

WATERFRONT COMMISSION OF NEW YORK HARBOR



At a meeting of the Waterfront Commission of New York Harbor held in the City of New York, State of New York, on the 14th day of July 2014.

COMMISSIONERS PRESENT:

Ronald Goldstock
Michael Murphy

DETERMINATION 37

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

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 September 9, 2013, the Contract Board of the New York Shipping Association, Inc. (NYSA) and the International Longshoremen's Association, AFL-CIO (ILA)(collectively, "NYSA-ILA Contract Board") requested the Commission, on its own initiative pursuant to Part I, Article IX, Section 5-p(1)(a) of the Waterfront Commission Act, open the deep sea Longshoremen's Register for the addition of 532 longshore employees (craft 5) and 150 checker/clerks (craft 6) to fill current shortages and to replace the expected retirements of longshore employees and checkers who will be leaving the industry in April 2014; and

WHEREAS, the ILA-NYSA Contract Board requested that new employees be brought into the industry in a metered sequence of 150 longshoremen and 25 checkers per month to allow for proper training without creating a backlog of individuals waiting to be trained; and

WHEREAS, pursuant to Determination 35, the Commission determined that the addition of 532 longshore employees and 150 checkers was appropriate in light of current shortages and expected retirements in April 2014;

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;

WHEREAS on December 3, 2013, through the issuance of Determination 35, the Commission determined, *inter alia*, to accept 150 applications from persons 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); and

WHEREAS, upon receipt of the last set of sponsorship letters from the ILA-NYSA Contract Board on March 21, 2014, the Commission deemed it appropriate to open the deep sea longshoremen’s register for acceptance of the next set of 150 longshoremen applications; and

WHEREAS on March 25, 2014, through the issuance of Determination 36, the Commission determined, *inter alia*, to accept an additional 150 applications from persons recommended by the NYSA-ILA Contract board for temporary inclusion in the Longshoremen's Register as longshore employees (craft 5) and from any other individuals sponsored by the NYSA-ILA Contract Board pursuant to its Hiring Plan; and

WHEREAS, upon receipt of the last set of sponsorship letters from the ILA-NYSA Contract Board on July 10, 2014, the Commission deemed it appropriate to open the deep sea longshoremen's register for acceptance of the next set of 150 longshoremen applications;

WHEREAS from December 3, 2013 to the date of this Determination, a total of 296 applications have been received by the Commission from those persons sponsored by the NYSA-ILA Contract Board for temporary inclusion in the Longshoremen's Register as longshore employees (craft 5); and

NOW, THEREFORE, be it hereby

ORDERED, that the Commission accept 150 applications from persons 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), and from any other individuals sponsored by the NYSA-ILA Contract Board pursuant to its Hiring Plan, and it is further

ORDERED, that such individuals who have been recommended by the NYSA-ILA Contract Board 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 any individual temporarily included in the Longshoremen's Register as a longshoreman (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 the Commission will accept applications for inclusion in the Longshoremen's Register for individuals pursuant to this Determination until July 14, 2015.

By the Commission,



Meralis Lopez
Secretary