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**APPENDIX A**

**PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2458

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WATERFRONT COMMISSION OF NEW YORK HARBOR,

*v.*

GOVERNOR OF NEW JERSEY,

*Appellant*

PRESIDENT OF THE NEW JERSEY STATE SENATE;  
SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY;  
NEW JERSEY SENATE;  
GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY,  
*Intervenors*

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No. 19-2459

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WATERFRONT COMMISSION OF NEW YORK HARBOR,

*v.*

GOVERNOR OF NEW JERSEY,

GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY;  
SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY;  
NEW JERSEY SENATE;  
PRESIDENT OF THE NEW JERSEY STATE SENATE,  
*Intervenor-Defendants/Appellants*

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On Appeal from the United States District Court  
for the District of New Jersey  
District Court No. 2-18-cv-00650  
District Judge: The Honorable Susan D. Wigenton

Argued March 3, 2020  
Filed June 5, 2020

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Before: SMITH, *Chief Judge*,  
HARDIMAN, and KRAUSE,  
*Circuit Judges*

\* \* \*

### **OPINION OF THE COURT**

SMITH, *Chief Judge*.

The States of New Jersey and New York agreed more than half a century ago to enter into the Waterfront Commission Compact. More recently, New Jersey enacted legislation to withdraw from the Compact. To prevent this unilateral termination, the Waterfront Commission sued the Governor of New Jersey in federal court. But because New Jersey is the real, substantial party in interest, its immunity should have barred the District Court from exercising subject-matter jurisdiction. Accordingly, this case must be dismissed.

#### **I**

#### **A**

By the mid-twentieth century, New York Harbor was rife with corruption, particularly in waterfront hiring practices. *See De Veau v. Braisted*, 363 U.S. 144, 147–48 (1960) (plurality opinion); *N.Y. Shipping Ass’n v. Waterfront Comm’n of N.Y. Harbor*, 835 F.3d 344,

348–49 (3d Cir. 2016). After studying the problems created by corrupt practices, representatives of New Jersey and New York prepared remedial legislation, which each State enacted in 1953. *See* N.J. Stat. Ann. § 32:23-1 *et seq.* (repealed 2018); N.Y. Unconsol. Law § 9801 *et seq.* Because the reciprocal statutes collectively function as an agreement between the States, Congress consented to the formation of the Waterfront Commission Compact, consistent with the Compacts Clause in Article I, § 10, of the U.S. Constitution.<sup>1</sup> Act of Aug. 12, 1953, Pub. L. No. 83-252, 67 Stat. 541, 541.

The Compact reformed waterfront hiring practices by, *inter alia*, introducing registration and licensing requirements and channeling hiring through designated centers. *E.g.*, N.Y. Unconsol. Law §§ 9812, 9827, 9853. To implement such reforms, the Compact also established the Waterfront Commission of New York Harbor, §§ 9807, 9810, and authorized the Commission to fund its operations by levying assessments on employers, § 9858.<sup>2</sup>

## B

As the decades passed, most of the Harbor workforce shifted from New York to New Jersey, where deepwater berths better accommodated the modern

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<sup>1</sup> Article I, § 10, cl. 3, provides in pertinent part that “[n]o State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another State.”

<sup>2</sup> Although the States could designate funding for the Commission (and the Commission may receive financial support from “federal grants or otherwise”), the Compact contemplates that the bulk of the budget would come from employer assessments. N.Y. Unconsol. Law §§ 9856, 9858. In fact, the Commission’s funding allegedly consists entirely of such assessments.

trend toward containerized shipping. Such developments redounded to the benefit of New Jersey's economy. Eventually, the New Jersey legislature came to see the Commission as "over-regulat[ing] the businesses at the port in an effort to justify its existence," which made the Commission "an impediment to future job growth and prosperity at the port." N.J. Stat. Ann. § 32:23-229.

New Jersey repeatedly tried to cabin the Commission's powers, and even to withdraw from the Compact entirely. Those efforts came to fruition at the end of Governor Chris Christie's term in office, when he signed into law Chapter 324. Act of Jan. 16, 2018, 2017 N.J. Sess. Law Serv. ch. 324 (codified at, e.g., N.J. Stat. Ann. §§ 32:23-229 to -230). That chapter immediately repealed the New Jersey legislation that had contributed to the formation of the Compact. Ch. 324, §§ 33-34 (citing N.J. Stat. Ann. § 32:23-1 *et seq.*).

But Chapter 324 set out additional steps intended to further the State's withdrawal from the Compact. It required the New Jersey Governor to notify Congress, the Governor of New York, and the Commission of the "intention to withdraw." § 2.a. That notification would initiate a ninety-day countdown to the "transfer date" when the Compact and the Commission would be "dissolved." §§ 3, 31. Thereafter, the New Jersey Division of State Police would assume the Commission's law enforcement functions on the New Jersey side of the Harbor. *See* §§ 1.d, 4.b, 34.

## C

The day after the outgoing Governor signed Chapter 324, the Commission filed suit in federal district court against New Jersey Governor Philip Murphy in

his official capacity.<sup>3</sup> The one-count Complaint sought two forms of relief: a declaration that Chapter 324 violated the Compact and the Supremacy Clause of the U.S. Constitution, and an injunction against its enforcement. The District Court permitted the New Jersey Senate, Senate President, General Assembly, and Assembly Speaker (collectively, the “Legislature”) to intervene in defense of Chapter 324.

The Commission filed a motion for a preliminary injunction to prevent the Governor from effectuating withdrawal, while the Governor and Legislature moved for dismissal. The District Court denied dismissal and granted the injunction. Nearly a year later, the Court granted the Commission’s motion for summary judgment and denied the separate motions of the Governor and the Legislature.

In these consolidated appeals, the Governor and Legislature challenge the District Court’s orders denying dismissal, granting an injunction, denying them summary judgment, and granting summary judgment to the Commission.<sup>4</sup> Briefing included amicus curiae filings by the New York Shipping Association (NYSA) in support of the Governor and Legislature, and the Columbia River Gorge Commission in support of the Waterfront Commission.

## II

The District Court had federal-question jurisdiction over this dispute because the Complaint invoked

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<sup>3</sup> The parties disagree as to whether this suit was properly filed in the Commission’s name. We need not resolve that dispute.

<sup>4</sup> We do not reach issues implicated in challenges by the Governor and Legislature to “all other orders and rulings adverse to” them. J.A. 2, 4.

the Supremacy Clause and the Compact. *See* 28 U.S.C. § 1331; *Waterfront Comm’n of N.Y. Harbor v. Elizabeth-Newark Shipping, Inc.*, 164 F.3d 177, 180 (3d Cir. 1998) (observing that Congressional consent enshrined the Compact in federal law). But that jurisdiction does not extend to any claim barred by state sovereign immunity. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98, 119–21 (1984).

In denying the Governor’s motion to dismiss, the District Court rejected the “suggest[ion]” that sovereign immunity applied to the Governor in this case. *Waterfront Comm’n of N.Y. Harbor v. Murphy*, No. 18-650 (SDW) (LDW), 2018 WL 2455927, at \*4 (D.N.J. June 1, 2018). We have plenary authority to determine whether sovereign immunity deprived the District Court of jurisdiction.<sup>5</sup> 28 U.S.C. § 1291; *In re PennEast Pipeline Co.*, 938 F.3d 96, 103 (3d Cir. 2019), *petition for cert. filed*, No. 19-1039 (Feb. 18, 2020).

### III

State sovereign immunity dates back to our Nation’s Founding, and is deeply rooted in English law. *See Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1493–94 (2019); 1 William Blackstone, *Commentaries on*

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<sup>5</sup> Although the District Court did not revisit the sovereign immunity issue at summary judgment, the Legislature and amicus NYSA pursue that issue on appeal as a jurisdictional matter. We have jurisdiction over an appeal of an order granting summary judgment to address an underlying issue going to the District Court’s jurisdiction. *See MCI Telecomm. Corp. v. Bell Atl.-Pa.*, 271 F.3d 491, 502-03 (3d Cir. 2001) (examining denial of sovereign immunity on appeal of summary judgment); *cf. Edelman v. Jordan*, 415 U.S. 651, 677-78 (1974) (observing “the Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court”).

the Laws of England 234–35 (1765). Assurances that States would remain immune from federal suit—absent their consent—were instrumental in securing sufficient support for the Constitution’s adoption. *Edelman v. Jordan*, 415 U.S. 651, 660 & n.9 (1974). Although the Eleventh Amendment expressly protects a State from federal suits by citizens of another State or country,<sup>6</sup> case law recognizes that the actual scope of immunity extends beyond the Amendment’s text. *Alden v. Maine*, 527 U.S. 706, 727–28 (1999). As a rule, “federal courts may not entertain a private person’s suit against a State” unless the State has waived its immunity or Congress has permissibly abrogated it. *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 253–54 (2011) [hereinafter *VOPA*].

An “important limit” to that rule allows federal suits against state *officials* in certain circumstances. *Id.* at 254–55. Under the *Ex parte Young* doctrine, a state official is “stripped of his official or representative character” and thereby deprived of the State’s immunity, *Ex parte Young*, 209 U.S. 123, 159–60 (1908), when he commits an “ongoing violation of federal law.” *VOPA*, 563 U.S. at 254–55 (quoting *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002)). A person who is aggrieved may therefore seek prospective relief by suing him in his official capacity. *See id.* But *Ex parte Young*’s “authority-stripping theory ... is a fiction that has been narrowly construed.” *Pennhurst*, 465 U.S. at 114 n.25. *Ex parte Young* ap-

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<sup>6</sup> “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI.

plies only to the “precise situation” of “a federal court command[ing] a state official to do nothing more than refrain from violating federal law.” *VOPA*, 563 U.S. at 255.

Consistent with this narrow construction of *Ex parte Young*, the doctrine “does not apply ‘when the state is the real, substantial party in interest.’” *Id.* (quoting *Pennhurst*, 465 U.S. at 101). Courts determine whether “relief sought nominally against an officer is in fact against the sovereign” based on whether the relief would “operate against” the sovereign. *Pennhurst*, 465 U.S. at 101 (quoting *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963) (per curiam)). In other words, we examine “the effect of the relief sought.” *Id.* at 107. If such relief would operate against the State, then we forego the fiction of *Ex parte Young* in favor of the bedrock principle of state sovereign immunity.

The Supreme Court has been “willing to police abuses of the [*Ex parte Young*] doctrine that threaten to evade sovereign immunity” because the relief would operate against the State. *VOPA*, 563 U.S. at 256. A State is generally the real, substantial party in interest if the “judgment sought would expend itself on the public treasury or domain, or interfere with public administration,” *id.* at 255 (quoting *Pennhurst*, 465 U.S. at 101 n.11) (internal quotation marks omitted), or if relief consists of “an injunction requiring the payment of funds from the State’s treasury, or an order for specific performance of a State’s contract,” *id.* at 256-57 (citation omitted) (citing *Edelman*, 415 U.S. at 666-67; *In re Ayers*, 123 U.S. 443 (1887)).<sup>7</sup>

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<sup>7</sup> Even if the relief would affect the State’s treasury, the State may not be the real, substantial party in interest if the effect on the public fisc is merely “ancillary” to permissible prospective



The Court has concluded that the sovereign was the real, substantial party in interest in suits nominally against officials where relief would effectively force the restructuring of state mental health care at the State's expense, *see Pennhurst*, 465 U.S. at 93, 101 & n.11, 107; confer money damages for a State's disability benefit processing deficiencies, *see Edelman*, 415 U.S. at 655-56, 668-69; enjoin activity that would breach a State's contract, *see In re Ayers*, 123 U.S. at 502-03, 507; require substantial, unbudgeted expansion of a federal water project, *see Dugan v. Rank*, 372 U.S. 609, 610-11, 616, 620-21 (1963);<sup>8</sup> or quiet title to, and preclude state control of, territory within the State's regulatory jurisdiction, *see Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281-82, 287-88 (1997) (permitting suit would be "as intrusive as almost any conceivable retroactive levy upon funds in its Treasury").<sup>9</sup>

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relief, as was the case in *Ex parte Young*. *Edelman*, 415 U.S. at 667-68.

<sup>8</sup> *Dugan* reached this conclusion as to claims against federal officials, but *Pennhurst* imported *Dugan's* principles into an *Ex parte Young* suit against state officials. *See Pennhurst*, 465 U.S. at 101 n.11 (citing *Dugan*, 372 U.S. at 620); *see also Gordon*, 373 U.S. at 58 (suit against federal official was effectively against United States because prospective relief would, *inter alia*, "affect the public administration of government agencies" impacted by official's action).

<sup>9</sup> By contrast, the sovereign was *not* the real, substantial party in interest in suits against state officials to prevent enforcement of a State's railroad rate regulation, *see Ex parte Young*, 209 U.S. at 129-31, 159-60; secure access to a State's mental hospital records, *see VOPA*, 563 U.S. at 252, 256-57; or, as this Court decided, alter a state-approved agreement between competitors, *see MCI Telecomm.*, 271 F.3d at 514-15.

## IV

Here, the Commission does not directly challenge the general rule of state sovereign immunity. It simply chose not to name the State of New Jersey as a defendant in its Complaint. By naming the Governor instead, the Commission attempts to bring this case within the reach of *Ex parte Young*. That attempt is unavailing. Because the relief nominally sought from the Governor in this case would operate against the State itself, New Jersey is the real, substantial party in interest.<sup>10</sup>

## A

The Commission seeks a judgment that “would expend itself on the public treasury or domain.” *VOPA*,

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<sup>10</sup> Although we agree with the Legislature on this conclusion, we do not embrace the grounds upon which it argues for such an outcome. The Legislature contends that the Governor’s enforcement duty was not sufficiently specific to permit an *Ex parte Young* action against him. Indeed, *Ex parte Young* suggests that we consider the nature of the state officer’s duty to enforce a challenged law. *See* 209 U.S. at 157, 161. But we think the Governor has sufficiently specific statutory obligations that an *Ex parte Young* claim cannot be precluded on that basis.

Chapter 324 expressly requires the Governor to notify Congress, the New York Governor, and the Commission of New Jersey’s impending withdrawal—which triggers the ninety-day countdown to consummation—and then tell the Legislature’s presiding officers that he did so. §§ 2, 31. The Complaint objects to the Governor’s “taking any action to implement or enforce” Chapter 324 and identifies the portion of the Governor’s obligations that triggers the withdrawal countdown. J.A. 55-56, 67-68. For this reason, we are not persuaded we should dismiss on grounds that the suit alleges insufficiently specific obligations to make out an *Ex parte Young* claim. *Cf. Constitution Party of Pa. v. Cortes*, 824 F.3d 386, 396 (3d Cir. 2016) (recognizing ministerial duties are amenable to *Ex parte Young* claims).

563 U.S. at 255 (quoting *Pennhurst*, 465 U.S. at 101 n.11).

The Complaint is frank in its recitation of the expected financial effects of Chapter 324 on the Commission:

[Chapter 324] would take away the Commission's primary revenue stream. ... [T]he Commission is not funded with tax dollars, and its budget derives entirely from the assessments that it collects from Port employers. Inasmuch as the vast majority of commercial Port operations occurs on the New Jersey side, [Chapter 324]—which purports to remove the Commission's authority to assess fees on New Jersey employers—will virtually eliminate the Commission's budget.

J.A. 69-70.

The Commission's dim prognosis is consistent with the text of Chapter 324. Whereas the Commission has been collecting assessments on work within New Jersey, Chapter 324 tabs those assessments for the budget of the New Jersey Division of State Police. *See* § 25.b. The result will be that those assessments will now flow into New Jersey's coffers: "Each employer shall pay to the State Treasurer, for placement within the General Fund, an assessment ... ." *Id.*; *see also* § 26.a(10) ("All funds of the division received as payment of any assessment or penalty under this section shall be deposited with the State Treasurer."). The same goes for the Commission's current liquid assets. Chapter 324 requires the Commission to deposit "the funds of the commission applicable to this State ... into the custody of the State Treasurer." § 4.b(2). At bottom, Chapter 324 redirects the Commission's present and anticipated

future funding from New Jersey employers into New Jersey's treasury.

This suit is no mere attempt to compel or forestall a state official's actions consistent with *Ex parte Young's* holding. Rather, when we compare the Commission's allegations about Chapter 324 with the chapter's text, we observe that the Commission attempts to pry back its authority to assess employers, in direct conflict with Chapter 324's provisions. On these facts, where a judgment for the Commission would divert state treasury funding and thereby operate against the State,<sup>11</sup> we conclude that New Jersey is the real, substantial party in interest.

## B

We reach the same outcome when considering this suit from a different angle: the Commission effectively seeks "specific performance of a State's contract." *VOPA*, 563 U.S. at 257.

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<sup>11</sup> Even if the effect on New Jersey's treasury can be deemed ancillary to permissible prospective relief, *see supra* note 7, this suit falls beyond *Ex parte Young's* bounds for the independent reason that it effectively seeks specific performance of the Compact.

Separately, we do not view our fact-specific holding to create tension with cases allowing suits to enjoin future taxation to proceed under *Ex parte Young*. *E.g.*, *CSX Transp., Inc. v. Bd. of Pub. Works of W. Va.*, 138 F.3d 537, 541-43 (4th Cir. 1998) (determining whether relief sought was prospective or retrospective, without commenting on whether State was real, substantial party in interest). We have no occasion to take a position on that issue. Here we are faced with a suit seeking prospective relief that unquestionably operates against the State itself: The Commission has no quibble with the assessments continuing but wants to keep the revenue coming to its own account instead of New Jersey's.

Like other interstate compacts, the Waterfront Commission Compact is a contract subject to our construction. *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 628 (2013). Our inquiry begins with the Compact's express terms, *id.*, and we need go no further. Each State "deemed" the Compact's regulation of the waterfront "an exercise of the police power of the two states for the protection of the public safety, welfare, prosperity, health, peace and living conditions of the people of the two states." N.Y. Unconsol. Law § 9805. And the Commission is empowered to "administer and enforce" the Compact's regulations. § 9810. New Jersey's contractual performance therefore consists primarily of permitting the Commission to carry out regulation of hiring on the New Jersey side of the Harbor that otherwise falls within the State's police powers.

By enacting Chapter 324, the State of New Jersey has chosen to discontinue its performance of the Compact and to resume the full exercise of its police powers on its own side of the Harbor. Yet the Complaint seeks invalidation of Chapter 324. Granting this relief would compel New Jersey to continue to abide by the terms of an agreement it has decided to renounce. Such relief tantamount to specific performance would operate against the State itself, demonstrating that New Jersey is the real, substantial party in interest.

