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**WATERFRONT COMMISSION OF NEW YORK HARBOR**

At a special session of the Waterfront Commission of New York Harbor held in the City of New York, State of New York, on the 28th day of September 2015.

**COMMISSIONERS PRESENT:**

Ronald Goldstock  
Michael Murphy

**AMENDED  
DETERMINATION 40**

In the Matter of Determining, Pursuant to Section 5-p of the Waterfront Commission Act, To Include Persons in the Longshoremen's Register.

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WHEREAS, the Commission is empowered by Part I, Article IX, Section 5-p(1)(a) of the Waterfront Commission Act ("Act") to determine, on its own initiative, whether to accept or suspend the acceptance of applications for inclusion in the Longshoremen's Register; and

WHEREAS, the Commission has independently recognized that there is a need for an increase in labor in the Port of New York-New Jersey and has determined to open the deep sea Longshoremen's Register on its own initiative; and

WHEREAS, Part I, Article IX, Section 5-p(2) of the Waterfront Commission Act enumerates certain standards that the Commission must observe in administering the provisions of the Act pertaining to the opening of the register, including, *inter alia*: encouraging as far as practicable the regularization of the employment of longshoremen; bringing the number of eligible longshoremen more closely into balance with the demand for longshoremen's services within the Port of New York district without reducing the number of eligible longshoremen below that necessary to meet the requirements of longshoremen in the Port of New York district; encouraging the mobility and full utilization of the existing work force of longshoremen; eliminating oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the Port of New

York district including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor; considering the effect of technological change and such other economic data and facts as are relevant to a proper determination; and protecting the public interest in the Port of New York district; and

WHEREAS, on April 24, 2015, the Commission received a request from the Recruitment Committee of the New York Shipping Association, Inc. (NYSA) and the International Longshoremen's Association, AFL-CIO (ILA)(collectively, "NYSA-ILA Recruitment Committee") to accept the applications of 25 replacement workers to fill vacancies of "V" seniority registrants who have abandoned the industry; and

WHEREAS the Commission has consulted with industry representatives of management and labor, and has determined that in addition to these 25 replacement workers, there is a need for an additional 150 longshore employees in light of current and anticipated future shortages; and

WHEREAS, pursuant to Part I, Article IX, Section 5-p(4) of the Waterfront Commission Act, where the Commission determines to accept applications for inclusion in the Longshoremen's Register on its own initiative, such acceptance shall be in such manner deemed appropriate by the Commission; and

WHEREAS, the NYSA-ILA Contract Board advised that new additions to the longshore force will be recruited, referred and selected in accordance with the terms of the collectively bargained NYSA-ILA Recruitment and Hiring Plan ("Hiring Plan"), which provides that the referral process for new hires which is designed to increase diversity and employment possibilities to qualified individuals will include three designated sources: Military Veterans (51%), ILA (25%) and NYSA/Employers (24%); and

WHEREAS, the Commission determined that the Hiring Plan is, in fact, appropriate if it is (1) implemented according to its terms; (2) not utilized as a means by which to deny particular groups of persons the right to become longshore workers; and (3) not utilized as a subterfuge to permit a referral source to exceed the percentages allotted to it by the Hiring Plan through the inclusion of its referrals in other referral pools; and

WHEREAS, the NYSA-ILA Contract Board has referred to the Commission individuals from the three designated referral sources and has requested that such individuals be prequalified as to meeting the standards for inclusion in the Longshoremen's Register; and

WHEREAS, the Commission has reviewed the Requests for Prequalification to Make Application to the Longshoremen's Register submitted by the individuals referred by the NYSA-ILA Contract Board to the Commission, and has prequalified eligible individuals;

NOW, THEREFORE, be it hereby

ORDERED, that the Commission accept applications at this time from 25 individuals recommended by the NYSA-ILA Contract Board and prequalified by the Commission for temporary inclusion in the Longshoremen's Register as longshore employees (craft 5) to replace those "V" seniority registrants (16 vets, 5 ILA, 4 NYSA) who have, as of the date of this Determination, abandoned the industry; and it is further

ORDERED, that upon receipt of 25 applications from those individuals, and upon the Commission's agreement that they have been submitted pursuant to the Hiring Plan, the deep sea register shall automatically be opened for the remaining 150 applications from individuals for temporary inclusion in the Longshore Register as longshore employees (craft 5), to be accepted in a metered sequence of 50 applications at a time, with each set of 50 being accepted in accordance with the referral percentages of the Hiring Plan, and with the register being automatically opened

for the next set of 50 applications once all of the applications in the preceding group have been accepted according to the percentages of the Hiring Plan; and it is further

