Vartan stated that he was not seeking any pay reductions. This is reflected in Skow's notes (GC Exh. 159 at 2): "Not asking for pay cuts but flexibility."

Skow replied that he disagreed with the email and that the blame was the Company's because its dispatching and crewing decisions were inadequately organized. He pointed out that the Company never made a counteroffer to the Union's MOU and was asking the Union to bargain against itself. He stated that Vartan had said he did not know Vane Brothers' wages and concluded by stating that the Union requested continued bargaining over an MOU and dates to continue to bargain. Vartan replied that he was available as always and asked Skow for dates to meet.

Also on December 1, Hilgenfeld notified Skow that Westoil had been informed that Minerva, Westoil's sole customer, was leaving Los Angeles effective December 31, 2022. Therefore, Westoil intended to close its operations. He asked that the Union contact him by December 15 if it wanted to bargain over the decision and its effects. (R. Exh. 320.) Skow responded in the affirmative, and they later engaged in discussions.

A Zoom meeting was held on December 9 between Houghton and Vartan and Skow and his stewards. Skow asked for a labor cost figure (which would have enabled the Union to review the MOU and see if it could make any adjustments). Vartan replied that he did not know. Skow pressed him. Although Vartan testified that he told the Union that Westoil had lost the bid for Los Angeles barge work because it was outside the bid range, this is not reflected in his notes. When asked why not, he circularly answered, "Because I didn't put it down there."[39] I would expect that would have been significant enough a development to write down in his notes. The tone of the meeting was confrontational, and Skow ended the meeting abruptly.

At a December 11 luncheon meeting that Houghton initiated with Skow, Houghton gave him the labor cost figure of 13 percent. Skow understood that to mean Westoil was 13 percent off the next subsidiary. Skow testified that he could not recall whether Houghton gave him any proposals about crewing, manning, and/or health insurance, or anything else. I would expect that Skow would have remembered this, especially when he testified with more certainty about what was said at previous meetings.

Houghton called Skow on December 28. He told Skow not to announce it until the Company announced an asset sale between Centerline and Saltchuk, in which the MMI brand ship assist contracts went to Saltchuk in exchange for fueling barges and the Chevron contract from Saltchuk. He also said that economics had driven Centerline's decision to award the Glencore contract to another Centerline subsidiary. Skow asked if that was OTB, and Houghton replied yes. Skow asked if Saltchuk was going to offer initial employment to the MMI employees. Houghton responded that the contract would be followed. He further stated that he wanted to get together to start removing MMI out of the CBA. This was the first Skow heard that Centerline had awarded the contract work to OTB. Houghton did not mention Peninsula or Minerva.

Houghton called a Zoom meeting, held on January 5, 2021, to

[38] Tr. 4188.

[39] Tr. 2016.

remove items from the MMI contract out of the CBA. He and Skow, Ubelhart, Sogliuzzo, and other stewards participated. Houghton opened the meeting by explaining why Centerline chose another business model and the difficulties that the Company was experiencing due to black oil being a dying business, COVID, and Foss' ship assist business. Skow said that he understood that companies were struggling due to COVID.

Houghton then turned to MMI and the asset sale. He gave his view of how he wanted to start taking clauses out of the contract that had to do with MMI. Skow questioned whether this amounted to opening the agreement. Houghton responded that he was not sure and would have to get with Hilgenfeld. Skow asked how many members would be affected and if any of them would be laid off. Houghton responded that he did not know and would get back to him.

Sogliuzzo asked if Saltchuk was going to offer initial offers of employment to Westoil employees. Houghton responded that the contract would be followed. Sogliuzzo also asked if Westoil was going to man the new Chevron barges and push tugs. Houghton replied no, that Westoil was not competitive.

Skow asked if any of their tugs were going to move Westoil's barges. Houghton said that it would be another company. Skow also asked when the transfer was going to take effect, and Houghton replied that it would be toward the end of February. There was no mention of the Minerva and Peninsula contracts during the meeting.

On January 12, Skow made an information request to Vartan (GC Exh. 38) regarding the effects of the asset transfer on the employment of Westoil/MMI IBU employees. He made a second request to Vartan for the same information on January 20. (GC Exh. 39.) Vartan replied that day. (GC Exh. 44.) In his response, he stated that there were no anticipated layoffs.

On January 13, Houghton called Skow. He stated that Westoil was going down to one tug and two barges and said that provisions in the CBA regarding the deckhand and third man on barges were the two things keeping Westoil from retaining the Glencore contract.[40] This was the first time that Skow heard this. Skow asked if savings from these changes would equal the 13 percent labor cost, and Houghton said yes. Houghton gave him a deadline of the end of the day to get back to him. Skow responded that he was going into urgent care and would pass on the information to Ubelhart. Skow did not recall if the Minerva and Peninsula contracts were discussed. The Union produced Respondent's Exhibit 313 in response to the Respondents' subpoena. It purports to be handwritten notes of the meeting, but they are not in Skow's handwriting, and he did not know who took them. The genesis of the document is therefore unknown.

Skow first testified on cross-examination that he could not recall if he understood that Centerline would reconsider Westoil's bid if the Union made concessions on labor costs but was refreshed by his affidavit. Skow testified that he understood Houghton was also speaking with Ubelhart during this period and that he spoke with Ubelhart but did not know what Ubelhart and Houghton discussed. I find this implausible in view of the importance of the subject to the IBU.

On January 14, Skow sent Houghton a letter confirming what was said in their conversation. (GC Exh. 40.) It is consistent with Skow's testimony. Skow asked Houghton to respond within 5 days if he disagreed with anything Skow stated about their conversation, but Houghton never did so. Skow requested dates to meet and confer regarding retaining the Glencore contract.

Also on January 14, Houghton called Ubelhart. He said that the IBU's proposals to that point had been meaningless and that he needed a proposal from the IBU addressing the 13% operating cost disparity by the end of the day because he was meeting with Godden the following day.

Skow called Houghton on January 15 and asked if he would consider taking a good will proposal or "supposal" (which would be made a formal proposal if the parties were close to agreement). Houghton responded that it was too late; Centerline had already decided. He pointed out that the Union was supposed to get back to him. Skow responded that he had been sick. Houghton said that he could not promise anything but would meet with Skow the next day.

They had a Zoom meeting on January 16. Also participating were Ubelhart and stewards, including Sogliuzzo. Skow reiterated that the Union wanted to make a goodwill proposal. The stewards asked many questions, including whether, if the Union gave a goodwill proposal, they would have a chance at the Chevron work. Houghton said he would look at anything that the Union offered but could not promise anything. The subject of Glencore did not come up.

After the meeting, Skow and the stewards drafted a supposal (GC Exh. 41), which he sent to Houghton that evening. (GC Exh. 42). The supposal provided, inter alia, that the Union agreed to limit use of the third man on barges and deckhands, not eliminate them as the Company wished, as an attempt to show good will. Other provisions in the supposal reflected what the Union wanted, including that Westoil employees would man all new push tugs and new Chevron barges, and a 2.5-percent wage increase. I credit Skow that Houghton never responded to this supposal because Houghton first testified that he never replied to the supposal but then equivocated: "I—I—I may have replied that I'm—you know, assuring him it got sent in some manner. Maybe a phone call when he was—when it got to me."[41] Houghton professed not to recall how he communicated the proposal to Godden or if Godden had any questions, and he provided no details of anything he or Godden said, thus providing no cogent testimony on the matter.