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We are convinced that this suit seeks relief beyond the *Ex parte Young* doctrine's narrow confines by asking that we invalidate Chapter 324. Invalidation would necessarily have an adverse impact on the State of New Jersey's treasury and compel the State to perform con-

sistent with the Compact.<sup>12</sup> Because such relief would operate against New Jersey as the real, substantial party in interest, the State is entitled to the protection of sovereign immunity.<sup>13</sup> Accordingly, we lack jurisdiction to address the other threshold concerns raised by the Governor and Legislature, nor can we reach the merits of New Jersey's anticipated withdrawal from the Compact.

## V

Because this suit impinges on the State of New Jersey's sovereignty, thereby depriving the District Court of jurisdiction, we will vacate the order granting summary judgment to the Commission, reverse the order denying the Governor's motion to dismiss, and vacate that order in all other respects. The case will be remanded for dismissal.

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<sup>12</sup> Cf. *MSA Realty Corp. v. Illinois*, 990 F.2d 288, 289-90, 295 (7th Cir. 1993) (rejecting *Ex parte Young* claim that would effectively compel State to comply with its program promising return of state sales taxes to participating municipalities).

<sup>13</sup> New Jersey has not waived its immunity from this suit, nor has Congress abrogated it. See *VOPA*, 563 U.S. at 253-54.

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**APPENDIX B**

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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No. 18-650 (SDW) (LDW)

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WATERFRONT COMMISSION OF NEW YORK HARBOR,  
*Plaintiff,*

*v.*

PHILIP MURPHY, in his official capacity as  
Governor of New Jersey,  
*Defendant,*

*and*

SENATE PRESIDENT STEPHEN M. SWEENEY,  
ASSEMBLY SPEAKER CRAIG J. COUGHLIN, NEW JERSEY  
SENATE, AND NEW JERSEY GENERAL ASSEMBLY,  
*Intervenor Defendants.*

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Filed May 29, 2019

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**OPINION**

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WIGENTON, District Judge.

Before this Court are: 1) Plaintiff Waterfront Commission of New York Harbor's (the "Commission" or "Plaintiff") Motion for Summary Judgment; and 2) Defendant Philip Murphy ("Governor Murphy") and

Intervenor Defendants the New Jersey Senate, the New Jersey General Assembly, Stephen M. Sweeney, and Craig J. Coughlin’s (“Intervenor Defendants”) (collectively, “Defendants”) Cross Motions for Summary Judgment, brought pursuant to Federal Rule of Civil Procedure (“Rule”) 56. Jurisdiction is proper pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391. For the reasons stated herein, Plaintiff’s Motion for Summary Judgment is **GRANTED**, and Defendants’ Cross Motions for Summary Judgment are **DENIED**.

## I. BACKGROUND<sup>14</sup>

For decades, criminal activity and corrupt hiring practices pervaded New York and New Jersey’s waterfronts in the Port of New York (the “Port”). *See De Veau v. Braisted*, 363 U.S. 144, 147-48 (1960); *N.Y. Shipping Ass’n. Inc. v. Waterfront Comm’n of N.Y. Harbor*, 835 F.3d 344, 348-49 (3d Cir. 2016); *Nat’l Org. for Women, N.Y. Chapter v. Waterfront Comm’n of N.Y. Harbor*, 468 F. Supp. 317, 318-19 (S.D.N.Y. 1979). In November 1951, New York’s Governor Thomas E. Dewey (“Governor Dewey”) ordered “a sweeping investigation” of the Port. (ECF No. 61-5 at 211.) Pursuant to his agreement with New Jersey’s Governor Alfred E. Driscoll (“Governor Driscoll”), the New York Crime Commission (“Crime Commission”) worked closely with New Jersey’s public authorities to conduct the study. (*Id.*) Following extensive hearings and in-

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<sup>14</sup> This Court assumes the parties’ familiarity with the factual background and procedural history in this matter and will summarize only those facts relevant to the instant motions.



interviews,<sup>15</sup> in May 1953, the Crime Commission published a detailed report calling for “drastic action” and proposing that New York’s Legislature create a division of port administration headed by a governor-appointed commissioner. (*Id.* at 211, 244-45.) Shortly thereafter, the New Jersey Law Enforcement Council issued a report agreeing with and joining in the Crime Commission’s findings. (*Id.* at 119-21.)

In June 1953, New York and New Jersey passed identical statutes to enter the Waterfront Commission Compact (the “Compact”), create the Waterfront Commission (the “Commission”), and remedy the deplorable conditions in the Port. (Gov.’s Supplemental Statement of Material Facts (“SMF”) ¶¶ 46-47, ECF No. 61-2); *see also* N.J. Stat. Ann. § 32:23-1 *et seq.*<sup>16</sup>; N.Y. Unconsol. Laws § 9801 *et seq.* On August 12, 1953, the States obtained Congressional consent to enter the Compact. Waterfront Commission Compact, Pub. L. No. 83-252, 67 Stat. 541 (1953).<sup>17</sup> Notwithstanding amendments through concurrent legislation, the Compact has remained in effect for over sixty-five years.

## II. FACTUAL AND PROCEDURAL HISTORY

On January 15, 2018, New Jersey’s then-Governor Chris Christie (“Governor Christie”) signed into law

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<sup>15</sup> “The [Crime C]ommission examined ... over 700 witnesses, held about 1,000 hearings, took over 30,000 pages of testimony, conducted over 4,000 interviews.” (*Id.*)

<sup>16</sup> For the purposes of this opinion, citations to New Jersey’s statutes refer to the statutory text as published prior to the changes New Jersey approved on January 16, 2018. *See* 2017 N.J. Sess. Law Serv. ch. 324 (West 2018).

<sup>17</sup> Hereinafter, citations to the Compact refer to provisions contained in 67 Stat. 541.

Chapter 324 of the 2017 New Jersey Public Laws (the “Act”). (Pl.’s SMF ¶ 7, ECF No. 58-3.) Among other things, the Act directs New Jersey’s Governor to “notify the Congress of the United States, the Governor of the State of New York, and the [Commission], of the State of New Jersey’s intention to withdraw from ... the [C]ompact” and declares that ninety days after such notice is given, the Compact and Commission will be dissolved. 2017 N.J. Sess. Law Serv. ch. 324, §§ 2, 31 (West 2018); *see also id.* § 3 (defining “transfer date”).

On January 16, 2018, Plaintiff filed a one-count Complaint seeking a declaration that the Act is invalid, void, and without force and effect, and requesting preliminary and permanent injunctive relief, enjoining Governor Murphy, Governor Christie’s successor, from implementing or enforcing the Act.<sup>18</sup> (ECF No. 1.) On June 1, 2018, this Court granted Plaintiff’s Motion for a Preliminary Injunction and denied Defendants’ Cross Motions to Dismiss. (ECF Nos. 43-44.) On September 14, 2018, Magistrate Judge Leda Dunn Wettre granted Plaintiff leave to file a motion for summary judgment and stayed discovery during the pendency of such a motion. (ECF No. 57.) Pursuant to an extended briefing schedule, Plaintiff filed a motion for summary judgment on October 12, 2018. (ECF No. 58.) Governor Murphy and Intervenor Defendants filed their respective opposition briefs and cross motions for summary judgment on November 29, 2018. (ECF Nos. 60-61.) Plaintiff replied on December 13, 2018. (ECF No. 62.)

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<sup>18</sup> In February 2018, this Court granted the Intervenor Defendants’ motions to intervene. (ECF Nos. 18, 37.)

### III. LEGAL STANDARD

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The “mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A fact is only “material” for purposes of a summary judgment motion if a dispute over that fact “might affect the outcome of the suit under the governing law.” *Id.* at 248. A dispute about a material fact is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The dispute is not genuine if it merely involves “some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

The moving party must show that if the evidentiary material of record were reduced to admissible evidence in court, it would be insufficient to permit the nonmoving party to carry its burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once the moving party meets its initial burden, the burden then shifts to the nonmovant who must set forth specific facts showing a genuine issue for trial and may not rest upon the mere allegations, speculations, unsupported assertions or denials of its pleadings. *Shields v. Zuccarini*, 254 F.3d 476, 481 (3d Cir. 2001). “In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party’s evidence ‘is to be believed and all justifiable infer-

ences are to be drawn in his favor.’” *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004) (quoting *Anderson*, 477 U.S. at 255).

The nonmoving party “must present more than just ‘bare assertions, conclusory allegations or suspicions’ to show the existence of a genuine issue.” *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 594 (3d Cir. 2005) (quoting *Celotex Corp.*, 477 U.S. at 325). Further, the nonmoving party is required to “point to concrete evidence in the record which supports each essential element of its case.” *Black Car Assistance Corp. v. New Jersey*, 351 F. Supp. 2d 284, 286 (D.N.J. 2004). If the nonmoving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which ... [it has] the burden of proof[,]” then the moving party is entitled to judgment as a matter of law. *Celotex Corp.*, 477 U.S. at 322-23. Furthermore, in deciding the merits of a party’s motion for summary judgment, the court’s role is not to evaluate the evidence and decide the truth of the matter, but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. The nonmoving party cannot defeat summary judgment simply by asserting that certain evidence submitted by the moving party is not credible. *S.E.C. v. Antar*, 44 F. App’x 548, 554 (3d Cir. 2002).

#### IV. DISCUSSION<sup>19</sup>

##### A. Authority to Bring Suit

This Court previously addressed whether Plaintiff's General Counsel Phoebe Sorial ("Sorial") had the authority to retain outside counsel and commence this action on behalf of the Commission. (*See* June 1, 2018 Opinion at 9-12, ECF No. 43.)<sup>20</sup> At this juncture, Defendants contend that Plaintiff's Motion for Summary Judgment is premature without discovery relating to

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<sup>19</sup> To the extent that Defendants reargue points made in their Motions to Dismiss, this Court need not address those arguments in full again in deciding the parties' Motions for Summary Judgment.

<sup>20</sup> As explained in this Court's prior opinion:

Although the Compact states that the Commission "shall act only by unanimous vote of both members thereof[.]" it also provides that the Commission's powers and duties may be exercised by its officers, employees, and agents, with the exception of its "power to make rules and regulations." Compact, arts. III, ¶ 3, IV (referring to concluding paragraph). Thus, the Commission may designate its power "[t]o sue" as well as its power to "retain and employ counsel and private consultants on a contract basis or otherwise[.]" *Id.* art. IV, ¶¶ 1, 5. Furthermore, the Commission's bylaws created officer positions, such as Executive Director, Commission Counsel, and Secretary. (Bylaws, McGahey Cert. Ex. A, at II, ECF No. 21-3.) Under those same bylaws, Commission Counsel is explicitly authorized to "handle ... legal matters and perform such other duties as may be assigned to him by the Commission or the Executive Director." (Bylaws at 6-7.)

(June 1, 2018 Opinion at 10-11.)

Defendants' argument "that the Commission lack[ed] authority to file the complaint[.]" (Rule 56(d) Decl. ¶¶ 10, 36, ECF No. 61-8.) Although Intervenor Defendants adopt and incorporate by reference Governor Murphy's arguments, they also cross move for summary judgment on this very same issue. (ECF No. 60-1 at 1, 24.) This Court will first address Defendants' joint request for discovery before turning to Intervenor Defendants' cross motion for summary judgment.

*i. Ripeness for Summary Judgment*

Rule 56(d) delineates a party's recourse if additional discovery is needed to oppose summary judgment. *See Pa., Dep't of Pub. Welfare v. Sebelius*, 674 F.3d 139, 157 (3d Cir. 2012) (citing *Dowling v. City of Phila.*, 855 F. 2d 136, 139 (3d Cir. 1988)). The rule provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may ... allow time to obtain affidavits or declarations or to take discovery[.]" Fed. R. Civ. P. 56(d)(2). The declarant must specify "what particular information ... is sought; how, if disclosed, it would preclude summary judgment; and why it has not been previously obtained." *Shelton v. Bledsoe*, 775 F.3d 554, 568 (3d Cir. 2015) (quoting *Dowling*, 855 F.2d at 140). Though Rule 56(d) requests are often granted "as a matter of course," they may be denied when "the discovery request[s] pertain[] to facts that are not material to the moving party's entitlement to judgment as a matter of law." *Id.* (citations omitted); *see also In re Taylor*, 548 F. App'x 822, 825 (3d Cir. 2013) ("Where information sought is not relevant to the court's inquiry, a Rule 56(d) motion for discovery may be denied." (citing *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 230 (3d Cir. 1987))).

Here, Defendants have failed to set forth a genuine need for the discovery delineated in their Rule 56(d) declaration. Investigating the Commission’s “procedures for retaining outside counsel[,]” cross examining witnesses about customs and practices, and determining whether “Commission staff have [ ]ever ... filed affirmative litigation of this nature and import without prior notice to the Commissioners,” (Rule 56(d) Decl. ¶¶ 26-27, 31), is immaterial. *In re Taylor*, 548 F. App’x at 825 (“In regard[] to a summary judgment motion, a fact is material if proof of its existence or nonexistence ‘might affect the outcome of the suit.’” (quoting *Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 667 F.3d 408, 412 (3d Cir. 2012))). This matter is ripe for adjudication on summary judgment because it presents “pure questions of law[.]” *See Hollus v. Amtrak Ne. Corridor*, 937 F. Supp. 1110, 1113 (D.N.J. 1996). Therefore, Defendants’ request to stay or deny Plaintiff’s Motion for Summary Judgment pursuant to Rule 56(d) is denied.

*ii. Cross Motion for Summary Judgment*

As discussed in detail in this Court’s prior opinion, Sorial had the authority to commence this action. (*See* June 1, 2018 Opinion at 9-11.) In sum, the Commission has numerous powers and duties that can be delegated to its officers, including the power “[t]o sue” and “retain and employ counsel and private consultants on a contract basis or otherwise[.]” Compact, art. IV., ¶¶ 1, 5. Pursuant to the Commission’s bylaws (“Bylaws”), Commission Counsel shall, *inter alia*, “handle other legal matters and perform such other duties as may be assigned to [her] by the Commission or the Executive Director.” (ECF No. 58-2 at 66-67.) Furthermore, the Commission’s Executive Director Walter Arsenault has affirmed that he “delegated to General Counsel the

power to bring legal actions and to defend lawsuits filed against the Commission.” (Arsenault Decl. ¶ 5, ECF No. 58-2.) Based on the plain text of the Compact, the Bylaws, as well as the certifications and declarations annexed to the parties’ briefs, this Court finds that Sorial had the capacity to commence the instant action. It is further noted that it would be inappropriate for this Court to constrain the types of suits Commission Counsel may bring or handle on behalf of the Commission given the Commission’s underlying, general power “[t]o sue and be sued.”<sup>21</sup> See Compact art. IV, ¶ 1.

Even if the Commission was required to explicitly authorize the commencement of this suit, it is undisputed that one of the two commissioners has recused himself from the matter entirely, (Pl.’s SMF ¶ 21), and the other has submitted a declaration stating that he “fully authorize[s] and ratifies” Sorial’s actions, (Comm’r Goldstock Decl. ¶ 11, ECF No. 58-2). Intervenor Defendants rely on *Texas v. New Mexico*, 462 U.S. 554 (1983), and *F.T.C. v. Flothill Products, Inc.*, 389 U.S. 179 (1967), in support of their argument that Sorial needed approval from a quorum constituting both commissioners. However, *Texas v. New Mexico* did not opine on the minimum number of votes needed if one

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<sup>21</sup> This matter is distinguishable from instances where boards lacked broad authority to sue or be sued. See, e.g., *Ass’n of Bds. of Visitors of N.Y. State Facilities for Mentally Disabled v. Prevost*, 471 N.Y.S. 2d 342 (N.Y. App. Div. 1983) (explaining that the petitioner lacked the capacity to institute the legal proceeding because it only had the power to investigate charges and subpoena witnesses); *Pooler v. Pub. Serv. Comm’n*, 397 N.Y.S. 2d 425 (N.Y. App. Div. 1977) (finding that the Executive Director of the State Consumer Protection Board did not have the capacity to commence a proceeding because “the Legislature has not seen fit to confer authority on [the Executive Director] or the [Consumer Protection Board] to sue or be sued”).



member of a two-member commissioner recuses himself from voting altogether. Rather, it addressed whether the Supreme Court could order a non-voting member of the Pecos River Commission to vote or otherwise empower a third-party to serve as a tiebreaker in contravention of the Pecos River Compact. 462 U.S. at 564-65. Furthermore, though the Supreme Court in *F.T.C. v. Flothill Products, Inc.* held that a federal agency was “not inhibited” from following the common-law rule of a quorum, 389 U.S. at 185, it did not “*mandate* a quorum rule for the SEC or any other agency[.]” *S.E.C. v. Feminella*, 947 F. Supp. 722, 726 (S.D.N.Y. 1996).

This Court will not construe Commissioner Michael Murphy’s abstention from the matter as the functional equivalent of his having disapproved of Sorial’s actions. *Cf. Arnold v. E. Air Lines, Inc.*, 712 F.2d 899, 903-04 (4th Cir. 1983) (reasoning that where a circuit court judge had recused himself from a matter, “[i]t would obviously contradict the purpose of disqualification to treat the situation precisely as though the disqualified judge had voted ‘No[.]’”). Because Commissioner Ronald Goldstock is the only commissioner who is willing or able to express his approval or disapproval of this action, this Court is persuaded that his approval and ratification are sufficient to authorize this lawsuit.

Based on the foregoing, Intervenor Defendants’ cross motion for summary judgment, as it relates to the Commission’s authority to commence this action, is denied.

**B. Unilateral Withdrawal**<sup>22</sup>

The Court will next address whether the Act’s directives to unilaterally withdraw the State of New Jersey from the Compact conflict with the Compact itself. “Interstate compacts are construed as contracts under the principles of contract law.” *Tarrant Reg’l Water Dist. v. Herrmann*, 569 U.S. 614, 628 (2013) (citing *Texas v. New Mexico*, 482 U.S. 124, 128 (1987)). “As with any contract, the analysis begins with the express terms of the Compact as the best indication of the intent of the parties ... [b]ut, if the text of the Compact is ambiguous, we must then turn to other interpretive tools to shed light on the intent of the Compact’s drafters.” *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm’n*, 894 F.3d 509, 527 (3d Cir. 2018) (citations and quotation marks omitted).

*i. Express Terms of the Compact*

Though the Compact does not have an express provision addressing how a state may withdraw from or terminate it, it is not completely silent as to those matters. For example, upon consenting to and enacting the Compact, Congress expressly reserved “[t]he right to alter, amend, or repeal” it. Compact § 2. Thus, the Compact could be terminated through an act of Con-

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<sup>22</sup> In his August 24, 2018 letter to the Court, Governor Murphy’s counsel argued that discovery as to legislative history was needed to resolve whether and how New York and New Jersey intended to handle termination or withdrawal from the Compact. (Aug. 24, 2018 Letter at 2, ECF No. 54.) However, this issue was not raised again in Governor Murphy’s Rule 56(d) declaration. Instead, Defendants now cross move for summary judgment on New Jersey’s right to unilaterally withdraw from the Compact.

gress.<sup>23</sup> Additionally, Article XVI of the Compact provides: “Amendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.” Compact, art. XVI, ¶ 1. Because this concurrency requirement applies to alterations to the Compact, it applies *a fortiori* to New Jersey’s withdrawal from and termination of the Compact, the most substantial types of change.