ORDERED that the 150 applications shall be from those individuals recommended by the NYSA-ILA Contract Board and prequalified by the Commission for temporary inclusion in the Longshoremen's Register as longshoremen (craft 5), or from any other individuals sponsored by the NYSA-ILA Contract Board pursuant to its Hiring Plan; and it is further

ORDERED, that individuals who have been recommended by the NYSA-ILA Contract Board as longshore employees (craft 5) pursuant to this Determination will be reviewed by the Commission to determine their appropriate referral source, and to ensure that the new hires are in accordance with the goals and percentages set forth in the Hiring Plan; and it is further

ORDERED, that prior to the Commission's acceptance of any application for inclusion in the Longshoremen's Register pursuant to this Determination, a representative of the NYSA-ILA Contract Board directly involved with the administration of the Hiring Plan shall submit a letter setting forth the name and address of the recommended individual, and certifying that: (1) he or she has personal knowledge of the facts concerning the recruitment, referral, selection and sponsorship of that individual and (2) the selection of the person so sponsored was made in a fair and nondiscriminatory basis in accordance with the requirements of the laws of the United States and the States of New York and New Jersey dealing with equal employment opportunities; and it is further

ORDERED, that the submission of sponsorship letters shall be in accordance with the referral percentages set forth in the Hiring Plan, to ensure that sponsorship is not done in such a manner which disadvantages veteran referrals, and to ensure that veterans receive the same waterfront seniority and training opportunities as ILA and NYSA referrals, and

ORDERED, that such sponsorship letter shall be filed at the offices of the Waterfront Commission of New York Harbor, 39 Broadway, New York, New York 10006, and that the offering of a false sponsorship letter for filing shall be punishable under N.Y. Penal Law §175.35; and it is further

ORDERED, that those individuals temporarily included in the Longshoremen's Register as longshoremen (craft 5) pursuant to this Determination shall be assigned "V" seniority; and it is further

ORDERED, that any individual temporarily included in the Longshoremen's Register pursuant to this Determination may be offered employment opportunities for any category of employment (including but not limited to, car driver and container equipment operator) in accordance with the hiring procedures set forth in Section 7 of the *Rules and Regulations of the Waterfront Commission*, only after all longshore workers permanently included in the Longshoremen's Register have been offered employment in accordance with the hiring procedures set forth in Section 7 of the *Rules and Regulation of the Waterfront Commission*; and it is further

ORDERED, that any individual temporarily included in the Longshoremen's Register pursuant to this Determination shall not be eligible for permanent inclusion in the Longshoremen's Register until such time as he or she is approved by the Commission for addition to and placement on a regular list in accordance with, and pursuant to, Section 7 of the *Rules and Regulations of the Waterfront Commission*; and it is further

ORDERED, that any individual temporarily included in the Longshoremen's Register pursuant to this Determination shall not be offered training opportunities prior to those individuals temporarily registered as "V" seniority longshore (craft 5) registrants pursuant to prior Commission determinations; and it is further

ORDERED, that any individual included in the Longshoremen's Register pursuant to this Determination shall not be placed, and will not be approved, on a regular or company sponsored list in a position higher than any "V" seniority individual issued longshore (craft 5) registration pursuant to previous Commission determinations, unless such individual issued pursuant to this Determination has pier seniority, or was first included on a company sponsored list, at the same pier; and it is further

ORDERED, that during Prior-Day-Order (PDO) and other volunteer hiring, employment opportunities shall continue to be offered to "V" seniority longshore (craft 5) registrants in Waterfront Commission Registration Number order, on a rotational basis; and it is further

ORDERED, that the Commission may accept applications for the replacements of any of the 175 individuals issued registration pursuant to this Determination who subsequently withdraw from the industry within six months of being issued registration, by a certification submitted by the NYSA-ILA Contract Board and approved by the Commission, and upon submission to the Commission by the NYSA-ILA Contract Board a letter of sponsorship, and it is further

ORDERED, that the Commission will accept applications for inclusion in the Longshoremen's Register for individuals pursuant to this Determination until September 28, 2016.

By the Commission,

  
Meralis Lopez  
Secretary