On January 20, Vartan wrote to Skow, "responding to your January 14, 2021, letter" to Houghton. (GC Exh. 43; R. Exh. 33.) Vartan stated, "I have been involved in these discussions and spoken with Dough Houghton regarding your correspondent. Your letter misstated the communications. It also incorrectly implies that the issue was recently discussed."

Before describing what Vartan went on to state, I discredit

[40] Normally, there are two individuals on a barge who load and unload, but the CBA has a requirement for a third man under certain circumstances. Over the years, the Company had repeatedly expressed an interest in eliminating the third man requirement in the CBA, as an added cost on barges over 45,000 barrels.

[41] Tr. 4235.

Houghton's testimony that he did not help Vartan draft the response and that he could not recall seeing it before Vartan sent it to Skow.

Firstly, Vartan directly contradicted Houghton's testimony, testifying that he drafted the response after consulting with Houghton and counsel and that he added conversations between Houghton and Skow as related to him by Houghton. This is supported by the second sentence in Vartan's statement response that "I have been involved in these discussions and spoken with Douglas Houghton regarding your correspondence." Secondly, the response describes one-on-one communications between Houghton and Skow to which neither Vartan nor anyone else were privy. There is no way that Vartan would have had knowledge of their contents unless Houghton told him. Finally, I highly doubt that Vartan would have taken it on his own to draft and send the response without running it by Houghton for approval.

In his email, Vartan went on to address issues related to Glencore work and the Foss sale. He gave the Company's view of what occurred at the November 6 and subsequent meetings in November and December, as well as of their correspondence during that period.

As noted above, Vartan described several communications solely between Houghton and Skow: the December 11 lunch meeting, the December 28 phone call, and the January 13 phone call. He also described Houghton's phone call with Ubelhart on January 14.

Vartan accused the Union of failing to provide any information that Houghton could take on Westoil's behalf to salvage the Glencore work. He stated the management rights' clause in the CBA (Sec. 5) permitted the transfer of work outside the bargaining unit once the issue was discussed with the Union and that the Union had waived the right to further bargain.

Vartan turned to the Foss sale and said the following. As a result of the sale, MMI was no longer handling ship assist work. Centerline had sought to have Foss adopt the terms of the CBA, but Foss had not done so. Westoil was still operating tank barges and utilizing a tug crewed under the contract to operate those barges. As to the Chevron work, Westoil had lost the opportunity to gain it because the Union had failed to respond in a meaningful way to make Westoil more competitive.

Vartan concluded by stating that the Glencore and Chevron work was no longer available to Westoil. Skow testified that this was when he learned that the award process could not be undone.

On February 1, Skow sent a request for information regarding work in Los Angeles to Vartan, to which Hathaway responded on February 17. (GC Exh. 45.) Among Skow's questions were whether Westoil was currently performing work for Glencore and there were any leases.

Hathaway replied no to both. Skow testified that prior to this, he was never informed that the Glencore contract was up for bid among Centerline's subsidiaries.

The Union filed a grievance on February 3 (GC Exh. 46), contending that the Company violated clause 5.2C of the CBA by notifying the Union of its intention to transfer (Glencore) work outside the CBA to another Centerline subsidiary, thereby resulting in reduced hours for union members. Vartan responded on February 8 that the grievance was time-barred under Section 10.4 of the CBA. (GC Exh. 47.) Skow filed an amended grievance on February 26 (GC Exh. 49), to add that the transfer of work resulted in current layoffs on February 28. See GC Exh. 48.

A Zoom grievance meeting was held on March 5. Skow, Sogliuzzo, and other stewards represented the Union; Hilgenfeld, Hathaway, and Westoil Supervisor Marshall Novak represented Westoil. Hilgenfeld stated the grievance was still untimely, and there was no discussion on its merits other than the parties' disagreement whether the letters constituted layoffs (the Union) or being taken off schedule (the Company).

On March 15, Hathaway stated in writing that the grievance was untimely. (GC Exh. 50.) Skow responded on March 22 that the Union disagreed that the grievance was untimely and had requested an arbitrator pursuant to the CBA. The timeliness issue never went to arbitration.

The Respondents never provided the Region with assurances that it would waive its untimeliness argument, so deferral to arbitration was inappropriate. See *Collyer Insulated Wire*, 192 NLRB 837 (1971).

2015 arbitration award and 2017/2018 negotiations

At this point, I will address the Respondents' contention that a March 27, 2015, arbitration decision (R. Exh. 121) and Westoil/MMI-IBU 2017/2018 negotiations (see R. Exh. 133) establish that Westoil had a right to unilaterally reassign bargaining unit work to another Centerline subsidiary.

The arbitration opinion dealt with the narrow issue of whether Westoil violated the CBA by allowing OTB to utilize a Westoil barge to perform cross-harbor work for its own customer and using its own employees. Thus, the situation involved no Westoil work being performed by nonbargaining unit employees. There is no indication in the decision that the transaction between Westoil and OTB had any negative impact on the workload of Westoil employees. On the contrary, the arbitrator concluded, "The evidentiary record fails to establish facts to support a claim that Westoil used nonbargaining unit employees to perform work . . . ." (R. Exh. 121 at 14.) Therefore, the arbitration opinion does not support the Respondents' position.

The Respondents further argue that the IBU's conduct during 2017/2018 negotiations constituted a waiver of the right to bargain over the transfer of Westoil work.

The 2012–2017 CBA between IBU and Westoil Marine/MMI effective July 30, 2018 (R. Exh. 128), did not have a work preservation clause. Negotiations for the 2018–2022 CBA started in November 2017 and ended in mid-August 2018. On the first day of negotiations, November 6, 2017, Skow presented approximately 20 contract language proposals. (R. Exh. 133.) One was a work preservation clause, which the Respondents rejected. See R. Exh. 134 at 4. On March 28, 2018, Union President Marina Secchitano (Secchitano) once more brought up the work preservation clause, which Hilgenfeld and Houghton rejected.

Such a clause was not included in the final CBA. The CBA that was negotiated contained a management-rights clause (GC Exh. 28 at 4), providing, in particular, that the Company has the sole and exclusive right to "install, change, discontinue or relocate, in whole or in part, methods, processes, services, procedures, barges, boats, equipment, operations or facilities." The provision goes on to state that only discussion with the Union is required before implementation of such changes.

Establishing waiver of a statutory right is a heavy burden, not to be lightly inferred. *American Medical Response of Connecticut, Inc.*, 361 NLRB 605, 605(2014); *Georgia Power Co.*, 325 NLRB 420, 420–421 (1998); see also *Local Joint Executive Board of Las Vegas v. NLRB,* 540 F.3d 1072, 1072 fn. 10, 1079 (9th Cir. 2008).

Both the General Counsel's and the Respondent's briefs cite *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), coming to opposite conclusions on its application. In that case, the Board abandoned the "clear and unmistakable waiver" standard for determining whether a labor organization waived the right to bargain over an employer's unilateral change. Instead, it adopted a two-prong "contract coverage" standard. The first step is examining the plain language of the agreement to determine whether the employer's action was within the compass or scope of contractual language granting the employer the right to act unilaterally. If not, and the act has "materially, substantially and significantly changed a term or condition of employment constituting a mandatory subject of bargaining," the employer must demonstrate that the union "clearly and unmistakably waived its right to bargain over the change." (Ibid at slip op. 2.)