To date, New York’s Legislature has not enacted concurring legislation to ratify the Act. (Pl.’s SMF ¶ 10.) Regardless of this fact, the Act not only withdraws New Jersey from the Compact, it transfers the “powers, rights, assets, and duties of the [C]ommission within [New Jersey]” to New Jersey’s Division of State Police (the “Division”). 2017 N.J. Sess. Law Serv. ch. 324, § 4(b)(1) (West 2018). To effectuate these objectives, the statute directs the Commission to make “information concerning its property and assets, contracts, operations, and finances within New Jersey” available to the Division, and orders the Commission’s officers to deliver funds of the Commission that are applicable to the State of New Jersey to the State’s Treasurer. *Id.* §§ 4(a), 4(b)(2). It is particularly troubling that under the Act, New Jersey seeks to distribute and assume jointly held assets and properties. *See Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and in the judgment)

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<sup>23</sup> Though Defendants argue that this provision is not part of the Compact because it was not proposed by either New York or New Jersey, the Supreme Court has explained that states that act under a compact “assume the conditions that Congress under the Constitution attached.” *Petty v. Tenn.-Mo. Bridge Comm’n*, 359 U.S. 275, 281-82 (1959).

(explaining that once States enter a compact to create an interstate agency, “no one State has complete dominion over property, owned and proprietary activities operated, by such an agency”).

“Allowing one state to dictate the manner and terms of the Commission’s dissolution, and the subsequent distribution of the agency’s assets, runs counter to the requirement that any change to the Compact occur through concurring legislation.” (June 1, 2018 Opinion at 17.) Because the Act’s unilateral directives unambiguously conflict with the Compact’s concurrency requirement, Plaintiff’s motion for summary judgment is granted and Defendants’ cross motions for summary judgment are denied.

*ii. Compact Drafters’ Intent*

Even if the Compact was ambiguous as to withdrawal and termination, this Court would reach the same outcome. Where a compact is ambiguous, courts have looked to “other interpretive tools to shed light on the intent of the Compact’s drafters[,]” such as legislative history, the parties’ course of performance, customary practices employed in other interstate compacts, and the “background notion ‘that States do not easily cede their sovereign powers[.]’” *Wayne Land & Mineral Grp.*, 894 F.3d at 527 (quoting *Tarrant Reg’l Water Dist.*, 569 U.S. at 631). Those sources lead this Court to the conclusion that the Compact drafters did not intend to permit the type of unilateral withdrawal and termination prescribed under the Act.

a. Legislative History

In May 1953, the Crime Commission recommended that New York enact two statutes, “one setting up a Division of Port Administration; the other providing

that all labor organizations must meet certain minimum standards.” (ECF No. 61-4 at 86.) In June 1953, Governor Dewey held public hearings to “provide [an] opportunity for representative groups who have other proposals to present them publicly.” (*Id.* at 74, 79.) During those hearings, Special Counsel to the Crime Commission Theodore Kiendl (“Kiendl”) responded to concerns that there was no time limitation to the proposed remedial measures and that the State of New York would regulate the Port indefinitely.<sup>24</sup> Kiendl explained that the proposed legislation included an annual reporting requirement that “was intended to give the Legislature an opportunity to end this legislation.” (*Id.* at 238.) A similar provision was later included in the Compact.<sup>25</sup>

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<sup>24</sup> Father John M. Corridan of the Xavier Institute of Industrial Relations asked whether the Crime Commission’s recommendations could be enacted “as a trial experiment for three years, subject to review at the end of that period.” (*Id.* at 203.) James Danahy, the General Manager of the West Side Association of Commerce, similarly suggested “that any law which is submitted definitely include a provision that the setting up of these agencies ... definitely end at three years unless the Legislature, in its judgment in the meantime determines that it should be prolonged further.” (*Id.* at 237.)

<sup>25</sup> Specifically, it provides that

annual reports [to the Governors and Legislatures of both States] shall state the [C]ommission’s finding and determination as to whether the public necessity still exists for (a) the continued registration of longshoremen, (b) the continued licensing of any occupation or employment required to be licensed hereunder and (c) the continued public operation of the employment information centers provided for in Article XII[.]

Defendants argue that the legislative history behind the Compact’s annual reporting requirement shows that the drafters never intended for the Commission to permanently regulate the Port. As this Court previously noted, “[t]here is no dispute that the Compact could be terminated if it outlived its usefulness. Rather, the disagreement is over the unilateral manner and method by which New Jersey seeks to end the Compact.” (June 1, 2018 Opinion at 18.)

In that regard, the legislative record underscores the importance of New York and New Jersey’s cooperative efforts. Beginning in 1951, New York’s Crime Commission and New Jersey’s Law Enforcement Council worked together to investigate the Port’s conditions. (ECF No. 61-5 at 65.) During the public hearings in 1953, speakers stressed the need for parallel or uniform legislation to truly remedy the Port’s problems.<sup>26</sup> The Commissioner of the Department of Marine and Aviation of the City of New York, Edward F. Cavanagh, Jr., referred to the Port as “one homogeneous entity,” and explained that “divid[ing] it into two

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Compact, art. IV, ¶ 13.

<sup>26</sup> Robert W. Dowling, the President of the Citizens Budget Commission stated: “We earnestly urge that the State of New Jersey be asked to cooperate fully in similar action.” (ECF No. 61-4 at 234.) Because the proposed agency in New York would have no control over port operations in New Jersey, James A. Farrell, Jr., the Chairman of the Committee on Harbors & Shipping of the Chamber of Commerce of the State of New York, emphasized “the desirability of legislation in New Jersey establishing a parallel [entity] ... in that state with duties identical to those assigned to the New York division.” (*Id.* at 217.) However, Frank S. Hogan, the District Attorney of New York County, expressed that “[e]ven if New Jersey enacts a statute identical to that of New York, it would seem that two commissions are less likely to achieve uniformity than would one.” (*Id.* at 151.)

parts, as between the State of New York and the State of New Jersey, would not be the efficient, practical, final, lasting recommendation that we could join in.” (ECF No. 61-4 at 279-80.) Similarly, Governor Dewey stated:

We intend to cooperate with the State of New Jersey. ... [I]t is my earnest hope that whatever is done will be done on a parallel basis, and I for one shall not recommend anything to the Legislature until there have been extensive conferences between the representatives of the two states to ascertain whether we cannot work out some method of joint action if no better solution comes.

(*Id.* at 90.)

Finally, when the Compact was presented to Congress, Governor Driscoll, described the Compact as a “concerted drive against organized crime in the North Jersey-New York metropolitan area.” (ECF No. 61-5 at 65.) He stated:

It was apparent that we were dealing with a single shipping industry operating in a single harbor bisected artificially by the accident of a historical boundary line between the two States. It was plain from the beginning that the only real solution would depend upon the creation of a single bistate agency to deal with this indivisible problem.

(*Id.*) Furthermore, he referred to the program as the “equal responsibility of both States” even though there were a disproportionate number of longshoremen em-

ployed on New York's side of the Port at the time. (*Id.*)<sup>27</sup>

These statements reflect the Compact drafters' understanding that the Port is best served through bi-state cooperation. Thus, the legislative history suggests that the two States would confer to determine whether their endeavor was no longer necessary.

b. Course of Performance

The remedial measures initially proposed in 1953 were described as "temporary." (ECF No. 61-4 at 154.) In a letter to New York's legislature, Governor Dewey wrote that it was his "earnest hope ... that the Waterfront Commission need not be permanent and that government regulation may be terminated as quickly as possible after gangsters and hoodlums have been removed from the [P]ort and decency restored." (*Id.* at 355.) These aspirational statements, however, have been rendered somewhat meaningless because in practice, the Compact has remained in effect for over sixty-five years.

Since 1953, New York and New Jersey have worked together to effectuate any changes to the Compact.<sup>28</sup> It was only in recent years that New Jersey's

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<sup>27</sup> This Court notes that according to the Act, presently, "more than 82 percent of the cargo and 82 percent of the work hours are on the New Jersey side of the port." 2017 N.J. Sess. Law Serv. ch. 324, § 1 (West 2018).

<sup>28</sup> *See, e.g.*, 2007 N.J. Laws 2090; 2007 N.Y. Laws 3061; 1999 N.J. Laws 1286; 1999 N.Y. Laws 3016; 1988 N.J. Laws 64; 1988 N.Y. Laws 2096; 1987 N.J. Laws 1382; 1987 N.Y. Laws 2484; 1982 N.J. Laws 76; 1982 N.Y. Laws 1376; 1969 N.J. Laws 406; 1969 N.Y. Laws 2319; 1966 N.J. Laws 51; 1966 N.Y. Laws 701; 1956 N.J. Laws 57; 1956 N.Y. Laws 1160; 1954 N.J. Laws 64; 1954 N.Y. Laws 745.



Legislature began taking steps to either withdraw from or repeal the Compact. For example, on March 9, 2015, it passed a bill that directed the governor to withdraw New Jersey from the Compact. (Pl.’s SMF ¶ 11); *see also* S.B. No. 2277, 216th Sess. (N.J. 2014). In issuing a conditional veto, Governor Christie stated: “I am advised that federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress. As a result, it is premature for New Jersey to contemplate withdrawing from the ... Commission until New York considers similar legislation.” (Pl.’s SMF ¶ 11.) Furthermore,

in 2015, 2016, and 2018, resolutions were introduced to New Jersey’s State Assembly to request that the United States Congress repeal the Compact. A.C.R. 90, 218th Leg. (N.J. 2018); A.C.R. 68, 217th Leg. (N.J. 2016); A.C.R. 217, 216th Leg. (N.J. 2015); *see also* S.C.R. 168, 216th Leg. (N.J. 2015) (concerning identical resolution introduced to New Jersey’s State Senate in 2015). In each instance, the resolutions did not reach a house vote. *Id.* If it was understood that a compacting state had the option to withdraw at any time, it begs the question why legislators would bother to introduce these resolutions year after year.

(June 1, 2018 Opinion at 20 n.18.) Ultimately, the parties’ course of performance over the past sixty-five years supports the understanding that any change to the Compact, including withdrawal, requires concurrent legislation.

c. Customary Practices

“Looking to the customary practices employed in other interstate compacts also helps us to ascertain the

intent of the parties to this Compact.” See *Tarrant Reg’l Water Dist.*, 569 U.S. at 633 (citing *Alabama v. North Carolina*, 560 U.S. 330 (2010); *Oklahoma v. New Mexico*, 501 U.S. 221, 235 n.5 (1991); *Texas v. New Mexico*, 462 U.S. 554, 565 (1983)). Generally, one distinguishing feature of a compact is that a state is not “free to modify or repeal its law unilaterally.” See *Ne. Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985) (analyzing classic indicia of compacts to determine whether Massachusetts and Connecticut’s statutes constituted a *de facto* compact). Compacts that intend to deviate from this norm have express provisions that permit withdrawal through notice or legislative action.<sup>29</sup>

The absence of comparable language in the Compact is significant and weighs against Defendants’ in-

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<sup>29</sup> See, e.g., Act of June 1, 1977, Pub. L. No. 95-35, 91 Stat. 175, 176 (1977) (“This compact shall continue in force and remain binding upon each party State until the Legislature or Governor of each or either State takes action to withdraw therefrom[.]”); Interstate Compact on Mental Health Act, Pub. L. No. 92-280, § 2, 86 Stat. 126, 130 (1972) (“A state party to this compact may withdraw therefrom by enacting a statute repealing the same.”); Act of Sept. 15, 1960, Pub. L. No. 86-794, 74 Stat. 1031, 1035 (1960) (“Any signatory may withdraw from the compact upon one year’s written notice to that effect to the other signatories.”); Act of Aug. 24, 1954, Pub. L. No. 83-642, 68 Stat. 783, 785 (1954) (“This compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state takes action to withdraw therefrom.”); Act of Aug. 8, 1953, Pub. L. No. 83-226, 67 Stat. 490, 493 (1953) (“Any state or territory may at any time withdraw from this Compact by means of appropriate legislation to that end.”); H.R.J. Res. 445, 75th Cong., 50 Stat. 719, 721 (1937) (“Either the state of New York or the state of New Jersey may[,] ... without the concurrence of the other state, withdraw, ... any of the functions, jurisdiction, rights, powers and duties transferred to the commission[.]”).

interpretation that the States understood that they could withdraw unilaterally.<sup>30</sup> *See, e.g., Tarrant Reg'l Water Dist.*, 569 U.S. at 633-34 (finding that because many compacts unambiguously permit signatory States to cross each other's borders to fulfill obligations under the compact, the absence of such a provision in the Red River Compact "strongly suggests that the cross-border rights were never intended to be part of the States' agreement"). Additionally, this Court is not aware of, and Defendants have not cited to, any instance in which a single state has dictated the terms and conditions of its withdrawal from a compact without relying on a permissive provision.

d. Sovereign Powers

In analyzing the Compact drafters' intent, this Court remains cognizant that States do not easily cede

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<sup>30</sup> Though Defendants cite to four instances where unanimity is required to terminate a compact, those examples are fewer in number and otherwise inapposite. For example, though termed a "compact," the Southern Regional Education Compact never obtained Congressional approval. *See Ark. Code Ann. § 6-4-101, art. VIII* (West 2018) (explaining that the multi-state agreement "may be terminated at any time by unanimous action of the states"); *see also* Claire Carothers, *United We Stand: The Interstate Compact as a Tool for Effecting Climate Change*, 41 *Ga. L. Rev.* 229, 245 n. 124-25 (2006); Frederick L. Zimmermann & Mitchell Wendell, *The Law and Use of Interstate Compacts* 21 (1976) ("[I]t was widely contended that the agreement was not of such a character as to require Congressional consent since the states are constitutionally in possession of power over education and the agreement would not affect the balance of power within the federal system."). Defendants exclusively rely upon multi-state compacts, (Gov.'s Opp'n Br. at 25, ECF 61-1), one of which requires an act of Congress or unanimity among the parties for termination, but which also permits states to withdraw unilaterally. *See Northeast Interstate Low-Level Radioactive Waste Management Compact*, Pub. L. No. 99-240, 99 Stat. 1909, 1922 (1986).

their sovereign powers. *See Wayne Land & Mineral Grp.*, 894 F.3d at 527. However, this notion is not dispositive and a review of the Compact's legislative history, the parties' course of performance through the actions of their executive and legislative bodies, and the customary practices employed in other interstate compacts, strongly supports a finding that the drafters did not intend to permit a State's unilateral withdrawal or termination.

## V. CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Summary Judgment is **GRANTED**, and Defendants' Cross Motions for Summary Judgment are **DENIED**. An appropriate Order follows.

*s/ Susan D. Wigenton* \_\_\_\_\_

**SUSAN D. WIGENTON**

**UNITED STATES DISTRICT JUDGE**

Orig: Clerk  
cc: Leda Dunn Wettre, U.S.M.J.  
Parties

**APPENDIX C**

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

\_\_\_\_\_  
No. 18-650 (SDW) (LDW)  
\_\_\_\_\_

WATERFRONT COMMISSION OF NEW YORK HARBOR,  
*Plaintiff,*

*v.*

PHILIP MURPHY, in his official capacity as  
Governor of New Jersey,  
*Defendant,*

*and*

SENATE PRESIDENT STEPHEN M. SWEENEY,  
ASSEMBLY SPEAKER CRAIG J. COUGHLIN, NEW JERSEY  
SENATE, AND NEW JERSEY GENERAL ASSEMBLY,  
*Intervenor Defendants.*

\_\_\_\_\_  
June 1, 2018  
\_\_\_\_\_

**OPINION**

WIGENTON, District Judge.

Before this Court are Plaintiff Waterfront Commission of New York Harbor's (the "Commission" or "Plaintiff") Motion for a Preliminary Injunction pursuant to Federal Rule of Civil Procedure ("Rule") 65, as well as Defendant Philip Murphy ("Governor Murphy")

and Intervenor Defendants Stephen M. Sweeney and Craig J. Coughlin’s (collectively, “Defendants”) Cross Motions to Dismiss Plaintiff’s Complaint pursuant to Rules 9(a) and 12(b)(6). Jurisdiction is proper pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391. For the reasons stated herein, Plaintiff’s Motion for a Preliminary Injunction is **GRANTED**, and Defendants’ Cross Motions to Dismiss are **DENIED**.

## I. BACKGROUND

In 1953, New York and New Jersey entered into the Waterfront Commission Compact (the “Compact”) following various government investigations into pervasive criminal activity and widespread corruption in the Port of New York (“Port”). *See De Veau v. Braisted*, 363 U.S. 144, 147-50 (1960) (discussing the Compact’s history); *Nat’l Org. for Women, N.Y. Chapter v. Waterfront Comm’n of N.Y. Harbor*, 468 F. Supp. 317, 318-19 (S.D.N.Y. 1979). To create the bi-state agreement, the states passed identical statutes in their respective legislatures; and as required under the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3, on August 13, 1953, they obtained Congressional consent to enter the Compact. Waterfront Commission Compact, Pub. L. No. 83-252, 67 Stat. 541 (1953)<sup>31</sup>; N.J. Stat. Ann. § 32:23-1 *et seq.*<sup>32</sup>; N.Y. Unconsol. Laws § 9801 *et seq.*

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<sup>31</sup> Hereinafter, citations to the Compact refer to provisions contained in 67 Stat. 541.

<sup>32</sup> For the purposes of this opinion, citations to New Jersey’s statutes refer to the statutory text as published prior to the changes New Jersey approved on January 16, 2018. *See* 2017 N.J. Sess. Law Serv. ch. 324 (West 2018).

Pursuant to the Compact, the States of New Jersey and New York declare

that the conditions under which waterfront labor is employed within the Port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment . . . .

Compact, art. I, ¶ 1. As part of the bi-state endeavor, a two-member Commission was created as a “body corporate and politic, [and] an instrumentality of the States of New York and New Jersey.” *Id.* art. III, ¶¶ 1-2. The agency was vested with an array of tools to combat corruption on the waterfront. *Id.* art. IV; N.J. Stat. Ann. § 32:23-10 (general powers); N.Y. Unconsol. Laws § 9810 (general powers and duties). Pursuant to these powers, the Commission has “undertaken scores of investigations that have led to the conviction of hundreds of individuals who were conducting illicit activities in the Port, including, but not limited to, drug trafficking, theft, racketeering, illegal gambling, loansharking, and murder[.]” (Compl. ¶ 26a, ECF No. 1.) In ad-

dition to investigating criminal activity, the Commission “has also worked to expose the continued corrupt and discriminatory hiring practices on the waterfront and to implement measures to address them.” (*Id.* ¶ 27.)