In *Twinbrook Opco*, LLC, 373 NLRB No. 6 (slip op. at 2, et seq.) (2023), the Board rejected the respondent's argument that the contract's management rights and integration clauses authorized it to unilaterally eliminate shift differential payments; the contract was silent on the matter, and the Board found no clear and unmistakable waiver. See also *Metro Health, Inc.*, 372 NLRB No 149, slip op. at 4 (2023); *NLRB v. Nextar Broadcasting, Inc.*, 4 F.4th 801, 810 (9th Cir. 2021) ("'[G]enerally worded management rights clauses . . . will not be construed as waivers of statutory bargaining rights,'" citing *Johnson-Bateman Co.*, 295 NLRB 180, 184 (1989)).

Here, nothing in the language of the provision concerns the transfer of Westoil work to another Centerline opco or a showing that the Union envisioned a situation in which that would occur.

Turning to the second step, *MV Transportation* elaborated on the concept of a clear and unmistakable waiver, citing *E.I. DuPont de Neumours & Co.*, 367 NLRB No. 145 (2019): that the issue must have been "'fully discussed and consciously explored and that the union consciously yielded or clearly and unmistakably waived its interest in the matter.'" Ibid at slip op. at 2.

Hilgenfeld's testimony does not establish that occurred. He further testified about a sidebar conversation with Secchitano during negotiations on July 15, 2018, in which she stated that she had heard rumors of a $500 million loan and that the IBU needed a little more money, to which he responded there was no more money, that it was not Westoil's to spend. His rather abbreviated notes (R. Exh. 141) state that when he told her "This is all we got," she said, "Okay." This fell far short of constituting any kind of full discussion or conscious exploration of transfer of Westoil work to another Centerline subsidiary, and it follows that there was no clear and unmistakable waiver on the Union's part.

Significantly, the IBU and Centerline began discussions in early November 2020 concerning Westoil's retention of work, but the first time that Centerline raised the contention that the management-rights clause permitted it to transfer the work was not until Vartan's January 20, 2021, email to Skow. This strongly suggests that the Respondents did not rely on this position until late in negotiations and that it was something of an after-thought.

Accordingly, I find no waiver by the Union. Therefore, I need not address the General Counsel's argument (GC Br. 543, et. seq.) that the above events occurring during the 2017/18 negotiations constituted parole or extrinsic evidence outside the parameters of the contract and as such should be disregarded.

Leo Marine's Recognition of the SIU in 2021

Joint Exhibit 2 contains the following stipulated facts:

1. On February 12, Leo Marine received a letter from Nick Marrone II (Marrone), vice president of the SIU, indicating that it had authorization cards showing representative status for Leo Marine employees. Leo Marine and the SIU agreed to meet on February 17 at the SIU Hall in San Francisco.

2. On the morning of February 17, they met as scheduled. Leo Marine was represented by Hilgenfeld, who stated that he was present because Titland could not attend. Harvey was also present on behalf of Leo Marine. Houghton and Morrison of Centerline were not part of the negotiations but were generally in attendance as observers, on and off. Marone was one of two SIU representatives, and a Leo Marine employee was also present.

3. The meeting began with the SIU presenting signed pledge cards to Harvey, who verified that there were 13 signed cards. Leo Marine asserted at the bargaining table that it understood there were 20 employees at Leo Marine at that time. Leo Marine later determined that it believed that the number was 19.[42] Leo Marine recognized the SIU; the parties engaged in negotiations, with proposals based upon the prior Starlight/SIU collective-bargaining agreement, dated 2019–2022; and they reached a tentative agreement in substance.

4. Leo Marine was informed on about February 19 that the tentative agreement had been ratified by the SIU.

5. Leo Marine and the SIU executed the CBA, which covered Leo Marine employees in San Alameda/Oakland (San Francisco) and Los Angeles, on about February 22. (R. Exh. 100.)

Titland testified that Marrone provided him with an SIU contract but had no recollection of any of the specifics of their interaction other than that he reviewed the contract and signed it within a week and that he had no further contact with the SIU. Inasmuch as these events occurred only a couple of years ago, Titland's averred complete failure of recall is suspicious. I also question his testimony that he did not talk to Godden about his

[42] The General Counsel did not stipulate to the accuracy of the number of employees employed by Leo Marine or their work locations on or about February 1 or stipulate to Leo Marine's understanding or determinations as to the number of employees employed by Leo Marine or their work locations on or about February 17.

conversation with Marrone. Certainly, this would have been something that Godden would have wanted to know. In short, I very much doubt that Titland would have signed the SIU contract absent direction from higher management. No one else in management testified about the circumstances of SIU recognition. In short, I do not believe that the Respondents provided a complete account of what occurred.

Prior to February 17, Leo Marine employed only one bargaining unit employee in Los Angeles, deckhand Brian Keate, who had worked for Westoil; the other 16 employees of Leo Marine at the time worked out of its San Francisco facility. (Jt. Exh. 7.)

I previously addressed statements that Vartan made to applicants about the SIU. Furthermore, Leo Marine held a 2-day orientation on about February 23 and 24 at Berth 301. Of the seven attendees, Bristol and three others were still Foss employees. Toward the end of the first day, Vartan announced that he had left additional paperwork on the front desk for them to sign and return. The paperwork turned out to be SIU membership applications and dues-deduction forms. Bristol took photographs of them. (GC Exh. 15.) The attendees asked Vartan about these forms. Vartan responded that he was told it was a done deal; they had pledged up in San Francisco and were in the middle of finalizing a contract. He told them that they would have 30 days to return the paperwork.

Bristol signed and submitted both forms on about February 26, but neither was processed. On March 3, Leo Marine notified Region 21 of the NLRB that it had voluntary recognized the SIU on February 17. (GC Exh. 148). On March 4, Titland issued a notice to Leo Marine employees informing them that Leo Marine and the SIU had agreed to suspend the union-security clause requirements in the CBA for 60 days and that neither party would enforce the union-security clause during that period. (GC Exh. 149; Jt. Exh. 2 at 2.)

Prior to or about April 15, Vartan advised the hired Leo Marine engineers that representatives of SIU would be on the premises to answer their questions. On that date, Marrone and another SIU representative held a meeting lasting about 10 minutes with the employees in the Berth 301 parking lot. They introduced themselves, welcomed the employees as new members, and handed out a contract. Marrone went through its provisions. The employees protested that they were not given a fair opportunity to vote on the contract. Marrone responded that that they had already finalized membership up in San Francisco.

On July 15, Titland informed Leo Marine employees that Leo Marine and the SIU had agreed to indefinitely suspend the CBA's union-security clause requirements. (GC Exh. 154; Jt. Exh. 4 at 2; R. Exh. 103.)

Pursuant to the petitions filed by IBU and MMP, the Regional Director in his April 8, 2021, DDE, found no successor bar, voluntary recognition bar, or contract bar, and he ordered that elections be held in separate single-facility units of all full-time and regular part-time licensed deckhand engineers and deckhand engineers employed by Leo Marine in Los Angeles and in San Francisco. (GC Exh. 89.) On September 28, 2021, the Board agreed with his conclusion that single-facility units were appropriate. (GC Exh. 201 at 1.) On May 10, 2022, the IBU was certified as the representative of the San Francisco unit, and on May 18, 2022, the MMP was certified as the representative of the Los Angeles unit. (GC Exhs. 90, 91.)

Analysis and Conclusions the relationship between Centerline/OTB/Leo Marine, HMF, and Westoil

There are two facets to this inquiry: (1) are Centerline/OTB/Leo Marine, HMF and Westoil a single-integrated enterprise and a single employer; and (2) is HMF an alter ego of Centerline and Westoil?

Single-employer status

A single-employer relationship exists when two or more employing entities are a single-integrated enterprise. Four criteria determine whether such a relationship exist: (1) common ownership; (3) common management; (3) functional interrelation of operations; and (4) centralized control of labor relations. *Emsing's Supermarket, Inc.*, 284 NLRB 302 (1987), enfd. 872 F.2d 1289 (7th Cir. 1988); see also *Radio & Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965). No single factor is deemed controlling, and not all factors need to be present. *Alcoa, Inc.*, 368 NLRB 368, 368 fn. 3 (2015); *Flat Dog Productions, Inc.*, 347 NRLB 1179 (2006). "[S]ingle-employer status depends on all the circumstances, and is characterized by the absence of the arm's-length relationship found between unintegrated entities."). *Dow Chemical Co.*, 326 NLRB 288, 288 (1988); see also *NLRB v. Don Burgess Construction Corp.*, 596 F.3d 378, 384 (9th Cir. 1979), cert. denied 444 U.S. 940 (1979).

When companies are found to constitute a single-integrated enterprise, they are held jointly responsible for unlawful conduct under the Act. See *Rogan Bros. Sanitation, Inc.*, 363 NLRB 547, 553 (2015); *Apex Electric Services, Inc.*, 356 NLRB No. 172, slip op. 2 (2011); *Emsing's Supermarket*, above at 304.

As I stated at the outset, the single-employer status of Centerline, OTB, and Leo Marine has already been determined.

(1) Common ownership

Centerline owns all the subsidiaries, including HM Holdings, of which HMF is a subsidiary. Thus, Centerline, HMF, and Westoil share common ownership.

(2) Common management

Godden is Centerline's president and CEO, secretary, and a member of its board of directors. He is also president and CEO of Leo Marine, OTB, and Westoil, and president and chief operating officer of HMF. In his role as Centerline president and CEO, Godden oversees Centerline and all its subsidiaries. As president and CEO of Leo Marine, OTB, and Westoil, he manages their business affairs.

According to the latest evidence of record, Godden, Bachteler, and Kadenacy are the directors and board members of Centerline, HMF, Leo Marine, OTB, and Westoil. Only HMF has an additional director and special board member. The officers for all five entities are Godden, Houghton, and Moore, with only Centerline having another vice president.

There is thus a very substantial overlap of top management control between Centerline, HMF, Leo Marine, OTB, and Westoil. Although HMF may have a different corporate identity, it does not operate independently of Centerline management.

Other factors lead to the conclusion that Centerline, HMF, and those opcos share common management. In the various agreements that HMS (later Centerline), HMF, and the various opcos executed pursuant to the 2018 securitization, Godden signed on behalf of all the entities. Houghton was responsible for negotiating Westoil's contracts with Glencore after he moved into Centerline management, and he needed approval from Godden and other Centerline officials. Moua, Centerline's accounts receivable manager, gave her title as AR manager for HMF in correspondence with Glencore 3 years in a row, from 2020–2022. HMF has used Centerline's address as its principal office and mailing address. Centerline files consolidated tax returns for itself, HMF, and all opcos.

Based on the above, I conclude that common management has been established.

(3) Functional interrelation of operations

Centerline itself does not own or operate any tugs or barges, engage in providing marine services, or generate any income. Rather, HMF owns the vessels and customer contracts and provides vessels and equipment to the subsidiaries, of which pay Centerline though HMF. The subsidiaries are responsible for any repairs or maintenance under $10,000, but expenses over that amount must be approved by Centerline management. Centerline, as the designated securitization manager, is responsible for managing customers, vendors, contracts, and equipment (primarily vessels), and for providing the subsidiaries various administrative services, including accounting, engineering, human resources, information technology, and payroll.

Requests for new vendors for opcos must be approved by Centerline's accounting department. Centerline applies for credit lines with new third party vendors on behalf of itself and the opcos. All vendors must go through Centerline.

Centerline has an email system that all the various operating companies utilize. Centerline has a distribution group of all approximately 40–50 managers of all vessels and captains and of all shoreside personnel.

Houghton periodically sends out safety communications to all Centerline opcos, and for all incidents involving opcos, he is the designated individual. Centerline and the opcos use one travel agency. The Centerline handbook covers employees of Leo Marine, OTB, and Westoil, and other subsidiaries, with specific language added depending on the state in which they are doing business and whether employees are covered by a collective-bargaining agreement.

The Centerline domain name is used by Westoil, OTB, and Leo Marine, and other subsidiaries. The Centerline website has customers pages for Westoil, OTB, and Leo Marine, and other subsidiaries. The Centerline website has a page in which job openings are posted for Centerline, Leo Marine, Westoil, and other subsidiaries. Depending on the region, a position can be for either Leo Marine or Westoil.

At Centerline's San Pedro facility, Houghton, Port Engineer Castagola, Leo Marine General Manager Vartan and Westoil General Manager Matt Hathaway all have offices in the same area of the building. Employees of Centerline and the opcos use the same restrooms and lunchroom, and the same clock-in station located at the entrance to the building. The same dispatchers assign work to Leo Marine and Westoil tankermen. The facility has a dock, areas for supplies and maintenance, and a workroom for welding/fabrication, all of which are used in common by Centerline, Leo Marine, and Westoil.

The above facts establish functional interrelationship of operations between Centerline, HMF, Leo Marine, OTB, and Westoil, noting that HMF is owned by a Centerline subsidiary.

(4) Centralized control of labor relations

Houghton and Vartan were not credible witnesses, and they appeared to deliberately attempt to underplay Houghton's role over Westoil's labor relations. In this regard, Houghton testified that when he became Centerline's vice president of California operations, he had no responsibility regarding Westoil's labor relations. However, he continued to be involved with the IBU, as reflected by his signing the Westoil/MMI CBA with the IBU in September 2018, and his ongoing communications with Skow, including sending a proposed MOU on November 24, 2020.

I find what Houghton stated in an October 7, 2022, declaration to be a more accurate account of his role in Westoil labor relations:

> "[S]enior management for Westoil, presently myself, has provided and continues to provide all supervisory authority, disciplinary authority, and firing/termination authority over Westoil's employees . . ..
>
> Throughout my time with Millennium, Westoil, and Centerline, the senior management of Westoil, which is presently me, has been, and continues to be responsible for making crewing assignments . . .."

The testimony of Amalfitano, Bristol, Buzard, and Pieniazek makes it clear that the hiring process for Leo Marine was a joint and coordinated effort between Centerline, OTB, and Westoil. Moreover, Westoil employees hired by Leo Marine carried over their seniority.

Therefore, I conclude that this criterion for single-employer status has been met as between them. HMF plays no direct role in hiring employees, but the other factors show that Centerline, HMF, and the opcos were structured to operate, and do operate, as a single-integrated enterprise under the common control of Centerline's management. Accordingly, I conclude that Centerline, HMF, Leo Marine, OTB, and Westoil constitute a single-integrated enterprise and single employer within the meaning of the Act.

Alter-ego status

The Supreme Court has long recognized that the operation of a prior enterprise under a different name can, in certain circumstances, constitute a "disguised continuance" that binds the new company to the old company's obligations under the Act. *Southport Petroleum Co. v. NRLB*, 315 U.S. 100, 106 (1942). The Board developed the alter-ego doctrine in order "to prevent employers from evading obligations under the Act merely by changing or altering their corporate form." *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986).

The concepts of single employer and alter ego are closely related, although not synonymous. Alter ego suggests an even more integral relationship between two companies than does single employer—two facets of one entity, rather than two entities that have some separate identify but overriding commonality.