The Compact contains a concurrency requirement, which provides that “[a]mendments and supplements to [the C]ompact ... may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.” Compact, art. XVI, ¶ 1. Pursuant to this provision, the Compact has been amended numerous times through concurrent legislation.<sup>33</sup> In recent years, this concurrency requirement has been a hindrance to New Jersey’s legislature. (*See* Sweeney Decl. ¶¶ 12-13, ECF No. 22-2.) For instance, in 2007, New Jersey passed a bill to amend Section 5-p of the Compact and thereby divest the Commission of its discretion in opening or closing the longshoremen’s register.<sup>34</sup> (*Sweeney* Decl. ¶ 12); *see also* 2007 N.J. Laws 1289. In 2017, New Jersey enacted a bill that would allow New Jersey or New York’s governors to veto actions taken

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<sup>33</sup> *See, e.g.*, 2007 N.J. Laws 2090; 2007 N.Y. Laws 3061; 1999 N.J. Laws 1286; 1999 N.Y. Laws 3016; 1988 N.J. Laws 64; 1988 N.Y. Laws 2096; 1987 N.J. Laws 1382; 1987 N.Y. Laws 2484; 1982 N.J. Laws 76; 1982 N.Y. Laws 1376; 1969 N.J. Laws 406; 1969 N.Y. Laws 2319; 1966 N.J. Laws 51; 1966 N.Y. Laws 701; 1956 N.J. Laws 57; 1956 N.Y. Laws 1160; 1954 N.J. Laws 64; 1954 N.Y. Laws 745.

<sup>34</sup> One of the Commission’s duties is to maintain the longshoremen’s register, which is a list of all individuals qualified to work as longshoremen. N.J. Stat. Ann. § 32:23-27. Under the Compact, no person can work as a longshoreman within the Port district unless his name is on the longshoremen’s register, and no person can employ someone to work as a longshoreman in the district unless that worker is registered. *Id.*



at Commission meetings. (Sweeney Decl. ¶ 12); *see also* 2017 N.J. Sess. Law Serv. ch. 201, § 3(e) (West 2018). Neither of these bills amended the Compact because New York did not enact concurring legislation.

## II. FACTUAL AND PROCEDURAL HISTORY

On December 7, 2017 and January 8, 2018, New Jersey’s Senate and General Assembly, respectively, passed New Jersey Senate Bill No. 3502 (the “Bill”), which among other things, withdraws the State of New Jersey from the Compact and dissolves the Commission. (Compl. ¶¶ 1, 43.) As enacted, the Bill directs New Jersey’s Governor “to notify the Congress of the United States, the Governor of the State of New York, and the [Commission], of the State of New Jersey’s intention to withdraw from ... the [C]ompact[.]” 2017 N.J. Sess. Law Serv. ch. 324, § 2 (West 2018). On January 15, 2018, New Jersey’s then-Governor Chris Christie (“Governor Christie”) signed the Bill into law. (Compl. ¶ 43.)

On January 16, 2018, Plaintiff filed a one-count Complaint seeking a declaration that the Bill is invalid, void, and without force and effect, and requesting preliminary and permanent injunctive relief, enjoining Governor Murphy from implementing or enforcing the Bill.<sup>35</sup> (*See generally id.*) On January 17, 2018, Plaintiff filed a Motion for an Order to Show Cause and a Preliminary Injunction. (ECF No. 8.) On January 18, 2018,

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<sup>35</sup> Governor Christie signed the Bill on his last full day in office. Susan K. Livio & Brent Johnson, *Christie Era Ends with a Flurry of Bills to Sign: Outdoing Governor Approves Regulations for Drones, Disbands SPCA & More*, Times (Trenton, N.J.), Jan. 16, 2018, 2018 WLNR 1540678. As such, Plaintiffs are suing his successor, Governor Murphy. (*See generally* Compl.)

this Court ordered Governor Murphy to appear on January 25, 2018 and show cause why he should not be enjoined from implementing or enforcing the Bill. (ECF No. 9.) On January 23, 2018, the parties stipulated to an extended briefing schedule, and the show-cause hearing was adjourned to February 22, 2018. (ECF No. 16.) In the interim, on February 1, 2018, this Court granted New Jersey Senate President Stephen M. Sweeney (“Sweeney”) and Speaker of the New Jersey General Assembly Craig J. Coughlin’s (“Coughlin”) Motion to Intervene. (ECF Nos. 17-18.) On February 6, 2018, Governor Murphy opposed Plaintiff’s Motion for a Preliminary Injunction, and cross moved to dismiss the Complaint. (ECF No. 21.) On the same day, Sweeney and Coughlin also opposed Plaintiff’s motion, and cross moved to dismiss.<sup>36</sup> (ECF No. 22.) On February 13, 2018, Plaintiff replied in support of its motion and opposed Defendants’ cross motions. (ECF No. 29.) Governor Murphy replied in support of his Cross Motion to Dismiss on February 16, 2018. (ECF No. 30.) On February 21, 2018, New Jersey’s Senate and General Assembly moved to intervene. (ECF No. 35.) On February 22, 2018, after the show-cause hearing was conducted, this Court reserved decision on the parties’ motions with the exception of the legislative bodies’ Motion to Intervene, which was granted. (ECF Nos. 37, 39.)

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<sup>36</sup> Sweeney and Coughlin filed a letter brief and a declaration enumerating their arguments in addition to adopting and incorporating by reference the facts and legal arguments set forth in Governor Murphy’s moving brief. (ECF No. 22.)

### III. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) may present either a facial or factual attack to a court's subject matter jurisdiction. "A facial attack 'contests the sufficiency of the complaint because of a defect on its face,' whereas a factual attack 'asserts that the factual underpinnings of the basis for jurisdiction fail to comport with the jurisdictional prerequisites.'" *Halabi v. Fed. Nat'l Mortg. Ass'n*, No. 17-1712, 2018 WL 706483, at \*2 (D.N.J. Feb. 5, 2018) (internal citations omitted). When reviewing facial attacks, "the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff." *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014) (citing *In re Schering Plough Corp. Intron*, 678 F.3d 235, 243 (3d Cir. 2012)). In contrast, with a factual attack, "a court may weigh and 'consider evidence outside the pleadings.'" *Id.* (citing *Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000)).

As with facial attacks under Rule 12(b)(1), when considering a motion to dismiss under Rule 12(b)(6), the Court must "constru[e] the alleged facts in favor of the nonmoving party." *Id.* In so doing, the court must "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (external citation omitted). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see also *Fowler v. UPMC Shadyside*, 578 F.3d 203 (3d Cir. 2009) (discussing the *Iqbal* standard). Additional-

ly, Rule 8(a)(2) requires a complaint to set forth a “short and plain statement of the claim showing that a pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Factual allegations must be enough to raise a right to relief above the speculative level[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted); *see also Phillips*, 515 F.3d at 231 (stating that Rule 8 “requires a ‘showing,’ rather than a blanket assertion, of an entitlement to relief”).

#### IV. DISCUSSION

##### A. Cross Motions to Dismiss

Before reaching Plaintiff’s request for injunctive relief, this Court will first address Defendants’ arguments in support of their cross motions to dismiss.

###### *i. Standing*

A federal court’s jurisdiction under Article III of the United States Constitution is limited to cases and controversies “which are appropriately resolved through the judicial process.” *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 278 (3d Cir. 2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “A motion to dismiss for want of standing is ... properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter.” *Aichele*, 757 F.3d at 357 (3d Cir. 2014) (citing *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007)).

A plaintiff has standing if it can show that:

- (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and

(3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). In the context of a motion to dismiss, “general factual allegations of injury resulting from the defendant’s conduct may suffice[.]” *Blunt*, 767 F.3d at 279 (quoting *Lujan*, 504 U.S. at 561).

Here, Plaintiff asserts that it has standing because it has an interest in “prevent[ing] its extinction.” (Pl.’s Reply Br. at 14, ECF No. 29.) The Bill declares that the Compact and Commission will be dissolved ninety days after the Governor notifies Congress, New York, and the Commission of New Jersey’s intention to withdraw from the Compact. 2017 N.J. Sess. Law Serv. ch. 324, § 3 (West 2018) (defining “transfer date”); *id.* § 31 (dissolving the Compact and Commission as of the transfer date). Thereafter, the “powers, rights, assets, and duties of the [C]ommission within [New Jersey],” will be vested with the Division of State Police in the Department of Law and Public Safety. *Id.* §§ 3, 4(b)(1)-(2). Plaintiffs allege that the Bill will also permit New Jersey to “poach” the Commission’s employees and divert the Commission’s funding sources to New Jersey State Police. (Pl.’s Mem. Supp. Mot. for Prelim. Inj. at 15, ECF No. 8-1.) Based on the Bill’s directives, if Governor Murphy is not enjoined from implementing the Bill, the Commission will be divested of its assets and will cease to exist. Thus, Plaintiff has articulated sufficient facts to establish standing in this matter.

*ii. Sovereign Immunity*

A motion to dismiss based on the Eleventh Amendment is properly brought under Rule 12(b)(1) because sovereign immunity “is a jurisdictional bar which deprives federal courts of subject matter jurisdiction.” *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 693 n.2 (3d Cir. 1996) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-100 (1984)).

Governor Murphy suggests that he is immune from suit under the Eleventh Amendment. (Def.’s Br. in Supp. of Cross Mot. to Dismiss [hereinafter Def.’s Br.] at 18 n.7, ECF No. 21-1.) However, “[s]uits for injunctive relief against state officials brought to end ongoing violations of federal law are not barred by the Eleventh Amendment.” *Rhett v. Evans*, 576 F. App’x 85, 88 n.2 (3d Cir. 2014) (citing *Ex parte Young*, 209 U.S. 123 (1908)). This is because “a suit challenging the constitutionality of a state official’s action in enforcing state law is not one against the State.” *Mercer Cty. Childrens Med. Daycare, LLC v. O’Dowd*, No. 13-1436, 2014 WL 546346, at \*3 (D.N.J. Feb. 10, 2014) (quoting *Green v. Monsour*, 474 U.S. 64, 68 (1985)); see also *Ex parte Young*, 209 U.S. 123. To determine whether the exception to immunity applies, “a court need only conduct a ‘straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.’” *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997) (O’Connor, J., concurring)); *Green*, 474 U.S. at 68.

Here, Plaintiff alleges that a state statute (i.e., the Bill) contravenes federal law (i.e., the Compact). Interstate compacts are not only contracts between states,

but also federal statutes. *Alabama v. North Carolina*, 560 U.S. 330, 351-52 (2010); *Alcorn v. Wolfe*, 827 F. Supp. 47, 52 (D.D.C. 1993). Consent from Congress in 1953 transformed the Compact into a law of the United States. See *Neb., ex rel. Nelson v. Cent. Interstate Low-Level Radioactive Waste Comm'n*, 834 F. Supp 1205, 1210 (D. Neb. 1993) (quoting *Cuyler v. Adams*, 449 U.S. 433, 438 (1981)). Because the Bill seeks to undo the Compact, which has the force and effect of federal law, Governor Murphy is not entitled to sovereign immunity.

*iii. Rule 12(b)(6)*

Defendants also challenge whether: (a) this suit was properly brought on behalf of the Plaintiff; (b) Plaintiff, as an instrumentality of the States of New Jersey and New York, may sue one of the compacting states; (c) Plaintiff's power to sue under the Compact is limited to persons; and (d) Plaintiff has articulated a cause of action.

*a. Authority to Bring Suit*

"Except when required to show that the court has jurisdiction, a pleading need not allege ... a party's capacity to sue or be sued ... [or] a party's authority to sue or be sued in a representative capacity[.]" Fed. R. Civ. P. 9(a)(1). Rather, "the onus is on an opposing party to challenge a party's capacity to sue or be sued." *Nahas v. Shore Med. Ctr.*, No. 13-6537, 2018 WL 1981474, at \*4 (D.N.J. Apr. 27, 2018). Generally, a defense of lack of capacity or authority to sue may be examined in a Rule 12(b)(6) motion "when the defect appears upon the face of the complaint." *Klebanow v. N.Y. Produce Exch.*, 344 F.2d 294, 296 n.1 (2d Cir. 1965). However, when matters beyond the pleadings are considered, the Rule 12(b)(6) motion must be treat-

ed as one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d).

Notwithstanding, a court may consider a “document *integral to or explicitly relied upon* in the complaint ... without converting the motion [to dismiss] into one for summary judgment.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (citation omitted). “The rationale underlying this exception is that the primary problem raised by looking to documents outside the complaint—lack of notice to the plaintiff—is dissipated “[w]here the plaintiff has actual notice ... and has relied upon these documents in framing the complaint.” *Id.* (quoting *Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993)). Allowable documents include the Complaint, “exhibits attached to the [C]omplaint, matters of public record, as well as undisputedly authentic documents if the [plaintiff’s] claims are based upon these documents.” *Guidotti v. Legal Helpers Debt Resolution*, 716 F.3d 764, 772 (3d Cir. 2013) (quoting *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010)); *see also In re Morgan Stanley Smith Barney LLC Wage & Hour Litig.*, No. 11-3121, 2012 WL 6554386, at \*2 (D.N.J. Dec. 14, 2012) (noting that courts may consider legislative history on a motion to dismiss) (citing *Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226-27 (1959)). Therefore, although they are not attached to the Complaint, this Court may consider the Compact, its bylaws, and the legislative history associated with these documents in deciding the Cross Motions to Dismiss.

Here, Defendants contend that the Commission’s General Counsel Phoebe Sorial (“Sorial”) did not have the authority to retain outside counsel and file this suit on behalf of the Commission. Although the Compact states that the Commission “shall act only by unani-



mous vote of both members thereof[.]” it also provides that the Commission’s powers and duties may be exercised by its officers, employees, and agents, with the exception of its “power to make rules and regulations.” Compact, arts. III, ¶ 3, IV (referring to concluding paragraph). Thus, the Commission may designate its power “[t]o sue” as well as its power to “retain and employ counsel and private consultants on a contract basis or otherwise[.]” *Id.* art. IV, ¶¶ 1, 5. Furthermore, the Commission’s bylaws created officer positions, such as Executive Director, Commission Counsel, and Secretary. (Bylaws, McGahey Cert. Ex. A, at II, ECF No. 21-3.) Under those same bylaws, Commission Counsel is explicitly authorized to “handle ... legal matters and perform such other duties as may be assigned to him by the Commission or the Executive Director.” (Bylaws at 6-7.) Thus, for the purposes of a motion to dismiss, Defendants have not demonstrated that Sorial lacks authority to commence legal actions on behalf of the Commission, including the instant suit.

Even if Defendants’ cross motions were converted to summary judgment motions, and the certifications and declarations annexed to the parties’ briefs were considered, this Court would reach the same conclusion. Summary judgment would also warrant a finding that Sorial did not require the unanimous vote of the commissioners to bring this action. Defendants rely on a certification from one of the Commission’s two members, Commissioner Michael Murphy (“Commissioner Murphy”). Commissioner Murphy avers that he “was not asked to approve, nor [has he] approved or authorized the Commission to file [this] ... lawsuit.” (Comm’r Murphy Cert. ¶ 5, ECF No. 21-2.) Plaintiff in turn provides a declaration from the only other commissioner, Ronald Goldstock (“Commissioner Goldstock”), in

which he asserts that the Commission was not required to authorize the lawsuit, and that “[e]ven if it were, [he] fully authorize[s] and ratif[ies] the Commission’s actions in this matter[.]” (Comm’r Goldstock Decl. ¶ 11, ECF No. 29-4.) Additionally, the Commission’s Executive Director Walter Arsenault (“Arsenault”) affirmed that he has delegated to Sorial “the power to bring legal actions[.]” (Arsenault Reply Decl. ¶ 5, ECF No. 29-1.) Importantly, Commissioner Goldstock has advised the Court that as of January 30, 2018, Commissioner Murphy “has decided to recuse himself” from any matter relating to the Bill.<sup>37</sup> (Comm’r Goldstock Decl. ¶¶ 9-10.)

Thus, even if a unanimous vote of the commissioners was needed to file this suit, one has ratified Sorial’s actions, and the other has recused himself from this matter entirely. (*Id.* ¶¶ 10-11.) Defendants have not pointed to anything in the Compact, its bylaws, or relevant case law to support their argument that both commissioners’ votes are needed to constitute a quorum.<sup>38</sup> As such, this Court is persuaded that Commissioner Goldstock’s approval would be sufficient to authorize Sorial’s actions in bringing this suit.

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<sup>37</sup> Commissioner Murphy’s recusal was undisputed during the show-cause hearing on February 22, 2018.

<sup>38</sup> This Court notes that New Jersey and New York previously attempted but failed to amend the Compact to define a quorum. In 1970, both states passed statutes to increase the number of Commissioners from two to four members, define a quorum as three members, and mandate that the Commission “act only by a majority vote of all its members.” N.J. Stat. Ann. §§ 32:23-8, -9; N.Y. Unconsol. §§ 9808-09. However, the amendment was conditioned upon consent from Congress, which was never obtained. *See* N.J. Stat. Ann. § 32:23-225; 1970 N.Y. Laws 2951.

Additionally, the Commission's past practices are particularly instructive in determining whether the unanimous vote of the commissioners was required before filing suit. See *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 636 (2013) ("A party's course of performance under the Compact is highly significant evidence of its understanding of the compact's terms." (quoting *Alabama*, 560 U.S. at 346) (internal quotation marks and alterations omitted)). Since its creation in 1953, "the Commission has filed approximately 83 legal proceedings in the state and federal courts of New York and New Jersey and was named as a defendant/respondent in over 420 other cases." (Arsenault Reply Decl. ¶ 6.) In its sixty-five-year history, neither the Executive Director nor General Counsel have been required to obtain authorization from the commissioners to commence these law suits. (*Id.*; see also Serial Decl. ¶ 8, ECF No. 29-2.) Thus, even applying the summary judgment standard, this Court would conclude that Sorial, as General Counsel, has authority to bring suit on behalf of the Commission.