In determining alter-ego status, the Board considers whether two entities have substantially identical ownership, management and supervision, business purpose, operation, customers, and equipment. *Fallon-Williams, Inc.*, 336 NRB 602, 602 (2001), citing *Crawford Door Sales Co.*, 226 NLRB 1144 (1976); see also *US Reinforcing, Inc.*, 350 NLRB 404, 404 (2015).

The Board also looks to whether the purpose behind the creation of the alleged alter ego was legitimate or was to evade responsibilities under the Act. *Liberty Source W*, 344 NLRB 1127, 1136 (2005), citing *Fugazy Continental Corp.*, 365 NLRB 1301, 1302 (1982), enfd. 725 F.2d 1416 (DC Cir. 1984). Unlawful motive exists where there is an attempt to avoid the obligations of a collective-bargaining agreement through a sham transaction or a technical change in operations. *Carpenters' Local 1478 v. Stevens*, 743 F.2d 1271, 1276–1277 (9th Cir. 1984), cert. denied 471 U.S. 1015 (1985). However, the Board does not require that an illegal motive be established to find alter-ego status. *Fallon-Williams*, ibid; *APF Carting, Inc.*, 336 NLRB 73, 73 fn. 4 (2001).

As with single-employer status, no single factor is determinative, and not all indicia need to be present to find alter-ego status. *Liberty Source W*, ibid, citing *Fugazy Continental Corp.*, ibid; *Standard Commercial Cartage, Inc.*, 330 NLRB 11, 13 (1999). See also *Allcoast Transfer*, above at 582); *J.M. Tanaka Construction, Inc. v. NLRB*, 675 F.2d 1029, 1033 (9th Cir. 1982).

Similarly, as with single-employer status, entities found to be alter egos are jointly and severally liable for violations under the Act. See *Mays Electric Co.,* 352 NLRB No. 49, slip op. 3 (2008); *Thomas H. Roberts*, 333 NLRB 987, 987–988 (2001).

The above discussion regarding single-employer status makes it abundantly clear that HMF, Centerline, and the subsidiaries, including Leo Marine, OTB, and Westoil, operate in close conjunction with one another in coordinating their common activities to advance the business interests of Centerline as the parent entity. This comports with the avowed purposes behind the almost half a billion-dollar securitization restructuring of 2018. HMF is a subsidiary of a subsidiary of Centerline; and the individuals who serve as directors and officers of Centerline, HMF, and the subsidiaries are almost identical, with Godden occupying the position of president and director for each company. Based on these factors, I conclude that HMF is an alter ego of Centerline and Westoil.[43]

Did the Respondents commit violations of the Act with respect to the SIU?

"'The Board has long held that an employer's voluntary recognition of a union is lawful only if, at the time of recognition, the employer . . . employed a substantial and representative complement of its projected workforce.'" *Garner/Morrision, LLC*, 353 NLRB 719, 723 (2009), citing *Elmhurst Care Center*, 345 NLRB 1176, 1177 (2005).

An employer violates Section 8(a)(2) of the Act when it extends recognition to a union that does not represent an uncoerced majority of employees. *Ladies Garment Workers Union v. NLRB (Bernhard-Altmann)*, 366 U.S. 731 (1961); *Garner/Morrision,* ibid; *Diaryland USA Corp.*, 347 NLRB 310, 311 (2006), enfd. 273 Fed.Appx. 40 (2d Cir. 2008). Further, by entering into, maintaining, and enforcing a CBA containing a union-security clause at a time when such union did not represent an uncoerced majority of employees, an employer violates Section 8 (a)(3) of the Act. *Dairyland USA Corp.*, supra; *Duane Reade Inc.,* 338 NLRB 943, 944 (2003), enfd. 99 Fed.Appx. 240 (DC Cir. 2004).

In determining whether an employer prematurely recognized a labor organization, the Board applies a two-part test: (1) the employer must employ a substantial and representative complement of its projected work force, i.e., the job or job classifications designated for the operation must be substantially filled; and (2) the employer must be engaged in normal business operations. *Elmhurst Care Center*, 345 NLRB 1176, 117–1178 (2005); *Hilton Inn Albany,* 270 NLRB 1364, 364 (1984).

The Board has frequently relied on *General Extrusion Co.*, 121 NLRB 1164 (1958), for guidance in determining whether the employer employed a substantial and held representative complement of its project work force as of the date of the recognition. In that case, the Board that the minimum work force threshold was met where "at least 30 percent of the complement employed at the time of the hearing had been employed at the time the contract was executed, and 50 percent of the job classifications in existence at the time of the hearing were in existence at the time the contract was executed." Ibid at 1167. The 30-percent standard is not mechanically applied. In *Hilton Inn Albany*, above, the Board found that even though the company had hired 33–35 percent of the full work force and 55 percent of the classifications, it had not employed a substantial and representative complement because only 8 to 15 percent of those employees performed any work or worked for more than 8 hours.

The second prong of *Elmhurst Care Center* is premised on the notion that "employees are better able to register their electoral choice when they are actually engaged in the work for which representation is sought." *Elmhurst Care Center*, supra, at 1177. Thus, an employer is not engaged in "normal business operations" when employees are working relatively few hours and their responsibilities are limited to training and preparation. Ibid.

Prior to the date of Leo Marine's SIU recognition on February 17, 2021, Leo Marine Los Angeles employed only one bargaining unit employee, whereas the other 16 Leo Marine employees worked out of its Alameda facility. After about March 1, its employee complement in Los Angeles grew considerably, mushrooming to 45–50 today. Moreover, not until March 1, 2021, did Leo Marine Los Angeles begin operating equipment and servicing customers. Accordingly, when the Respondents granted the SIU voluntary recognition, neither prong of *Elmhurst Care Center* was met, and such recognition was therefore premature. It follows that the Respondents also violated Section 8(a)(3) by entering into a CBA with the SIU that contained a union-security

[43] The General Counsel does not contend that the securitization restructuring that created HMF in 2018 violated the Act, and there is no basis for finding unlawful motive in its creation.

clause provision and seeking to enforce it. See *Emerald Green Building Services, LLC*, 364 NLRB 1603, 1603 (2016); *Duane Reade, Inc.*, 338 NLRB 943, 944 (2003), enfd. 99 Fed.Appx. 240 (D.C. Cir. 2004).

At the Leo Marine orientation on about February 24, Vartan advised attendees that they had 30 days to return SIU membership applications and dues-deduction forms. Buzard's February 19 offer of employment stated that he would be required to join the SIU within 30 days of his initial hiring date. Because the CBA was invalid, these were further violations of the Act.

Accordingly, by the above conduct, the Respondents violated Section 8(a)(2), (3), and 1 of the Act.

Did Centerline and/or HMF, on about October 14, 2020, initiate a course of conduct in which Westoil acquiesced, designed to take away Westoil's! Glencore work and assign it to another Centerline subsidiary, in an effort to undermine the IBU's representation of Westoil's Los Angeles employees?

This allegation is pivotal in determining the 8(a)(5) allegations, and its resolution requires an in-depth analysis of the following events to ascertain whether the Respondents had an unlawful motive: (1) the bidding process as it related to Los Angeles work; (2) the creation of Leo Marine; (3) negotiations between Westoil and Glencore; and (4) communications between Centerline/Westoil and the IBU. For reasons that I stated, the Respondents' witnesses were not generally credible in testifying about these matters.

(1) The bidding process

Although the bidding process itself taken as a whole may well have had a legitimate purpose, the issue is whether it was conducted in such a way for Los Angeles so as to take away Westoil work performed by IBU members and award it to OTB and then Leo Marine.