*b. Instrumentality of the States of New Jersey & New York*

Defendants argue that the Commission cannot sue the State of New Jersey or its officials because "federal law does not often create rights for ... agencies to assert against other arms of the State." *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 264 (2011). However, Compact Clause entities are not equivalent to state agencies. The Supreme Court has previously differentiated the two types of entities for Eleventh Amendment purposes. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994). In holding that the Port Authority Trans-Hudson Corporation ("PATH") was not entitled to the same immunity as a

state agency, Justice Ginsburg explained that bistate agencies created by compact “owe their existence to state and federal sovereigns acting cooperatively, and not to any one of the United States[.]” *Id.* (internal quotation marks omitted). As such, they “are not subject to the unilateral control of any one of the States that compose the federal system.” *Id.* In another case involving PATH, Justice Brennan emphasized that “[t]he inherent nature of interstate agencies precludes their being found so intricately intertwined with the State as to constitute an ‘arm of the State.’” *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 312 (1990) (Brennan, J., concurring in part and in the judgment). Thus, the Complaint will not be dismissed on the basis that it has been brought against an official of a compacting state.<sup>39</sup>

*c. Commission’s Power to Sue*

Based on N.J. Stat. Ann. § 32:23-90,<sup>40</sup> Defendants argue that the Commission’s ability to sue under the

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<sup>39</sup> This Court further notes that a compact agency has previously sued a compacting state. *See, e.g., Kan. City Area Transp. Auth. v. Missouri*, 640 F.2d 173 (8th Cir. 1981).

<sup>40</sup> The statute provides:

The commission may maintain a civil action against any *person* to compel compliance with any of the provisions of the compact, or to prevent violations, attempts or conspiracies to violate any such provisions, or interference, attempts or conspiracies to interfere with or impede the enforcement of any such provisions or the exercise or performance of any power or duty thereunder, either by mandamus, injunction or action or proceeding in lieu of prerogative writ.

Compact is limited to civil actions against persons, and not States. However, the statutory language Defendant relies upon was added to the Compact in 1954, along with the following instructive provision:

This amendatory and supplementary act, except section 12, constitutes an agreement between the States of New York and New Jersey supplementary to the waterfront commission compact and amendatory thereof, and shall be liberally construed to effectuate the purposes of said compact, and the powers vested in the waterfront commission hereby *shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission.*

1954 N.J. Laws 64, 68 (emphasis added); *see also* 1954 N.Y. Laws 745, 748 (containing similar language). Defendants have not demonstrated that the 1954 amendments limited the Commission's power to sue and be sued, or to administer and enforce the provisions of the Compact. *See* Compact, art. IV, ¶¶ 1, 6.

*d. Cause of Action*

Defendants argue that Plaintiff cannot maintain a cause of action that is solely premised on a violation of the Supremacy Clause. (Def.'s Br. at 15); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015) (holding that the Supremacy Clause is not the source of any federal rights.) However, here, Plaintiff's right to sue for declaratory and injunctive relief stems from the Declaratory Judgment Act, 28 U.S.C.

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N.J. Stat. Ann. § 32:23-90 (emphasis added); *see also* N.Y. Unconsol. Law § 9910 (concurring New York statute).

§§ 2201-02, and the Compact. Furthermore, because Plaintiff alleges it is immune under federal law from state regulation, it is in the Court’s purview to “issue an injunction upon finding the state regulatory actions preempted.” *Armstrong*, 135 S. Ct. at 1384 (citing *Ex parte Young*, 209 U.S. at 155-56); *see also Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*, 841 F.3d 133, 144-45, 147 (2d Cir. 2016) (distinguishing *Armstrong*, and concluding that Congress did not intend to foreclose plaintiffs from invoking equitable jurisdiction to challenge a town’s enforcement of local laws enacted in alleged violation of a federal statute).

Defendants further argue that because compacts are construed as contracts, the appropriate party to bring a “breach of compact” claim would be parties to the Compact, such as New York.<sup>41</sup> However, as discussed above, interstate compacts that require Congressional consent are not merely bi-state contracts, but also federal statutes. *See Alabama*, 560 U.S. at 351-52; *Alcorn*, 827 F. Supp. at 52. Thus, Plaintiff need not “stand-in” for New York or Congress to bring this suit.

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<sup>41</sup> Courts often refer to compacts as contracts between states and interpret them accordingly. *See, e.g., Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (“It remains a legal document that must be construed and applied in accordance with its terms.” (citation omitted)); *Petty v. Tenn.-Mo. Bridge Comm’n*, 359 U.S. 275, 285 (1959) (“A Compact, is after all, a contract.”). As a party to the agreement, New York could have sued to enjoin New Jersey from withdrawing from the Compact. Additionally, Congress could have intervened as it expressly reserved “[t]he right to alter, amend, or repeal this Act[.]” Compact, art. XVI, § 2. However, at this juncture, New York and Congress have remained silent in the instant action.

Based on the foregoing, Plaintiff has pled sufficient facts to survive a motion to dismiss.

### **B. Injunctive Relief**

To obtain a preliminary injunction, a plaintiff must establish (i) it is likely to succeed on the merits of its claims, (ii) it is likely to suffer irreparable harm without relief, (iii) the balance of harms favors it, and (iv) relief is in the public interest. *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 131 (3d Cir. 2017) (citing *Ferring Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205, 210 (3d Cir. 2014)).<sup>42</sup>

#### *i. Likelihood of Success*

For the purposes of a preliminary injunction, “the plaintiff need only prove a prima facie case, not a certainty that he or she will win.” *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 173 (3d Cir. 2001). This requires a showing that is significantly better than “negligible,” but not necessarily “more likely than not.” *Reilly*, 858 F.3d at 179.

The question before this Court is whether the Bill’s directives to unilaterally withdraw the State of New Jersey from the Compact are preempted because they conflict with the Compact, as a federal law. “Conflict preemption nullifies state law inasmuch as it conflicts with federal law, either where compliance with both laws is impossible or where state law erects an ‘obsta-

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<sup>42</sup> The Third Circuit has referred to the first two elements as “gateway factors.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). If they are met, “a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.” *Id.*

cle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Bell v. Cheswick Generating Station*, 734 F.3d 188, 193 (3d Cir. 2013) (quoting *Farina v. Nokia Inc.*, 625 F.3d 97, 115 (3d Cir. 2010)).

As a threshold matter, the Bill is not entitled to a presumption of constitutionality. “The presumption against pre-emption is rooted in respect for the States as independent sovereigns in our federal system and assume[s] that Congress does not cavalierly pre-empt state laws.” *Tarrant Reg’l Water Dist.*, 569 U.S. at 631 n.10 (quotation marks omitted) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009)). However, this presumption does not apply “[w]hen the States themselves have drafted and agreed to the terms of a compact, and Congress’ role is limited to approving that compact[.]” *Id.*

The Compact at issue does not explicitly address how a state may withdraw from or end it. Jurisprudence dictates that a court’s role in compact construction is to “effectuate the clear intent of both sovereign states,” not to rewrite their agreement. *Int’l Union of Operating Eng’rs, Local 542 v. Del. River Joint Toll Bridge Comm’n*, 311 F.3d 273, 276 (3d Cir. 2002) (citing *Texas v. New Mexico*, 462 U.S. 554, 564-65 (1983)). Courts may not order relief inconsistent with the express terms of a compact. *Texas*, 462 U.S. at 564; see also *Tarrant Reg’l Water Dist.*, 569 U.S. at 628 (describing the express terms of a compact as “the best indication of the intent of the parties”); *N.Y. Shipping Ass’n, Inc.*, 835 F.3d 344, 353 (3d Cir. 2016) (“[W]e treat the Compact like any other federal statute, and interpret it accordingly.” (citing *Texas*, 482 U.S. at 128)). Additionally, courts must remain cognizant of the agreement’s purpose, and “any interpretive principles



mandated by the Compact.” *Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm’n*, 207 F.3d 1021, 1023 (8th Cir. 2000).

The Compact’s concurrency requirement is germane to this Court’s interpretive analysis. *See* Compact, art. XVI, ¶ 1 (“Amendments and supplements to this compact ... may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.”). Additionally, the Compact instructs that “[i]n accordance with the ordinary rules for construction of interstate compacts this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.” *Id.*, art. XVI, ¶ 3; *see also Cent. Interstate Low-Level Radioactive Waste Comm’n*, 207 F.3d at 1026 (“If the provisions of the Compact at issue in this appeal were ambiguous, reliance on the Compact’s liberal construction clause and statement of purpose would be appropriate to help resolve the ambiguity.”). Based on the foregoing provisions, this Court finds that the Bill’s directives to unilaterally withdraw from and nullify the Compact directly conflicts with the Compact. Allowing one state to dictate the manner and terms of the Commission’s dissolution, and the subsequent distribution of the agency’s assets, runs counter to the requirement that any change to the Compact occur through concurring legislation.

Defendants mistakenly rely on the Supreme Court’s rationale in *New Jersey v. New York*, 523 U.S. 767 (1998), to argue that the common law of contracts speaks in the silence of the Compact, and where a contract is silent on withdrawal, either party may do so after a reasonable time. That case concerned an 1834 compact between New Jersey and New York whereby both states agreed that Ellis Island was part of New

York despite its location. *Id.* After 1891, the National Government began filling the island’s shoreline, adding 24.5 acres to the originally three-acre island. *Id.* at 770. Thereafter, the parties disputed which state had sovereign authority over the filled land. *Id.* at 771. Justice Souter, delivering the opinion of the Court, held that the common-law doctrine of avulsion “speaks in the silence of the Compact,” such that the filled land remained the sovereign property of New Jersey. *Id.* at 783. The Supreme Court explained that there was no reason to address the legal consequences of landfilling in the compact because they “were sufficiently clear under the common law as it was understood in 1834.” *Id.* at 783. This Court finds that the holding in *New Jersey v. New York*, was not so broad as to instruct that where a compact is silent as to any issue in dispute, the parties intended common law to fill the gaps. Rather, the Supreme Court’s holding was narrowly tailored to a dispute over territorial jurisdiction. Interpreting the holding otherwise would be to ignore Justice White’s explanation in *Oklahoma v. New Mexico*, 501 U.S. 221 (1991), that it is appropriate to look to legislative history and extrinsic evidence to interpret an ambiguous compact. *Id.* at 235 n.5.

Defendants further contend that legislative history supports their interpretation that the Compact was meant to exist for a limited duration. (Def.’s Br. at 23.) There is no dispute that the Compact could be terminated if it outlived its usefulness.<sup>43</sup> Rather, the disa-

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<sup>43</sup> Thus, provisions were included in the Compact requiring the Commission to “make annual and other reports to the Governors and Legislatures of both States ... stat[ing] the commission’s finding and determination” as to the public necessity of several of its main functions. Compact, art. IV, ¶ 13.

greement is over the unilateral manner and method by which New Jersey seeks to end the Compact.<sup>44</sup> Ultimately, the states had an opportunity to include provisions regarding withdrawal from or termination of their agreement,<sup>45</sup> and only Congress explicitly reserved

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<sup>44</sup> Although not determinative, it is worth noting that in 2015, Governor Christie vetoed a bill directing him to withdraw New Jersey from the Compact. See S.B. No. 2277, 216th Sess. (N.J. 2014). In issuing a conditional veto, he stated: “I am advised that federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress. As a result, it is premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation.” (Cardozo Decl., Ex. 3, at 2, ECF No. 8-5.)

<sup>45</sup> “Looking to the customary practices employed in other interstate compacts also helps us to ascertain the intent of the parties to this Compact.” *Tarrant Reg’l Water Dist.*, 569 U.S. at 633 (citations omitted). Though Defendants argue that it can be assumed that the states intended to allow unilateral withdrawal at any time, through the years interstate compacts have often included express withdrawal provisions. See, e.g., Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, Pub. L. No. 99-240, § 221, 99 Stat. 1842, 1863 (1986) (“Any party state may withdraw from this compact by enacting a statute repealing its approval.”); Act of June 1, 1977, Pub. L. No. 95-35, 91 Stat. 175, 176 (1977) (“This compact shall continue in force and remain binding upon each party State until the Legislature or Governor of each or either State takes action to withdraw therefrom; provided that such withdrawal shall not become effective until six months after the date of the action taken by the legislature or Governor.”); Act of Dec. 24, 1970, Pub. L. No. 91-575, § 1.5, 84 Stat. 1509, 1512 (1970) (“The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if ... none of the signatory states ... notif[y] the commission of intention to terminate the compact[.]”); Interstate Compact on Mental Health Act, Pub. L. No. 92-280, § 2, 86 Stat. 126, 130 (1972) (“A state party to this compact may withdraw therefrom by enacting a statute repealing the same.”); Act of Sept. 15, 1960, Pub. L. No. 86-794, 74 Stat. 1031, 1035 (1960) (“Any signatory may withdraw from the compact upon one year’s written no-

“[t]he right to alter, amend, or repeal this Act.” *Id.* art. XVI, § 2.

Moreover, case law regarding unilateral withdrawal contradicts Defendants’ position. Though the Supreme Court previously declined to decide whether a compact could be read “to allow any signatory State to withdraw from its obligations at any time[,]” the Court opined: “It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.” *State ex rel. Dyer v. Sims*, 341 U.S. 22, 26 (1951).<sup>46</sup> The Supreme Court has also recognized that one classic indicium of a compact is that a state is not “free to modify or repeal its law unilaterally.” *See Ne. Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985). Furthermore, in a concurring opinion, Justice Brennan stated that “[w]hile a State has plenary power to create and destroy its political subdivisions, a State enjoys no such

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tice to that effect to the other signatories.”); Act of Aug. 24, 1954, Pub. L. No. 83-642, 68 Stat. 783, 785 (1954) (“This compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state takes action to withdraw therefrom.”); Act of Aug. 8, 1953, Pub. L. No. 83-226, 67 Stat. 490, 493 (1953) (“This Compact may be terminated at any time by consent of a majority of the compacting states and territories. ... Any state or territory may at any time withdraw from this Compact by means of appropriate legislation to that end.”).

<sup>46</sup> One district court has further stated that the terms of a “compact cannot be modified unilaterally by state legislation and take precedence over conflicting state law.” *Alcorn*, 827 F. Supp. at 52 (first citing *McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991); then citing *Kan. City Area Transp. Auth.*, 640 F.2d at 174).

hegemony over an interstate agency.” *Feeney*, 495 U.S. at 314 (Brennan, J., concurring in part and in the judgment).<sup>47</sup>

Based on the foregoing, Plaintiff has established that it is likely to succeed on the merits. This Court will not construe the Compact in a manner that rewrites the agreement to include the right to unilateral withdrawal.<sup>48</sup>

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<sup>47</sup> On May 21, 2018, after the motions in this matter were fully briefed, Defendants directed this Court’s attention to the Supreme Court’s recent decision in *Murphy v. Nat’l Collegiate Athletic Ass’n*, Nos. 16-476, 16-477, 2018 WL 2186168 (S. Ct. May 14, 2018) [hereinafter *NCAA*]. (ECF Nos. 40-41.) Plaintiff replied on May 22, 2018. (ECF No. 42.) The *NCAA* Court held that a provision in the federal Professional and Amateur Sports Protection Act (“PASPA”) violates the anticommandeering doctrine because it “unequivocally dictates what a state legislature may and may not do.” *Id.* at \*13. *NCAA*’s holding has no bearing on the instant matter. Congress has not passed a statute dictating what New Jersey’s legislature may or may not do. Rather, this case concerns whether New Jersey can unilaterally withdraw from an interstate compact that it drafted and voluntarily entered into. Therefore, the anti-commandeering doctrine is not at issue here.

<sup>48</sup> Despite Defendants’ insistence that New Jersey has always had the ability to unilaterally withdraw from the Compact, in 2015, 2016, and 2018, resolutions were introduced to New Jersey’s State Assembly to request that the United States Congress repeal the Compact. A.C.R. 90, 218th Leg. (N.J. 2018); A.C.R. 68, 217th Leg. (N.J. 2016); A.C.R. 217, 216th Leg. (N.J. 2015); *see also* S.C.R. 168, 216th Leg. (N.J. 2015) (concerning identical resolution introduced to New Jersey’s State Senate in 2015). In each instance, the resolutions did not reach a house vote. *Id.* If it was understood that a compacting state had the option to withdraw at any time, it begs the question why legislators would bother to introduce these resolutions year after year.

*ii. Irreparable Harm*

“In order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the *only* way of protecting the plaintiff from harm.” *Checker Cab of Phila. Inc. v. Uber Techs., Inc.*, 643 F. App’x 229, 232 (3d Cir. 2016) (quoting *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992)). Economic injuries that can be compensated with a monetary award do not constitute irreparable harm. *Uber Techs., Inc.*, 643 F. App’x at 232.

As discussed above, the Bill divests Plaintiff of its “powers, rights, assets, and duties.” 2017 N.J. Sess. Law Serv. ch. 324, § 4(b)(1) (West 2018). Most of Plaintiff’s functions would be transferred to the New Jersey State Police, and the Commission would be dissolved. The dissolution of the Compact and the Commission is the statutorily-mandated outcome. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (explaining that the irreparable injury must be “likely” and not merely a possibility). Thus, this Court finds that Plaintiff has demonstrated that it will suffer irreparable harm unless Governor Murphy is enjoined from implementing the Bill.<sup>49</sup>

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<sup>49</sup> Although this Court finds that Plaintiff has satisfied the “irreparable harm” prong in the preliminary injunction analysis, it should also be noted that “[c]ourts have found that ‘an alleged constitutional infringement will often alone constitute irreparable harm.’” *Am. Express Travel Related Servs. Co., Inc. v. Sidamon-Eristoff*, 755 F. Supp. 2d 556, 614 (D.N.J. 2010) (quoting *Ass’n for Fairness in Bus. v. New Jersey*, 82 F. Supp. 2d 353, 359 (D.N.J. 2000)).

*iii. Balance of Harms*

Plaintiff argues that, at a minimum, the Bill would “cripple the Commission” and leave it unable to carry out its duties as mandated under the Compact. (Arsenault Decl. ¶ 18, ECF No. 8-7.) The Commission would lose a majority of its funding because 90 percent of its operating budget is derived from assessments from Port employers based in New Jersey. (*Id.* ¶ 19.) Without these assessments, the Commission alleges it would not be able to meet its financial obligations and would have to lay off its employees. (*Id.* ¶¶ 20-21.) Economic injuries aside, Plaintiff also alleges that the Bill would result in two separate entities overseeing activity in a single Port, which would result in “confusion, inefficiencies, and harm to citizens of both New York and New Jersey[.]” (*Id.* ¶ 24.) Without a centralized system to complete background checks and register dockworkers, waterfront employees would be subject to differing rules in New York and New Jersey despite working in the same Port. (*Id.* ¶ 25.) Furthermore, the Bill eliminates provisions in the Compact that Plaintiff maintains “is the Commission’s primary tool for ensuring fair and non-discriminatory hiring practices, and for preventing extortion of Port workers.” (*Id.* ¶ 26.) For example, it removes Section 5-p, “which allows the Commission to regulate the register of available labor as well as to ensure that hiring is made in a fair and nondiscriminatory manner” as well as Section 8, “which allows the Commission to remove union officials convicted of a felony[.]” (Compl. ¶ 43g.) In opposition, Defendants primarily argue that the Commission “has over-regulated the business at the port” and has become “an impediment to future job growth and prosperity at the port.” (Def.’s Br. at 5); *see also* 2017 N.J. Sess. Law Serv. ch. 324, § 1(b) (West 2018).

The hardships that Plaintiff alleges will occur without a preliminary injunction are not “illusory;” rather, they are realistic and expansive. Therefore, this Court finds that the imminent harm to the Commission’s functions and operations outweighs Defendants’ impetus to foster potential economic growth.

*iv. Public Interest*

As discussed above, the Commission works to reform corrupt and discriminatory hiring practices in the Port. (Compl. ¶ 27.) For instance, in 2013, the Commission amended its rules “to require employers in the industry to submit a certification that the persons they are hiring have been selected in a fair and non-discriminatory basis[.]”<sup>50</sup> (Compl. ¶ 30.) The Commission also investigates illicit activities in the Port. (*Id.* ¶ 26a.) Arsenault, the Commission’s Executive Director, avers that “organized crime still very much continues to exist on the waterfront.” (Arsenault Reply Decl. ¶ 11). He notes that in 2014, the ILA’s former local president, Thomas Leonardis (“Leonardis”), “along with numerous other ILA union officials, shop stewards and foreman pled guilty ... to [an] extortion conspiracy of their own union members on behalf of the Genovese Organized Crime Family.” (*Id.* ¶ 11.) Less than four months before Leonardis was arrested, he testified before New Jersey’s legislature, urging that the Commis-

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<sup>50</sup> Thereafter, membership organizations, employer associations, and labor organizations, such as the New York Shipping Association, Inc. (“NYSA”) and the International Longshoremen’s Association, AFL-CIO (“ILA”), sued the Commission and sought a preliminary injunction to enjoin the implementation of the certification requirement. See *N.Y. Shipping Ass’n. Inc. v. Waterfront Comm’n of N.Y. Harbor*, No. 13-7115, 2014 WL 4271630 (D.N.J. Aug. 27, 2014), *aff’d*, 835 F.3d 344 (3d Cir. 2016) (affirming dismissal).



sion was “archaic.” (*Id.*) Most recently, the “Commission was instrumental in the investigation that led to the indictments of 19 members of the Luchese family on May 31, 2017.” (*Id.* ¶ 10 n.6).

Relying on information from the NYSA and ILA, Defendants argue that organized crime has been driven out of the Port and that State Police are “suited to undertake an investigation of any criminal activity[.]” (Intervenor-Defs.’ Br. at 3-4, ECF No. 22-1.) Defendants assert that the Bill “would seamlessly transfer the regulatory powers of the Commission to the Division of State Police in New Jersey,” and thus, there would be “no risk of ‘corruption, extortion, and racketeering’ once the Commission is dissolved.” (Def.’s Br. at 39-40; *see also* Intervenor-Def.’s Br. at 3-4.) Despite these assurances, the Bill also recognizes “a continued need to regulate port-located business to ensure fairness and safety[.]” 2017 N.J. Sess. Law Serv. ch. 324, § 1(c) (West 2018).

Based on the foregoing, it is in the public interest for the Commission to continue its investigatory and regulatory work. Furthermore, upon careful consideration, each of the four factors weigh in favor of granting a preliminary injunction. The relief sought will preserve the status quo of a sixty-five-year-old Compact that embodies a concerted effort between New Jersey, New York, and Congress during the pendency of this matter.

## V. CONCLUSION

For the reasons set forth above, Plaintiff’s Motion for a Preliminary Injunction is **GRANTED**, and Defendants’ Cross Motions to Dismiss are **DENIED**. An appropriate Order follows.

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*s/ Susan D. Wigenton* \_\_\_\_\_  
**SUSAN D. WIGENTON**  
**UNITED STATES DISTRICT JUDGE**

Orig: Clerk  
cc: Leda Dunn Wettre, U.S.M.J.  
Parties

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**APPENDIX D**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2458 & 19-2459

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WATERFRONT COMMISSION OF NEW YORK HARBOR,

*v.*

GOVERNOR OF NEW JERSEY,  
*Appellant in 19-2458*

PRESIDENT OF THE NEW JERSEY STATE SENATE;  
SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY;  
NEW JERSEY SENATE;  
GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY,  
*Intervenors/Appellants in 19-2459*

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Filed July 8, 2020

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**SUR PETITION FOR REHEARING**

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Present: SMITH, *Chief Judge*, McKEE, AMBRO,  
CHAGARES, JORDAN, HARDIMAN,  
GREENAWAY, SHWARTZ, KRAUSE, RESTREPO,  
BIBAS, PORTER, PHIPPS, *Circuit Judges*

The petition for rehearing filed by appellee in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority

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of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ D. Brooks Smith  
Chief Judge

Dated: July 8, 2020

CJG/cc: R. Kelly, Esq.  
Sean R. Kelly, Esq.  
Aaron A. Love, Esq.  
Leon J. Sokol, Esq.  
A. Matthew Boxer, Esq.  
Joseph A. Fischetti, Esq.  
Jeffrey B. Litwak, Esq.

**APPENDIX E**

**RELEVANT CONSTITUTIONAL  
AND STATUTORY PROVISIONS**

**U.S. Const. art. I, § 10, cl. 3  
(Compact Clause)**

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

**U.S. Const. art. VI, cl. 2  
(Supremacy Clause)**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**PUB. L. NO. 83-252, 67 STAT. 541 (1953)**

PUBLIC LAW 252

CHAPTER 407

AN ACT

Granting the consent of Congress to a compact between the State of New Jersey and the State of New York known as the Waterfront Commission Compact, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of Congress is hereby given to the compact set forth below to all of its terms and provisions, and to the carrying out and effectuation of said compact, and enactments in furtherance thereof:

THE WATERFRONT COMMISSION COMPACT  
BETWEEN THE STATES OF NEW YORK AND  
NEW JERSEY AS AUTHORIZED BY CHAPTER  
882 AS AMENDED BY CHAPTER 883 OF THE  
LAWS OF THE STATE OF NEW YORK OF 1953,  
AND BY CHAPTER 202 AS AMENDED BY  
CHAPTER 203 OF THE LAWS OF THE STATE  
OF NEW JERSEY OF 1953.

ARTICLE I

FINDINGS AND DECLARATIONS

1. The States of New Jersey and New York hereby find and declare that the conditions under which waterfront labor is employed within the Port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently

criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment and a loss of respect for the law; that not only does there result a destruction of the dignity of an important segment of American labor, but a direct encouragement of crime which imposes a levy of greatly increased costs on food, fuel and other necessities handled in and through the Port of New York district.

2. The States of New Jersey and New York hereby find and declare that many of the evils above described result not only from the causes above described but from the practices of public loaders at piers and other waterfront terminals; that such public loaders serve no valid economic purpose and operate as parasites exacting a high and unwarranted toll on the flow of commerce in and through the Port of New York district, and have used force and engaged in discriminatory and coercive practices including extortion against persons not desiring to employ them ; and that the function of loading and unloading trucks and other land vehicles at piers and other waterfront terminals can and should be performed, as in every other major American port, without the evils and abuses of the public loader system, and by the carriers of freight by water, stevedores and operators of such piers and other waterfront terminals or the operators of such trucks or other land vehicles.

3. The States of New Jersey and New York hereby find and declare that many of the evils above described result not only from the causes above described but from the lack of regulation of the occupation of stevedores; that such stevedores have engaged in corrupt practices to induce their hire by carriers of freight by water and to induce officers and representatives of labor organizations to betray their trust to the members or such labor organizations.

4. The States of New Jersey and New York hereby find and declare that the occupations of longshoremen, stevedores, pier superintendents, hiring agents and port watchmen are affected with a public interest requiring their regulation and that such regulation shall be deemed an exercise of the police power of the two States for the protection of the public safety, welfare, prosperity, health, peace and living conditions of the people of the two States.

## ARTICLE II

### DEFINITIONS

As used in this compact:

“The Port of New York district” shall mean the district created by Article II of the compact dated April thirtieth, one thousand nine hundred and twenty-one, between the States of New York and New Jersey, authorized by chapter one hundred fifty-four of the laws of New York of one thousand and nine hundred and twenty-one and chapter one hundred fifty-one of the laws of New Jersey of one thousand nine hundred and twenty-one.

“Commission” shall mean the waterfront commission of New York harbor established by Article III hereof.

“Pier” shall include any wharf, pier, dock or quay.



“Other waterfront terminal” shall include any warehouse, depot or other terminal (other than a pier) which is located within one thousand yards of any pier in the Port of New York district and which is used for waterborne freight in whole or substantial part.

“Person” shall mean not only a natural person but also any partnership, joint venture, association, corporation or any other legal entity but shall not include the United States, any State or territory thereof or any department, division, board, commission or authority of one or more of the foregoing.

“Carrier of freight by water” shall mean any person who may be engaged or who may hold himself out as willing to be engaged, whether as a common carrier, as a contract carrier or otherwise (except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in such service or carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count) in the carriage of freight by water between any point in the Port of New York district and a point outside said district.

“Waterborne freight” shall mean freight carried by or consigned for carriage by carriers of freight by water.

“Longshoreman” shall mean a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore,

(a) physically to move waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals, or

(b) to engage in direct and immediate checking of any such freight or of the custodial accounting therefor

or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores, or

(c) to supervise directly and immediately others who are employed as in subdivision (a) of this definition.

“Pier superintendent” shall mean any natural person other than a longshoreman who is employed for work at a pier or other waterfront terminal by a carrier of freight by water or a stevedore and whose work at such pier or other waterfront terminal includes the supervision, directly or indirectly, of the work of longshoremen.

“Port watchman” shall include any watchman, gateman, roundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in such capacity on any pier or other waterfront terminal.

“Longshoremen’s register” shall mean the register of eligible longshoremen compiled and maintained by the commission pursuant to Article VIII.

“Stevedore” shall mean a contractor (not including an employee) engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals.

“Hiring agent” shall mean any natural person, who on behalf of a carrier of freight by water or a stevedore shall select any longshoreman for employment.

“Compact” shall mean this compact and rules or regulations lawfully promulgated thereunder.

## ARTICLE III

## WATERFRONT COMMISSION OF NEW YORK HARBOR

1. There is hereby created the waterfront commission of New York harbor, which shall be a body corporate and politic, an instrumentality of the States of New York and New Jersey.

2. The commission shall consist of two members, one to be chosen by the State of New Jersey and one to be chosen by the State of New York. The member representing each State shall be appointed by the Governor of such State with the advice and consent of the Senate thereof, without regard to the State of residence of such member, and shall receive compensation to be fixed by the Governor of such State. The term of office of each member shall be for three years; *provided, however*, that the members first appointed shall be appointed for a term to expire June thirtieth, nineteen hundred fifty-six. Each member shall hold office until his successor has been appointed and qualified. Vacancies in office shall be filled for the balance of the unexpired term in the same manner as original appointments.

3. The commission shall act only by unanimous vote of both members thereof. Any member may, by written instrument filed in the office of the commission, designate any officer or employee of the commission to act in his place as a member whenever he shall be unable to attend a meeting of the commission. A vacancy in the office of a member shall not impair such designation until the vacancy shall have been filled.

ARTICLE IV

GENERAL POWERS OF COMMISSION

In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, hold and dispose of real and personal property by gift, purchase, lease, license or other similar manner, for its corporate purposes;
4. To determine the location, size and suitability of accommodations necessary and desirable for the establishment and maintenance of the employment information centers provided in Article XII hereof and for administrative offices for the commission;
5. To appoint such officers, agents and employees as it may deem necessary, prescribe their powers, duties and qualifications and fix their compensation and retain and employ counsel and private consultants on a contract basis or otherwise;
6. To administer and enforce the provisions of this compact;
7. To make and enforce such rules and regulations as the commission may deem necessary to effectuate the purposes of this compact or to prevent the circumvention or evasion thereof, to be effective upon publication in the manner which the commission shall prescribe and upon filing in the office of the Secretary of State of each State. A certified copy of any such rules and regulations, attested as true and correct by the commission, shall be presumptive evidence of the regular making, adoption, approval and publication thereof;
8. By its members and its properly designated officers, agents and employees, to administer oaths and issue subpoenas throughout both States to compel the

attendance of witnesses and the giving of testimony and the production of other evidence;

9. To have for its members and its properly designated officers, agents and employees, full and free access, ingress and egress to and from all vessels, piers and other waterfront terminals or other places in the port of New York district, for the purposes of making inspection or enforcing the provisions of this compact; and no person shall obstruct or in any way interfere with any such member, officer, employee or agent in the making of such inspection, or in the enforcement of the provisions of this compact or in the performance of any other power or duty under this compact;

10. To recover possession of any suspended or revoked license issued under this compact;

11. To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objectives of this compact;

12. To advise and consult with representatives of labor and industry and with public officials and agencies concerned with the effectuation of the purposes of this compact, upon all matters which the commission may desire, including but not limited to the form and substance of rules and regulations, the administration of the compact, maintenance of the longshoremen's register, and issuance and revocation of licenses;

13. To make annual and other reports to the Governors and Legislatures of both States containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district, for the alleviation of the evils described in Article I and for the effectuation of the purposes, of this compact. Such annual reports shall state the commission's find-

ing and determination as to whether the public necessity still exists for (a) the continued registration of long-shoremen, (b) the continued licensing of any occupation or employment required to be licensed hereunder and (c) the continued public operation of the employment information centers provided for in Article XII;

14. To cooperate with and receive from any department, division, bureau, board, commission, or agency of either or both States, or of any county or municipality thereof, such assistance and data as will enable it properly to carry out its powers and duties hereunder; and to request any such department, division, bureau, board, commission, or agency, with the consent thereof, to execute such of its functions and powers, as the public interest may require.

The powers and duties of the commission may be exercised by officers, employees and agents designated by them, except the power to make rules and regulations. The commission shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the Legislature of either State concurred in by the Legislature of the other.

## ARTICLE V

### PIER SUPERINTENDENTS AND HIRING AGENTS

1. On or after the first day of December, nineteen hundred and fifty-three, no person shall act as a pier superintendent or as a hiring agent within the port of New York district without first having obtained from the commission a license to act as such pier superintendent or hiring agent, as the case may be, and no person shall employ or engage another person to act as a pier superintendent or hiring agent who is not so licensed.

2. A license to act as a pier superintendent or hiring agent shall be issued only upon the written application, under oath, of the person proposing to employ or engage another person to act as such pier superintendent or hiring agent, verified by the prospective licensee as to the matters concerning him, and shall state the following:

(a) The full name and business address of the applicant;

(b) The full name, residence, business address (if any), place and date of birth and social security number of the prospective licensee;

(c) The present and previous occupations of the prospective licensee, including the places where he was employed and the names of his employers;

(d) Such further facts and evidence as may be required by the commission to ascertain the character, integrity and identity of the prospective licensee; and

(e) That if a license is issued to the prospective licensee, the applicant will employ such licensee as pier superintendent or hiring agent, as the case may be.

3. No such license shall be granted.

(a) Unless the commission shall be satisfied that the prospective licensee possesses good character and integrity;

(b) If the prospective licensee has without subsequent pardon, been convicted by a court of the United States, or any State or territory thereof, of the commission of, or the attempt or conspiracy to commit treason, murder, manslaughter or any felony or high misdemeanor or any of the following misdemeanors or offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from

prison; unlawfully possessing or distributing habit-forming narcotic drugs; and violation of this compact. Any such prospective licensee ineligible for a license by reason of any such conviction may submit satisfactory evidence to the commission that he has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so conducted himself as to warrant the grant of such license, in which event the commission may, in its discretion, issue an order removing such ineligibility. The aforesaid period of five years shall be measured either from the date of payment of any fine imposed upon such person or the suspension of sentence or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence;

(c) If the prospective licensee knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates such desirability, knowing the purposes of such group include such advocacy.

4. When the application shall have been examined and such further inquiry and investigation made as the commission shall deem proper and when the commission shall be satisfied therefrom that the prospective licensee possesses the qualifications and requirements prescribed in this article, the commission shall issue and deliver to the prospective licensee a license to act as pier superintendent or hiring agent for the applicant, as the case may be, and shall inform the applicant of his action. The commission may issue a temporary permit to any prospective licensee for a license under the provisions of this article pending final action on an application made for such a license. Any such permit shall be valid for a period not in excess of thirty days.



5. No person shall be licensed to act as a pier superintendent or hiring agent for more than one employer, except at a single pier or other waterfront terminal, but nothing in this article shall be construed to limit in any way the number of pier superintendents or hiring agents any employer may employ.

6. A license granted pursuant to this article shall continue through the duration of the licensee's employment by the employer who shall have applied for his license.

7. Any license issued pursuant to this article may be revoked or suspended for such period as the commission deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(a) Conviction of a crime or act by the licensee or other cause which would require or permit his disqualification from receiving a license upon original application;

(b) Fraud, deceit or misrepresentation in securing the license, or in the conduct of the licensed activity;

(c) Violation of any of the provisions of this compact;

(d) Addiction to the use of or trafficking in morphine, opium, cocaine or other narcotic drug;

(e) Employing, hiring or procuring any person in violation of this compact or inducing or otherwise aiding or abetting any person to violate the terms of this compact;

(f) Paying, giving, causing to be paid or given or offering to pay or give to any person any valuable consideration to induce such other person to violate any provision of this compact or to induce any public officer, agent or employee to fail to perform his duty hereunder;

(g) Consorting with known criminals for an unlawful purpose;

(h) Transfer or surrender of possession of the license to any person either temporarily or permanently without satisfactory explanation;

(i) False impersonation of another licensee under this compact;

(j) Receipt or solicitation of anything of value from any person other than the licensee's employer as consideration for the selection or retention for employment of any longshoreman;

(k) Coercion of a longshoreman by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

(l) Lending any money to or borrowing any money from a longshoreman for which there is a charge of interest or other consideration; and

(m) Membership in a labor organization which represents longshoremen or port watchmen; but nothing in this section shall be deemed to prohibit pier superintendents or hiring agents from being represented by a labor organization or organizations which do not also represent longshoremen or port watchmen. The American Federation of Labor, the Congress of Industrial Organizations and any other similar federation, congress or other organization of national or international occupational or industrial labor organizations shall not be considered an organization which represents longshoremen or port watchmen within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or port watchmen.

ARTICLE VI

STEVEDORES

1. On or after the first day of December, nineteen hundred and fifty-three, no person shall act as a stevedore within the Port of New York district without having first obtained a license from the commission, and no person shall employ a stevedore to perform services as such within the Port of New York district unless the stevedore is so licensed.