Despite Godden's testimony that safe operation was the "predominant consideration" for awarding all bids, Titland on behalf of OTB never filled out the experience or qualifications section, and he testified that Beckman never asked for it. In marked contrast, Vartan, on behalf of Westoil, gave a detailed recitation of Westoil's qualifications, including 30 years operational history servicing multiple petroleum customers in Los Angeles and its established relationship with customers, local oil terminals, and government agencies. Indeed, Vartan testified that Westoil had an "exceptional" safety record, with only occasional and minor safety events.

On December 9, at Godden's direction, Beckman notified Titland that OTB had been awarded tug and barge crewing in Los Angeles starting on January 29, and on January 21, Godden issued a "follow-up to our award letter of December 9, 2020." Godden gave contradictory testimony about when he made the decision to award OTB the Glencore work. At one point, he testified it was on December 9, but he later testified that it was not made until January 21, 2021. In this regard, he testified that Beckman's December 9 award letter to OTB was not "wholly accurate" because there was further communication and correspondence, despite Beckman's testimony that Godden made the final decisions on the awards in December. Godden also gave contradictory testimony whether the December 9 award letter covered all work in Los Angeles or only the Glencore contract.

In sum, the bidding process as it related to Los Angeles appears to have been manipulated to take work away from Westoil, rather than been objectively and neutrally conducted.

(2) Creation of Leo Marine

Titland could not remember any specifics about his conversations with Godden on creating Leo Marine as an OTB subsidiary, to operate Chevron barges, and Godden offered no testimony about any communications that they had on the matter. Thus, the record is devoid of persuasive evidence that the timing of the creation of Leo Marine was based on legitimate business reasons.

(3) Negotiations between Westoil and Glencore

Houghton was an unreliable witness concerning his communications with Heredia of Glencore, who did not testify. He testified inconsistently on when in 2019 they began negotiations on a new contract and failed to give specifics of their conversations. On November 11, Houghton advised Godden, Parry, and Backe that he had given Heredia a 350,000-bbl minimum, contradicting October emails that arrived at the 325,000 bbl figure. In this regard, he admitted that he was at a total loss to explain why, in an October 5 email to Parry, he asked Parry for 17 months of barrel history. Houghton and Godden testified inconsistently on who made the final decision that Centerline would need to target a minimum of 325,000 bbl from Glencore. I therefore cannot conclude that Centerline/Westoil approached negotiations with Glencore with a sincere desire that Westoil retain Glencore's work as opposed to another opco.

(4) Communications between Centerline/Westoil and the IBU.

After their November 9 meeting, at which Vartan described his concerns with the IBU contract, Skow provided an MOU on November 23. Vartan avoided giving a straight answer when asked by the General Counsel whether the MOU addressed the concerns that Vartan had expressed about supplemental schedules, instead saying that the Union sought additional conditions that were not viable. He did concede that the MOU proposal contained a provision for which the Company had been asking, and in their subsequent conversation, he told Skow that the standard crewing levels proposal was good.

On November 29, Skow and Houghton communicated by email. Skow stated that he had been working with his group to attempt to help the crewing issues. Although Houghton replied that he would follow up the next day on the MOU, he never did so, offering a paradoxical justification that he did not think that Skow was looking for a response. Neither he nor Vartan ever made a counterproposal.

At the November 9 meeting, Vartan stated that he was not seeking any pay reductions, but on December 1, he informed Skow that the IBU had to consider real cost-cutting measures, such as a reduction in hourly rates, benefits, eliminating third-man position, covering with a deckhand and/or switching to the Company's medical plan.

On January 16, Skow sent a "supposal" to Houghton, who never responded to it and testified that he could not even recall the circumstances in which he communicated the proposal to Godden.

In sum, the above facts demonstrate that Houghton did not act in good faith in purporting to try to help the IBU retain Los Angeles work.

I note the following. About February 8, Vartan informed Amalfitano that he would work in San Francisco for only a couple of months and then come back to Los Angeles because Vartan could not hire all the IBU members at one time. Similarly, on February 16 or 17, Castagnola explained to Buzard that he was being offered a temporary position in San Francisco instead of Los Angeles so that the IBU could not claim jurisdiction in Los Angeles. Furthermore, on February 22, Vartan, in a meeting with Amalfitano in his capacity as an MMP representative, stated that he was told not to hire any of the IBU members but that he had urged management to let him hire two of them, who were good tankermen and ready to work. I further note the Respondents' premature unlawful recognition of the SIU as the collective-bargaining representative of former Westoil employees.

Accordingly, I conclude that the General Counsel has sustained this allegation.

The General Counsel contends that the decision to put the Glencore contract up for bid was a mandatory subject of bargaining because it related to labor costs and that it triggered the Respondents' obligation to give the IBU notice and an opportunity to bargain. (GC Br. 518, et. seq.)

The General Counsel concedes (GC Br. 480) that there is a dearth of precedent supporting this position. The General Counsel asserts (Ibid, et. seq.) that two cases indirectly support the proposition that subjecting the Glencore contract to internal bidding was a decision subject to mandatory bargaining because labor costs were the motivating factor: *Osco Drug, Inc.*, 294 NLRB 779, 779 (1989), and *Pacific Crane Maintenance Co.*, 359 NLRB 1206, 1213 (2013) ("PCMC I"), adopted in *PCMC/Pacific Crane Maintenance, Inc.*, 362 NRLB 988 (2015) ("*PCMC II*"), enfd. sub nom. 890 F.3d 1100 (D.C. Cir. 2018). However, in neither of those cases did the General Counsel contend that the decision to put a contract up for bid itself triggered an obligation. I conclude that any bargaining obligation did not arise when Centerline decided to issue RFPs. Indeed, theoretically, Centerline could have made the decision that Westoil retain the Los Angeles work, including the Glencore contract, in which event there would have been no impact on IBU-represented employees.

Did the Respondents, without providing IBU notice and an opportunity to bargain violate Section 8(a)(5) and (1) by: (1) on about October 20, 2020, initiating the above course of action; (2) on about December 9, 2020, unilaterally reassigning bargaining-unit work that Westoil performed for Glencore to non-bargaining unit employees; (3) and notifying IBU on about December 28, 2020, that bargaining-unit work that Westoil performed for Glencore would be performed by employees of another Centerline subsidiary?

An employer has the duty to bargain with a union that represents its employees over matters of wages, hours, and other terms and conditions of employment, which are mandatory subjects of bargaining. *NLRB v. Katz,* 369 U.S. 736 (1962). A unilateral change regarding a mandatory subject of bargaining violates the Act absent a good-faith impasse or waiver. *Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, 370 NLRB No. 71, slip op. at 3 (2021); *Richfield Hospitality, Inc.*, 368 NLRB No. 44, slip op. at 3 (2019).

The Court in *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964), addressed subcontracting situations and held that a bargaining obligation arises where employees are replaced with those of an independent contractor to do the same work and no capital investment is involved. The Court opined that a desire to reduce labor costs is a matter "peculiarly suitable for resolution within the collective-bargaining framework." Ibid at 214. In his concurrence, Justice Stewart distinguished situations where management decisions are "concerning the commitment of investment capital and the basic scope of the enterprise" that "lie at the core of entrepreneurial control." Ibid at 223.