2. Any person intending to act as a stevedore within the Port of New York district shall file in the office of the commission a written application for a license to engage in such occupation, duly signed and verified as follows:

(a) If the applicant is a natural person, the application shall be signed and verified by such person and if the applicant is a partnership, the application shall be signed and verified by each natural person composing or intending to compose such partnership. The application shall state the full name, age, residence, business address (if any), present and previous occupations of each natural person so signing the same, and any other facts and evidence as may be required by the commission to ascertain the character, integrity and identity of each natural person so signing such application.

(b) If the applicant is a corporation, the application shall be signed and verified by the president, secretary and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, the names and addresses of, and the amount of the stock held by stockholders owning five percent or more of any of the stock thereof, and of all officers (including all members of the board of directors). The requirements of subdivision (a) of this section as to a natural person who is a

member of a partnership, and such requirements as may be specified in rules and regulations promulgated by the commission, shall apply to each such officer or stockholder and their successors in office or interest as the case may be.

In the event of the death, resignation or removal of any officer, and in the event of any change in the list of stockholders who shall own five percent or more of the stock of the corporation, the secretary of such corporation shall forthwith give notice of that fact in writing to the commission, certified by said secretary.

3. No such license shall be granted

(a) If any person whose signature or name appears in the application is not the real party in interest required by section 2 of this article to sign or to be identified in the application or if the person so signing or named in the application is an undisclosed agent or trustee for any such real party in interest;

(b) Unless the commission shall be satisfied that the applicant and all members, officers and stockholders required by section 2 of this article to sign or be identified in the application for license possess good character and integrity;

(c) Unless the applicant is either a natural person, partnership or corporation;

(d) Unless the applicant shall be a party to a contract then in force or which will take effect upon the issuance of a license, with a carrier of freight by water for the loading and unloading by the applicant of one or more vessels of such carrier at a pier within the port of New York district;

(e) If the applicant or any member, officer or stockholder required by section 2 of this article to sign or be identified in the application for license has, without subsequent pardon, been convicted by a court of the

United States or any State or territory thereof of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any felony or high misdemeanor or any of the misdemeanors or offenses described in subdivision (b) of section 3 of Article V. Any applicant ineligible for a license by reason of any such conviction may submit satisfactory evidence to the commission that the person whose conviction was the basis of ineligibility has for a period of not less than five years, measured as hereinafter provided and up to the time of application, so conducted himself as to warrant the grant of such license, in which event the commission may, in its discretion, issue an order removing such ineligibility. The aforesaid period of five years shall be measured either from the date of payment of any fine imposed upon such person or the suspension of sentence or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence;

(f) If, on or after July first, nineteen hundred fifty-three, the applicant has paid, given, caused to have been paid or given or offered to pay or give to any officer or employee of any carrier of freight by water any valuable consideration for an improper or unlawful purpose or to induce such person to procure the employment of the applicant by such carrier for the performance of stevedoring services;

(g) If, on or after July first, nineteen hundred fifty-three, the applicant has paid, given, caused to be paid or given or offered to pay or give to any officer or representative of a labor organization any valuable consideration for an improper or unlawful purpose or to induce such officer or representative to subordinate the interests of such labor organization or its members in

the management of the affairs of such labor organization to the interests of the applicant.

4. When the application shall have been examined and such further inquiry and investigation made as the commission shall deem proper and when the commission shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed in this article, the commission shall issue and deliver a license to such applicant. The commission may issue a temporary permit to any applicant for a license under the provisions of this article pending final action on an application made for such a license. Any such permit shall be valid for a period not in excess of thirty days.

5. A license granted pursuant to this article shall be for a term of two years or fraction of such two-year period, and shall expire on the first day of December of each odd numbered year. In the event of the death of the licensee, if a natural person, or its termination or dissolution by reason of the death of a partner, if a partnership, or if the licensee shall cease to be a party to any contract of the type required by subdivision (d) of section 3 of this article, the license shall terminate ninety days after such event or upon its expiration date, whichever shall be sooner. A license may be renewed by the commission for successive two-year periods upon fulfilling the same requirements as are set forth in this article for an original application.

6. Any license issued pursuant to this article may be revoked or suspended for such period as the commission deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses on the part of the licensee or of any person required by section 2 of this article to sign or be identified in an original application for a license:

(a) Conviction of a crime or other cause which would permit or require disqualification of the licensee from receiving a license upon original application;

(b) Fraud, deceit or misrepresentation in securing the license or in the conduct of the licensed activity;

(c) Failure by the licensee to maintain a complete set of books and records containing a true and accurate account of the licensee's receipts and disbursements arising out of his activities within the Port of New York district;

(d) Failure to keep said books and records available during business hours for inspection by the commission and its duly designated representatives until the expiration of the fifth calendar year following the calendar year during which occurred the transactions recorded therein;

(e) Any other offense described in subdivisions (c) to (i) inclusive, of section 7 of Article V.

## ARTICLE VII

### PROHIBITION OF PUBLIC LOADING

1. The States of New Jersey and New York hereby find and declare that the transfer of cargo to and from trucks at piers and other waterfront terminals in the port of New York district has resulted in vicious and notorious abuses by persons commonly known as "public loaders." There is compelling evidence that such persons have exacted the payment of exorbitant charges for their services, real and alleged, and otherwise extorted large sums through force, threats of violence, unauthorized labor disturbances and other coercive activities, and that they have been responsible for and abetted criminal activities on the waterfront. These practices which have developed in the port of New York district impose unjustified costs on the han-

dling of goods in and through the port of New York district, and increase the prices paid by consumers for food, fuel and other necessities, and impair the economic stability of the port of New York district. It is the sense of the Legislatures of the States of New York and New Jersey that these practices and conditions must be eliminated to prevent grave injury to the welfare of the people.

2. It is hereby declared to be against the public policy of the States of New Jersey and New York and to be unlawful for any person to load or unload waterborne freight onto or from vehicles other than railroad cars at piers or at other waterfront terminals within the port of New York district, for a fee or other compensation, other than the following persons and their employees:

(a) Carriers of freight by water, but only at piers at which their vessels are berthed;

(b) Other carriers of freight (including but not limited to railroads and truckers), but only in connection with freight transported or to be transported by such carriers;

(c) Operators of piers or other waterfront terminals (including railroads, truck terminal operators, warehousemen and other persons), but only at piers or other waterfront terminals operated by them;

(d) Shippers or consignees of freight, but only in connection with freight shipped by such shipper or consigned to such consignee;

(e) Stevedores licenses under article VI, whether or not such waterborne freight has been or is to be transported by a carrier of freight by water with which such stevedore shall have a contract of the type prescribed by subdivision (d) of section 3 of article VI.



Nothing herein contained shall be deemed to permit any such loading or unloading of any waterborne freight at any place by any such person by means of any independent contractor, or any other agent other than an employee, unless such independent contractor is a person permitted by this article to load or unload such freight at such place in his own right.

## ARTICLE VIII

### LONGSHOREMEN

1. The commission shall establish a longshoremen's register in which shall be included all qualified longshoremen eligible, as hereinafter provided, for employment as such in the Port of New York district. On or after the first day of December, nineteen hundred fifty-three, no person shall act as a longshoreman within the Port of New York district unless at the time he is included in the longshoremen's register, and no person shall employ another to work as a longshoreman within the Port of New York district unless at the time such other person is included in the longshoremen's register.

2. Any person applying for inclusion in the longshoremen's register shall file at such place and in such manner as the commission shall designate a written statement, signed and verified by such person, setting forth his full name, residence address, social security number, and such further facts and evidence as the commission may prescribe to establish the identity of such person and his criminal record, if any.

3. The commission may in its discretion deny application for inclusion in the longshoremen's register by a person

(a) Who has been convicted by a court of the United States or any State or territory thereof, without subsequent pardon, of treason, murder, manslaughter

or of any felony or high misdemeanor or of any of the misdemeanors or offenses described in subdivision (b) of section 3 of Article V or of attempt or conspiracy to commit any of such crimes;

(b) Who knowingly or willingly advocates the desirability of overthrowing or destroying the government of the United States by force or violence or who shall be a member of a group which advocates such desirability knowing the purposes of such group includes such advocacy;

(c) Whose presence at the piers or other waterfront terminals in the Port of New York district is found by the commission on the basis of the facts and evidence before it, to constitute a danger to the public peace or safety.

4. Unless the commission shall determine to exclude the applicant from the longshoremen's register on a ground set forth in section 3 of this article it shall include such person in the longshoremen's register. The commission may permit temporary registration of any applicant under the provisions of this article pending final action on an application made for such registration. Any such temporary registration shall be valid for a period not in excess of thirty days.

5. The commission shall have power to reprimand any longshoreman registered under this article or to remove him from the longshoremen's register for such period of time as it deems in the public interest for any of the following offenses:

(a) Conviction of a crime or other cause which would permit disqualification of such person from inclusion in the longshoremen's register upon original application;

(b) Fraud, deceit or misrepresentation in securing inclusion in the longshoremen's register;

(c) Transfer or surrender of possession to any person either temporarily or permanently of any card or other means of identification issued by the commission as evidence of inclusion in the longshoremen's register, without satisfactory explanation;

(d) False impersonation of another longshoreman registered under this article or of another person licensed under this compact;

(e) Wilful commission of or wilful attempt to commit at or on a water-front terminal or adjacent highway any act of physical injury to any other person or of wilful damage to or misappropriation of any other person's property, unless justified or excused by law; and

(f) Any other offense described in subdivisions (c) to (f) inclusive of section 7 of Article V.

6. The commission shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register in the event that the holder thereof has been removed from the longshoremen's register.

7. Nothing contained in this article shall be construed to limit in any way any rights of labor reserved by Article XV.

## ARTICLE IX

### REGULARIZATION OF LONGSHOREMEN'S EMPLOYMENT

1. On or after the first day of December, one thousand nine hundred and fifty-four, the commission shall, at regular intervals, remove from the longshoremen's register any person who shall have been registered for at least nine months and who shall have failed during the preceding six calendar months either to have worked as a longshoreman in the Port of New York district or to have applied for employment as a longshoreman at an employment information center es-

tablished under article XII for such minimum number of days as shall have been established by the commission pursuant to section two of this article.

2. On or before the first day of June, one thousand nine hundred and fifty-four, and on or before each succeeding first day of June or December, the commission shall, for the purposes of section one of this article, establish for the six-month period beginning on each such date a minimum number of days and the distribution of such days during such period.

3. In establishing any such minimum number of days or period, the commission shall observe the following standards:

(a) To encourage as far as practicable the regulation of the employment of longshoremen;

(b) To bring 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;

(c) To eliminate oppressive and evil hiring practices affecting longshoremen and waterborne commerce in the Port of New York district;

(d) To eliminate unlawful practices injurious to waterfront labor; and

(e) To establish hiring practices and conditions which will permit the termination of governmental regulation and intervention at the earliest opportunity.

4. A longshoreman who has been removed from the longshoremen's register pursuant to this article may seek reinstatement upon fulfilling the same requirements as for initial inclusion in the longshoremen's register, but not before the expiration of one year from

the date of removal, except that immediate reinstatement shall be made upon proper showing that the registrant's failure to work or apply for work the minimum number of days above described was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause.

5. Notwithstanding any other provision of this article, the commission shall at any time have the power to register longshoremen on a temporary basis to meet special or emergency needs.

## ARTICLE X

### PORT WATCHMAN

1. On or after the first day of December, nineteen hundred fifty-three, no person shall act as a port watchman within the Port of New York district without first having obtained a license from the commission, and no person shall employ a port watchman who is not so licensed.

2. A license to act as a port watchman shall be issued only upon written application, duly verified, which shall state the following:

(a) The full name, residence, business address (if any), place and date of birth and social security number of the applicant;

(b) The present and previous occupations of the applicant, including the places where he was employed and the names of his employers;

(c) The citizenship of the applicant and, if he is a naturalized citizen of the United States, the court and date of his naturalization; and

(d) Such further facts and evidence as may be required by the commission to ascertain the character, integrity and identity of the applicant.

3. No such license shall be granted

(a) Unless the commission shall be satisfied that the applicant possesses good character and integrity;

(b) If the applicant has, without subsequent pardon, been convicted by a court of the United States or of any State or territory thereof of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any felony or high misdemeanor or any of the misdemeanors or offenses described in subdivision (b) of section 3 of Article V;

(c) Unless the applicant shall meet such reasonable standards of physical and mental fitness for the discharge of his duties as may from time to time be established by the commission;

(d) If the applicant shall be a member of any labor organization which represents longshoremen or pier superintendents or hiring agents; but nothing in this Article shall be deemed to prohibit port watchmen from being represented by a labor organization or organizations which do not also represent longshoremen or pier superintendents or hiring agents. The American Federation of Labor, the Congress of Industrial Organizations and any other similar federation, congress or other organization of national or international occupational or industrial labor organizations shall not considered an organization which represents longshoremen or pier superintendents or hiring agents within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or pier superintendents or hiring agents.

(e) If the applicant knowingly or wilfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates such de-

sirability, knowing the purposes of such group include such advocacy.

4. When the application shall have been examined and such further inquiry and investigation made as the commission shall deem proper and when the commission shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed by this article and regulations issued pursuant thereto, the commission shall issue and deliver a license to the applicant. The commission may issue a temporary permit to any applicant for a license under the provisions of this article pending final action on an application made for such a license. Any such permit shall be valid for a period not in excess of thirty days.

5. A license granted pursuant to this article shall continue for term of three years. A license may be renewed by the commission for successive three-year periods upon fulfilling the same requirements as are set forth in this article for an original application.

6. Any license issued pursuant to this article may be revoked or suspended for such period as the commission deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(a) Conviction of a crime or other cause which would permit or require his disqualification from receiving a license upon original application;

(b) Fraud, deceit or misrepresentation in securing the license; and

(c) Any other offense, described in subdivisions (c) to (i), inclusive, of section 7 of article V.

## ARTICLE XI

## HEARINGS, DETERMINATIONS AND REVIEW

1. The Commission shall not deny any application for a license or registration without giving the applicant or prospective licensee reasonable prior notice and an opportunity to be heard.

2. Any application for a license or for inclusion in the longshoremen's register, and any license issued or registration made, may be denied, revoked, cancelled, suspended as the case may be, only in the manner prescribed in this article.

3. The commission may on its own initiative or on complaint of any person, including any public official or agency, institute proceedings to revoke, cancel or suspend any license or registration after a hearing at which the licensee or registrant and any person making such complaint shall be given an opportunity to be heard, provided that any order of the commission revoking, cancelling or suspending any license or registration shall not become effective until fifteen days subsequent to the serving of notice thereof upon the licensee or registrant unless in the opinion of the commission the continuance of the license or registration for such period would be inimicable to the public peace or safety. Such hearing shall be held in such manner and upon such notice as may be prescribed by the rules of the commission, but such notice shall be of not less than ten days and shall state the nature of the complaint.

4. Pending the determination of such hearing pursuant to section 3 the commission may temporarily suspend a license or registration if in the opinion of the commission the continuance of the license or registration for such period is inimicable to the public peace or safety.



5. The commission, or such member, officer, employee or agent of the commission as may be designated by the commission for such purpose, shall have the power to issue subpoenas throughout both States to compel the attendance of witnesses and the giving of testimony or production of other evidence and to administer oaths in connection with any such hearing. It shall be the duty of the commission or of any such member, officer, employee or agent of the commission designated by the commission for such purpose to issue subpoenas at the request of and upon behalf of the licensee, registrant or applicant. The commission or such person conducting the hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in the conduct of such hearing.

6. Upon the conclusion of the hearing, the commission shall take such action upon such findings and determination as it deems proper and shall execute an order carrying such findings into effect. The action in the case of an application for a license or registration shall be the granting or denial thereof. The action in the case of a licensee shall be revocation of the license or suspension thereof for a fixed period or reprimand or a dismissal of the charges. The action in the case of a registered longshoreman shall be dismissal of the charges, reprimand or removal from the longshoremen's register for a fixed period or permanently.

7. The action of the commission in denying any application for a license or in refusing to include any person in the longshoremen's register under this compact or in suspending or revoking such license or removing any person from the longshoremen's register or in reprimanding a licensee or registrant shall be subject to judicial review by a proceeding instituted in either

State at the instance, of the applicant, licensee or registrant in the manner provided by the law of such State for review of the final decision or action of administrative agencies of such State; *provided, however*, that notwithstanding any other provision of law the court shall have power to stay for not more than thirty days an order of the commission suspending or revoking a license or removing a longshoreman from the longshoremen's register.

## ARTICLE XII

### EMPLOYMENT INFORMATION CENTERS

1. The States of New Jersey and New York hereby find and declare that the method of employment of longshoremen and port watchmen in the Port of New York district, commonly known as the "shape-up," has resulted in vicious and notorious abuses, of which such employees have been the principal victims. There is compelling evidence that the "shape-up," has permitted and encouraged extortion from employees as the price of securing or retaining employment and has subjected such employees to threats of violence, unwilling joinder in unauthorized labor disturbances and criminal activities on the waterfront. The "shape-up" has thus resulted in a loss of fundamental rights and liberties of labor, has impaired the economic stability of the Port of New York district and weakened law enforcement therein. It is the sense of the Legislatures of the States of New Jersey and New York that these practices and conditions must be eliminated to prevent grave injury to the welfare of waterfront laborers and to the people at large and that the elimination of the "shape-up" and the establishment of a system of employment information centers are necessary to a solution of these public problems.

2. The commission shall establish and maintain one or more employment information centers in each State within the Port of New York district at such locations as it may determine. No person shall, directly or indirectly, hire any person for work as a longshoreman or port watchman within the Port of New York district, except through such particular employment information center or centers as may be prescribed by the commission. No person shall accept any employment as a longshoreman or port watchman within the Port of New York district, except through such an employment information center. At each such employment information center the commission shall keep and exhibit the longshoremen s register and any other records it shall determine to the end that longshoremen and port watchmen shall have the maximum information as to available employment as such at any time within the Port of New York district and to the end that, employers shall have an adequate opportunity to fill their requirements of registered longshoremen and port watchmen at all times.

3. Every employer of longshoremen or port watchmen within the Port of New York district shall furnish such information as may be required by the rules and regulations prescribed by the commission with regard to the name of each person hired as a longshoreman or port watchman, the time and place of hiring, the time, place and hours of work, and the compensation therefor.

4. All wage payments to longshoremen or port watchmen for work as such shall be made by check or cash evidenced by a written voucher receipted by the person to whom such cash is paid. The commission may arrange for the provision of facilities for cashing such checks.

## ARTICLE XIII

## EXPENSES OF ADMINISTRATION

1. By concurrent legislation enacted by their respective Legislatures, the two States may provide from time to time for meeting the commission's expenses. Until other provision shall be made, such expense shall be met as authorized in this article.