In *First National Maintenance Corp. v. NLRB*, 452 U.S. 66, 677 (1981), the Court, citing Justice Stewart, held that a management decision involving a change in the scope and direction of the enterprise is not a mandatory subject of bargaining because it is akin to the decision whether to be in the business all. The Court further held that an economically motivated decision to close a particular facility or part of an employer's operations (a partial closure) is a mandatory subject of bargaining only as to the effects of the decision, not the decision itself. In that case, the employer had canceled a contract with a customer, resulting in terminations of bargaining unit employees,

Consistent with those cases, a long line of Board cases has held that a decision to subcontract the work of employees that is unaccompanied by any substantial commitment of capital or change in the scope of the business is not a decision "at the core of entrepreneurial control" and is therefore a mandatory subject of bargaining. See, e.g., *Arbah Hotel Corp.,* 371 NLRB No. 126, slip op. at 4–5 (2022); *Mi Pueblo Foods*, 360 NLRB 1097, 1097–1099 (2014); *Spurlino Materials, Inc.*, 353 NLRB 1198, 1218 (200), reaffirmed 355 NLRB 409 (2010), enfd. 645 F.3d 870 (7th Cir. 2011); *Sociedad Espanola de Auxilio Mutuo y Beneficia de P.R.,* 3432 NLRB 458, 458 (2004), enfd. 414 F.3d 158 (1st Cir. 2005). As per *Fibreboard,* above, decisions to subcontract based on labor costs are subject to effects bargaining. *Arbah Hotel*, above, slip op. at 1 fn. 13; see also *Dubuque Packing Co.*, 303 NLRB 286, 391 (1991), enfd. in relevant part sub nom., 1 F.3d 24 (D.C. 1993), cert. granted 511 U.S. 1016 (1994), cert. dismissed 511 U.S. 1138 (1994) (relocation decision).

Throughout the course of the bidding process and Houghton's and Vartan's conversations with IBU about Westoil work, labor costs were an expressed primary focus. The transfer of Glencore work from Westoil to Leo Marine resulted in the same work being performed by many of the same employees, with no substantial commitment of capital or change in the scope of the business. Indeed, very little changed in the transition from Westoil to Leo Marine other than which subsidiary of Centerline performed the work.

If the transfer of work from Westoil to Leo Marine is viewed as an assignment of unit work to nonunit employees, this also was a mandatory subject of bargaining requiring affording IBU notice and an opportunity to bargain. *Harris-Teeter Super Mar-*

kets, Inc., 307 NLRB 1075, 1075 fn. 1 (1992), citing *Kohler Co.*, 292 NLRB 716, 720 (1989); *A-1 Fire Protection, Inc.*, 374 964, 966 (1984).

Accordingly, I conclude that the elimination of bargaining-unit work in Los Angeles was a mandatory subject of bargaining.

The Respondents contend that the IBU waived the right to bargain, an argument that I have already addressed and rejected. The Respondents further contend that although they had no obligation to bargain, they bargained to impasse with the IBU. (R. Br. 123, et. seq.). However, I have found that the Respondents engaged in a course of conduct intended to deprive the IBU of bargaining unit work, tainting the bargaining process and precluding a finding of a good-faith impasse. "[T]he Act is predicated on the notion that the parties must have a sincere desire to enter into 'good faith negotiations with an intent to settle differences and arrive at agreement." *Richfield Hospitality*, ibid, quoting *Public Service of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), enfd. 318 F.3d 1173 (10th Cir. 2003). A lawful impasse cannot be reached in the presence of unremedied unfair labor practices. *Titan Tire Corp.,* 333 NLRB 1156, 1158 (2001); *White Oak Coal Co.*, 295 NRB 567, 568 (1989) ("A finding of impasse presupposes that the parties prior to the impasse have acted in good faith.").

The question next becomes at what point the Respondents took action that triggered its obligation to notify and bargain with IBU. I already addressed why I do not believe it was at the point when Centerline decided on putting out bids.

The General Counsel contends that the Respondents on about December 9 unilaterally assigned bargaining unit work that Westoil performed for Glencore to OTB. Although the Respondents offered contradictory testimony on when the final decision was made, it is undisputed that on December 9, Vartan told Skow and union stewards that Westoil had lost the bid. Nonetheless, there was no actual reassignment of bargaining unit work on about December 9, so the allegation of a unilateral change on that date cannot be sustained. However, an announcement to employees of an unlawful unilateral change is in itself a violation of Section 8(a)(1). *Finley Hospital*, 362 NLRB 915, 921 (2016), reversed on other grounds, 827 F.2d 720 (8th Cir. 2016); *Marion Memorial Hospital Corp.*, 335 NLRB 1016, 1019 (2001), enfd. 321 F.3d 1178 (D.C. Cir. 2003). Accordingly, in light of my conclusion that the transfer of bargaining unit work was not made in good faith, I conclude that the Respondents' conduct in announcing such a transfer violated Section 8(a)(1).

Finally, the General Counsel contends that a unilateral change occurred when, on December 28, 2020, Houghton notified Skow that the Glencore contract was going to be awarded to OTB. Once more, I do not see how such a notification per se constituted a violation of the Act.

On the other hand, a unilateral change did occur on about March 1, 2021, when 10 employees were taken off a regular schedule and placed on the casual (or on-call) list because the Respondents had failed to bargain in good faith with IBU. At that point, the Respondents violated Section 8(a)(5) and (1).

Did Vartan, on February 8, 2021, unlawfully inform Amalfitano that he could not hire all union employees at one time?

In deciding whether an employer's statement violates Section 8(a)(1), the Board applies an objective standard: whether, in the totality of circumstances, it would reasonably tend to interfere with the free exercise of an employee's statutory rights. *Saginaw Control and Engineering, Inc.*, 339 NLRB 541, 541 (2004); *Multi-Ad Services*, 331 NLRB 1226, 1227–1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

Amalfitano called Vartan, whom he knew personally through his wife's friendship with Vartan's wife, after Titland told him that he would first be offered a position in Seattle and then moved back to Los Angeles. He essentially pleaded to stay in Los Angeles. Vartan reassured him that he would be back in Los Angeles after a couple of months, commenting that "I can't hire all the union guys at one time."

Thus, Amalfitano initiated the phone call and spoke with Vartan on a personal level rather than as an applicant. Vartan confirmed that Amalfitano would be offered employment first in Seattle and then in Los Angeles. He made a casual comment not that union members would not be hired at all but rather that they could not be hired at one time (in Los Angeles). In all the circumstances, I do not find Vartan's statement coercive. The cases cited by the General Counsel (GC Br. 652) are distinguishable because therein the statements were that applicants would not be hired at all because of their union affiliations.

Accordingly, although Vartan's statement was evidence of the Respondents' unlawful course of conduct toward the IBU, I conclude that it did not violate Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondents Westoil Marine and HMF are a single employer with Respondents Centerline, OTB, and Leo Marine, and engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent HMF is an alter ego of Respondents Centerline and Westoil Marine

3. Inland Boatmen's Union of the Pacific (the IBU) is a labor organization within the meaning of Section 2(5) of the Act.

4. International Organization of Masters, Mates & Pilots, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

5. Seafarers International Union (the SIU) is a labor organization within the meaning of Section 2(5) of the Act.

6. By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act: announced an unlawful unilateral change to employees.

7. By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(2) and (1) of the Act: rendered unlawful assistance and support to the SIU.

8. By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(2), (3), and (1) of the Act: directed applicants as a condition of employment to join the SIU and sign SIU union dues-deduction

authorization forms.

9. By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce with the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3), (5), and (1) of the Act: unilaterally laid off employees from a regular schedule.

10. By the following conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act: failed to bargain in good faith with the IBU before reassigning work performed by IBU-represented employees to OTB/Leo Marine.

REMEDY

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

The Respondents having unlawfully laid off from a regular schedule Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo, must offer them full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed; and make them whole for any losses of earnings and other benefits suffered as a result of their being taken off regular schedule.[44] Backpay 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 Respondents compensate them for any other direct or foreseeable pecuniary harms incurred due to 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 Respondents shall compensate them for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 19, 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*, 361 NLRB 101 (2014). The Respondents shall compensate them for their expenses for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above. In addition to the backpay-allocation report, the Respondents shall file with the Regional Director copies of their corresponding W-2 forms reflecting the backpay awards. *Cascades Containerboard Packing—Niagara*, 370 NLRB No. 76 (2021).

The General Counsel requests the following special remedies (GC Br. 615, et. seq.):

> A. Because the Respondent's unfair labor practices were so severe and widespread, the Respondents should be ordered to convene a meeting or meetings, scheduled to ensure the widest possible attendance from employees, during which responsible officials of the Respondents read the Notice to Employees of Respondents Leo Marine and Westoil Marine on worktime, in the presence of a Board agent.

The General Counsel argues that this is appropriate because the Respondents' highest-level officials committed these violations, citing *North Memorial Health Care*, 364 NRB 770, 770 (2016).

A notice-reading remedy is appropriate when it is necessary to ensure that employees "fully perceive that the Respondent and its managers are bound by the requirements of the Act." *Federated Logistics & Operations*, 340 NLRB 255, 258 (2003), review denied 400 F.3d 920 (D.C. Cir. 2005). The Board imposes this remedy when an employer's misconduct has been "sufficiently serious and widespread that reading of the notice will be necessary to enable employees to exercise their Section 7 rights free of coercion." *Jason Lopez' Planet Earth Landscape, Inc.*, 358 NLR 383, 383 (2012). However, a read-aloud remedy is not warranted unless the General Counsel shows that standard remedies will be insufficient. See *Chinese Daily News*, 346 NLRB 906, 909 (2006), enfd. 224 Fed.Appx.6 (D.C. Cir. 2007).

Here, the unfair labor practices were limited in scope, and the Respondents have not engaged in any kind of pattern of committing unfair labor practices in Los Angeles or elsewhere. Accordingly, I do not find warranted a read-aloud remedy.

The Respondents should be ordered to reimburse the IBU and the MMP for costs they incurred in organizing, as a direct result of the Respondents' violations of the Act.

More specifically, the General Counsel contends that the Respondents reimburse the IBU for organizing expenses incurred since December 9, 2020, and reimburse the MMP for organizing expenses incurred since February 17, 2021, related to Leo Marine's premature recognition of SIU. The General Counsel cites *Texas Super Foods*, 303 NLRB 209, 209 (1991). In that case, in the context of a fourth election, the Board found that the employer had engaged in conduct that was "patently frivolous and designed solely as a stalling tactic." Ibid.

The General Counsel has not explained the "organizing expenses" that either union incurred, but in an event, I do not find that the Respondents' conduct was egregious or widespread enough to warrant this special remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[45]

ORDER

The Respondents, Centerline Logistics Corporation, Harley

[44] Reinstatement and financial remuneration may not be applicable to all the discriminatees, but that is a compliance matter.

[45] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

Marine Financing, LLC, Leo Marine Services, Inc., Olympic Tug & Barge, Inc., and Westoil Marine Services, Inc., Seattle, Washington, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prematurely granting recognition to, granting assistance to, signing a collective-bargaining agreement with, or applying the terms of such a collective-bargaining agreement with, the Seafarers International Union (SIU) or any other labor organization that does not represent a majority of a substantial and representative complement of unit employees.

(b) Informing applicants for employment that they are required to join the SIU or any other labor organization that does not representative a majority of a substantial and representative complement of unit employees.

(c) Directing employees to sign membership applications and dues-deduction authorization forms for the SIU or any other labor organization that does not represent a majority of a substantial and representative complement of unit employees, as a condition of employment.

(d) Failing and refusing to bargain in good faith with Inlandboatmen's Union of the Pacific (the IBU) as the collective-bargaining representative of unit employees.

(e) Making unilateral changes in wages, hours, or other working conditions, including reassigning bargaining unit work to nonbargaining unit employees.

(f) Announcing to employees that there will be an unlawful unilateral change in their terms and conditions of employment.

(g) 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) Within 14 days from the date of the Board's Order, offer Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the above individuals whole for any loss of earnings and other benefits suffered resulting from of the unlawful reassignment of bargaining unit work, in the manner set forth in the remedy section of the decision.

(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 payroll records, social security payment records, timecards, personnel records and reports, and all other records, 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) Upon request, meet, and bargain in good faith with the IBU as the exclusive representative of unit employees about any changes in wages, hours, or other working conditions, including the reassignment of bargaining unit work.

(e) If requested by the IBU, rescind any or all changes to the terms and conditions of employment of unit employees that were made without bargaining in good faith with the IBU.

(f) Reimburse unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Leo Marine and SIU collective-bargaining agreement, with interest.

(g) Within 14 days after service by the Region, post at their facility in San Pedro, California, copies of the attached notice marked "Appendix."[46] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper noticer, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. The Respondents shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If during the pendency of these proceedings, the Respondents have gone out of business or closed their San Pedro, California facility, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 9, 2021.

(h) 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 Respondents have taken to comply.

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

Dated, Washington, D.C. April 3, 2024.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

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.

[46] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, 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 Respondents are communicating with their 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 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."

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.

The Inlandboatmen's Union of the Pacific (the IBU) is the exclusive collective-bargaining agreement of a unit of our tankermen, engineers, boomboat operators, mate of tow, deckhand/engineers, ship assist/deckhands, deckhands/cooks and deckhands working at our Los Angeles/Long Beach facility in San Pedro, California.

WE WILL NOT fail and refuse to bargain in good faith with the IBU.

WE WILL NOT make unilateral changes in wages, hours, or other working conditions, including reassigning bargaining unit work to nonbargaining unit employees.

WE WILL NOT announce unlawful unilateral changes in your terms and conditions of employment.

WE WILL NOT prematurely grant recognition to, grant assistance to, sign a collective-bargaining agreement with, or apply the terms of such a collective-bargaining agreement with, the Seafarers International Union (SIU) or any other labor organization that does not representative a majority of a substantial and representative complement of unit employees.

WE WILL NOT inform applicants for employment that they are required to join the SIU or any other labor organization that does not representative a majority of a substantial and representative complement of unit employees.

WE WILL NOT direct employees to sign membership applications and dues-deduction authorization forms for the SIU or any other labor organization that does not represent a majority of a substantial and representative complement of unit employees, as a condition of employment.

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 upon request, meet, and bargaining in good faith with the IBU as the exclusive representative of unit employees about any changes in wages, hours, or other working conditions, including the reassignment of bargaining unit work.

WE WILL, if requested by the IBU, rescind any or all changes to the terms and conditions of employment of unit employees that were made without bargaining in good faith with the IBU.

WE WILL reimburse unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Leo Marine-SIU collective-bargaining agreement, with interest.

WE WILL within 14 days from the date of the Board's Order, offer Mark Aproda, Ray Blakeslee, Nick Buzard, John Costello, Clay Holick, Matt Irvine, Chad Milikan, Nolan Padilla, Dain Schmidt, and Cris Sogliuzzo full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the above individuals whole for any loss of earnings and other benefits they suffered as a result of the unlawful reassignment of their bargaining unit work, in the manner set forth in the remedy section of the decision.

CENTERLINE LOGISTICS CORPORATION, HARLEY MARINE FINANCING, LLC, LEO MARINE SERVICES, INC., OLYMPIC TUG & BARGE, INC., AND WESTOIL MARINE SERVICES, INC.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 19-CA-273208or 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.