2. The commission shall annually adopt a budget of its expenses for each year. Each budget shall be submitted to the Governors of the two States and shall take effect as submitted; *provided*, that either Governor may within thirty days disapprove or reduce any item or items, and the budget shall be adjusted accordingly.

3. After taking into account such funds as may be available to it from reserves, Federal grants or otherwise, the balance of the commission's budgeted expenses shall be assessed upon employers of persons registered or licensed under this compact. Each such employer shall pay to the commission an assessment computed upon the gross payroll payments made by such employer to longshoremen, pier superintendents, hiring agents and port watchmen for work or labor performed within the port of New York district, at a rate, not in excess of two per cent, computed by the commission in the following manner: the commission shall annually estimate the gross payroll payments to be made by employers subject to assessment and shall compute a rate thereon which will yield revenues sufficient to finance the commission's budget for each year. Such budget may include a reasonable amount for a reserve but such amount shall not exceed ten per cent of the total of all other items of expenditure contained therein. Such reserve shall be used for the stabilization of annual as-

sessments, the payment of operating deficits and for the repayment of advances made by the two States.

4. The amount required to balance the commission's budget, in excess of the estimated yield of the maximum assessment, shall be certified by the commission, with the approval of the respective Governors, to the Legislatures of the two States, in proportion to the gross annual wage payments made to longshoremen for work in each State within the port of New York district. The Legislatures shall annually appropriate to the commission the amount so certified.

5. The commission may provide by regulation for the collection and auditing of assessments. Such assessments hereunder shall be payable pursuant to such provisions for administration, collection and enforcement as the States may provide by concurrent legislation. In addition to any other sanction provided by law, the commission may revoke or suspend any license held by any person under this compact, or his privilege of employing persons registered or licensed hereunder, for non-payment of any assessment when due.

6. The assessment hereunder shall be in lieu of any other charge for the issuance of licenses to stevedores, pier superintendents, hiring agents and port watchmen or for the registration of longshoremen or use of an employment information center. The commission shall establish reasonable procedures for the consideration of protests by affected employees concerning the estimates and computation of the rate of assessment.

#### ARTICLE XIV

##### GENERAL VIOLATIONS; PROSECUTIONS; PENALTIES

1 The failure of any witness, when duly subpoenaed to attend, give testimony or produce other evi-

dence, whether or not at a hearing, shall be punishable by the Superior Court in New Jersey and the Supreme Court in New York in the same manner as said failure is punishable by such court in a case therein pending.

2 Any person who, having been sworn or affirmed as a witness in any such hearing, shall wilfully give false testimony or who shall wilfully make or file any false or fraudulent report or statement required by this compact to be made or filed under oath, shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than one year or both.

3. Any person who violates or attempts or conspires to violate any other provision of this compact shall be punishable as may be provided by the two States by action of the Legislature of either State concurred in by the Legislature of the other.

4. Any person who interferes with or impedes the orderly registration of longshoremen pursuant to this compact or who conspires to or attempts to interfere with or impede such registration shall be punishable as may be provided by the two States by action of the Legislature of either State concurred in by the Legislature of the other.

5. Any person who directly or indirectly inflicts or threatens to inflict any injury, damage, harm or loss or in any other manner practices intimidation upon or against any person in order to induce or compel such person or any other person to refrain from registering pursuant to this compact shall be punishable as may be provided by the two States by action of the Legislature of either State concurred in by the Legislature of the other.

6. In any prosecution under this compact, it shall be sufficient to prove only a single act (or a single hold-

ing out or attempt) prohibited by law, without having to prove a general course of conduct, in order to prove a violation.

## ARTICLE XV

### COLLECTIVE BARGAINING SAFEGUARDED

1. This compact is not designed and shall not be construed to limit in any way ally rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this compact shall be construed to limit in any way the right of employees to strike.

2. This compact is not designed and shall not be construed to limit in any way any rights of longshoremen, hiring agents, pier superintendents or port watchmen or their employers to bargain collectively and agree upon any method for the selection of such employees by way of seniority, experience, regular gangs or otherwise; *provided*, that such employees shall be licensed or registered hereunder and such longshoremen and port watchmen shall be hired only through the employment information centers established hereunder and that all other provisions of this compact be observed.

## ARTICLE XVI

### AMENDMENTS; CONSTRUCTION; SHORT TITLE

1. Amendments and supplements to this compact to implement the purposes thereof may be adopted by

the action of the Legislature of either State concurred in by the Legislature of the other.

2. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or circumstances and the two States hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

3. In accordance with the ordinary rules for construction of interstate compacts this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

4. This compact shall be known and may be cited as the "Waterfront Commission Compact."

SEC. 2. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved August 12, 1953.



**2017 N.J. LAW CH. 324 (2018)****CHAPTER 324  
(CORRECTED COPY)**

**AN ACT** directing the Governor, on behalf of the State of New Jersey, to notify the Congress of the United States, the Governor of the State of New York, and the Waterfront Commission of New York Harbor, of the State of New Jersey's intention to withdraw from the compact created by P.L.1953, c.202 (C.32:23-1 et seq.), supplementing Titles 32 and 53 of the Revised Statutes, amending R.S.52:14-7, and repealing parts of the statutory law.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.32:23-229 Findings, declarations.

1. The Legislature finds and declares that:

a. The Port of New York and New Jersey (port) has been one of the backbones of the region's economy for decades. When ranked by tonnage, the port is the largest port complex on the East coast of North America and the third largest in the United States. When ranked by the value of shipments passing through it, the port is the second busiest freight gateway in the United States. The port's strategic location, within one day's drive of a significant percentage of the national market and developed transportation infrastructure, are key assets that have made the region a gateway for international trade. Since the birth of containerization in 1956, the marine terminals on the New Jersey side of the port have grown significantly in comparison to the New York terminals. Today more than 82 percent of the cargo and 82 percent of the work hours are on the

New Jersey side of the port. The port and freight industry in New Jersey alone supports more than 143,000 direct jobs and 250,000 total jobs, nearly \$14.5 billion in personal income, over \$20 billion in business income, and nearly \$4.9 billion in federal, State, and local taxes, of which State and local taxes account for \$1.6 billion.

b. The Waterfront Commission of New York Harbor (commission) was created through a compact between the states of New Jersey and New York and approved by Congress in 1953. The commission's mission is to ensure fair hiring and employment practices and investigate, deter, and combat criminal activity and influence in the port. The commission has itself been tainted by corruption in recent years and, moreover, has exercised powers that do not exist within the authorizing compact, by dictating the terms of collective bargaining agreements of organized labor, and by requiring stevedoring companies to hire and retain independent inspectors to examine company operations in order for those companies to continue to operate in the port. Further, the commission, despite changes in the industry to drive out organized crime's influence, has over-regulated the businesses at the port in an effort to justify its existence as the only waterfront commission in any port in the United States. As a result, the commission has become an impediment to future job growth and prosperity at the port.

c. While there is a continued need to regulate port-located business to ensure fairness and safety, there are numerous federal, State, and local taxpayer funded agencies that have jurisdiction that the commission lacks to regulate port operations, including, but not limited to: the United States Department of Homeland Security; United States Customs and Border Protection; the United States Coast Guard; the Transportation Se-

curity Administration; the Federal Bureau of Investigation; the United States Department of Labor's Division of Longshore and Harbor Workers Compensation; the National Labor Relations Board; the Food and Drug Administration; the United States Environmental Protection Agency; the United States Department of Transportation; the Federal Maritime Commission; the Occupational Safety and Health Administration; the Port Authority of New York and New Jersey Police Department; depending on the particular location of the facility in New Jersey, the City of Newark Police Department, City of Elizabeth Police Department, City of Bayonne Police Department, City of Jersey City Police Department, and the New Jersey State Police; and, in matters of fair hiring and employment discrimination, the United States Equal Employment Opportunity Commission and the New Jersey Division on Civil Rights.

d. Abolishing the commission and transferring the New Jersey portion of the commission's law enforcement responsibilities to the New Jersey State Police would be practical and efficient, as the State Police is suited to undertake an investigation of any criminal activity in the ports of northern New Jersey without impeding economic prosperity.

C.32:23-230 Withdrawal from compact.

2. a. Within 30 days of the effective date of P.L.2017, c.324 (C.32:23-229 et al.), the Governor, on behalf of the State of New Jersey, shall notify the Congress of the United States, the Governor of the State of New York, and the waterfront commission of New York harbor, of the State of New Jersey's intention to withdraw from:

(1) the compact entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1953, c.202 (C.32:23-1 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1953, c.882 (NY Unconsol. Ch.307, s.1), as amended and supplemented; and

(2) the compact, entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1970, c.58 (C.32:23-150 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1970, c.951 (NY Unconsol. Ch.307, s.10), as amended and supplemented.

b. As soon as practicable after the date of notification pursuant to subsection a. of this section, the Governor shall notify the presiding officers of each house of the Legislature that the notification has occurred, the date of the notification, and any other information concerning the notification the Governor deems appropriate.

#### C.53:2-8 Definitions.

3. As used in P.L.2017, c.324 (C.32:23-229 et al.):

“Career offender” means a person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing methods that are deemed criminal violations against the laws of this State.

“Career offender cartel” means a number of career offenders acting in concert, and may include what is commonly referred to as an organized crime group.

“Carrier” means a carrier as that term is defined in 49 U.S.C. s.13102.

“Carrier of freight by water” means any person who may be engaged or who may hold himself or herself out as willing to be engaged, whether as a common carrier, a contract carrier, or otherwise, except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in that service or carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count, in the carriage of freight by water between any point in the port of New York district, as applicable only within the State of New Jersey, and a point outside that district.

“Checker” means a longshoreman who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores.

“Commission” means the waterfront commission of New York harbor established by the State of New Jersey pursuant to P.L.1953, c.202 (C.32:23-1 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1953, c.882 (NY Unconsol. Ch.307, s.1).

“Common carrier” means a common carrier as that term is defined in 46 U.S.C. s.40102.

“Compact” means the compact entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1953, c.202 (C.32:23-1 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1953, c.882 (NY Unconsol. Ch.307, s.1), as amended and supplemented.

“Consignee” means the person designated on a bill of lading as the recipient of waterborne freight consigned for carriage by water.

“Container” means any receptacle, box, carton, or crate which is specifically designed and constructed so that it may be repeatedly used for the carriage of freight by a carrier of freight by water.

“Contract carrier” means a contract carrier as that term is defined in 49 U.S.C. s.13102.

“Division” means the Division of State Police in the Department of Law and Public Safety.

“Freight” means freight which has been or will be, carried by, or consigned for carriage by a carrier of freight by water.

“Hiring agent” means any natural person who, on behalf of a carrier of freight by water or a stevedore, shall select any longshoreman for employment, and “hiring agent” includes any natural person, who on behalf of any other person shall select any longshoreman for employment.

“Immunity” means that a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, pursuant to an order of the division, the person gave answer or produced evidence, and that no answer given or evidence produced shall be received against the person upon any criminal proceeding.

“Labor organization” means and includes any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms and conditions of employment, or other mutual aid or protection, but “labor organization” shall not include a

federation or congress of labor organizations organized on a national or international basis even though one of its constituent labor organizations may represent persons so registered or licensed.

“Longshoreman” means a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore, to: a. physically move waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; b. engage in direct and immediate checking of any such freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores; c. supervise directly and immediately others who are employed as a longshoreman; d. physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; e. physically move waterborne freight to or from a barge, lighter, or railroad car for transfer to or from a vessel of a carrier of freight by water which is, shall be, or shall have been berthed at the same pier or other waterfront terminal; or f. perform labor or services involving, or incidental to, the movement of freight at a pier or other waterfront terminal.

“Longshoremen’s register” means the register of eligible longshoremen compiled and maintained by the division pursuant to section 8 of P.L.2017, c.324 (C.53:2-13).

“Marine terminal” means an area which includes piers, which is used primarily for the moving, warehousing, distributing, or packing of waterborne freight

or freight to or from piers and which is under common ownership or control with the pier.

“Other waterfront terminal” means any warehouse, depot, or other terminal, other than a pier, which is located within a marine terminal in the port of New York district and which is used for waterborne freight in whole or substantial part, and includes any warehouse, depot, or other terminal, other than a pier, whether enclosed or open, which is located in a marine terminal in the port of New York district, any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight.

“Person” means not only a natural person but also any partnership, joint venture, association, corporation, or any other legal entity but shall not include the United States, any state or territory thereof, or any department, division, board, authority, or authority of one or more of the foregoing.

“Pier” means any wharf, pier, dock, or quay in regular use for the movement of waterborne freight between vessel and shore.

“Pier superintendent” means any natural person other than a longshoreman who is employed for work at a pier or other waterfront terminal by a carrier of freight by water or a stevedore and whose work at the pier or other waterfront terminal includes the supervision, directly or indirectly, of the work of longshoremen.

“Port of New York district” or “district” means the district created by Article II of the compact dated April 30, 1921, between the states of New York and New Jersey, authorized by chapter 154 of the laws of New



York of 1921 and chapter 151 of the laws of New Jersey of 1921.

“Port watchman” means any watchman, gateman, roundsman, detective, guard, guardian, or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in that capacity on any pier or other waterfront terminal.

“Select any longshoreman for employment” means select a person for the commencement or continuation of employment as a longshoreman, or the denial or termination of employment as a longshoreman.

“Stevedore” means a contractor, not including an employee, engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by the carrier on vessels of the carrier berthed at piers, on piers at which the vessels are berthed or at other waterfront terminals. “Stevedore” shall also include: a. a contractor engaged for compensation pursuant to a contract or arrangement with the United States, any state or territory thereof, or any department, division, board, commission, or authority of one or more of the foregoing, in moving freight carried or consigned for carriage between any point in the port of New York district and a point outside that district on vessels of the public agency berthed at piers, on piers at which their vessels are berthed or at other waterfront terminals; b. a contractor, engaged for compensation pursuant to a contract or arrangement with any person to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; or c. a contractor engaged for compensation pursuant to a con-

tract or arrangement with any other person to perform labor or services involving, or incidental to, the movement of freight into or out of containers, which have been or which will be carried by a carrier of freight by water, on vessels berthed at piers, on piers or at other waterfront terminals.

“State Treasurer” means the Treasurer of the State of New Jersey.

“Terrorist group” means a group associated, affiliated, or funded in whole or in part by a terrorist organization designated by the United States Secretary of State in accordance with section 219 of the federal Immigration and Nationality Act, as amended from time to time, or any other organization which assists, funds, or engages in crimes or acts of terrorism as defined in the laws of the United States, or of this State.

“Transfer date” means the 90th day following the notification by the Governor pursuant to section 2 of P.L.2017, c.324 (C.32:23-230).

“Waterborne freight” means freight carried by or consigned for carriage by carriers of freight by water, and shall also include freight described in the definition of “stevedore” and in the definition of “other waterfront terminal.” Provided, however, that at the point at which the freight is released from a pier or marine terminal to the possession of the consignee or the person designated by the consignee, the freight shall no longer be considered waterborne freight if:

- a. the freight is not further transported by water; and
- b. services involving or incidental to the unloading, storage, inspection, grading, repackaging, or processing

of freight occur at a location outside a pier or marine terminal.

“Witness” means any person whose testimony is desired in any investigation, interview, or other proceeding conducted by the division under the authority granted pursuant to P.L.2017, c.324 (C.32:23-229 et al.).

C.53:2-9 Division to assume powers, assets, duties after transfer date.

4. a. Until the transfer date established pursuant to section 31 of P.L.2017, c.324 (C.53:2-36) shall have become operative, the division shall not exercise any powers, rights, or duties conferred by P.L.2017, c.324 (C.32:23-229 et al.) or by any other law in any way which will interfere with the powers, rights, and duties of the commission. The division and the commission are directed to cooperate with each other after the date of notification pursuant to section 2 of P.L.2017, c.324 (C.32:23-230) until the transfer date, and the commission shall make available to the division all information concerning its property and assets, contracts, operations, and finances within New Jersey as the division may require to provide for the efficient exercise by the division of all powers, rights, and duties conferred upon the division by P.L.2017, c.324 (C.32:23-229 et al.).

b. After the transfer date established pursuant to section 31 of P.L.2017, c.324 (C.53:2-36):

(1) The division shall assume all of the powers, rights, assets, and duties of the commission within this State, and those powers, rights, assets, and duties shall then and thereafter be vested in and exercised by the division;

(2) The officers having custody of the funds of the commission applicable to this State shall deliver those funds into the custody of the State Treasurer, the property and assets of the commission within this State shall, without further act or deed, become the property and assets of the division; and

(3) Any officers and employees of the commission seeking to be transferred to the division may apply to become employees of the division until determined otherwise by the division. Nothing in P.L.2017, c.324 (C.32:23-229 et al.) shall be construed to deprive any officers or employees of the commission of their rights, privileges, obligations, or status with respect to any pension or retirement system. The commission employees shall retain all of their rights and benefits under existing collective negotiation agreements or contracts until such time as new or revised agreements or contracts are agreed to. All existing employee representatives shall be retained to act on behalf of those employees until such time as the employees shall, pursuant to law, elect to change those representatives. If an existing officer or employee becomes a member of an administered retirement system of the State of New Jersey, the officer or employee shall receive the same amount of service credit in the retirement system as the officer or employee previously had in the pension or retirement system as an employee of the commission, provided that there is a transfer of funds, or purchase, of the full cost of that credit from the pension or retirement system of the commission to an administered retirement system of the State of New Jersey. Nothing in P.L.2017, c.324 (C.32:23-229 et al.) shall affect the civil service status, if any, of those officers or employees;

(4) All debts, liabilities, obligations, and contracts of the commission applicable only to this State, as deter-

mined by the officers having custody of the funds of the commission, except to the extent specifically provided for or established to the contrary in P.L.2017, c.324 (C.32:23-229 et al.), are imposed upon the division, and all creditors of the commission and persons having claims against or contracts with the commission of any kind or character may enforce those debts, claims, and contracts against the division as successor to the commission in the same manner as they might have done against the commission, and the rights and remedies of those holders, creditors, and persons having claims against or contracts with the commission shall not be limited or restricted in any manner by P.L.2017, c.324 (C.32:23-229 et al.);

(5) In continuing the functions, contracts, obligations, and duties of the commission within this State, the division is authorized to act in its own name as may be convenient or advisable under the circumstances from time to time;

(6) Any references to the commission in any other law or regulation shall then and thereafter be deemed to refer and apply to the division;

(7) All rules and regulations of the commission shall continue in effect as the rules and regulations of the division until amended, supplemented, or rescinded by the division pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Regulations of the commission inconsistent with the provisions of P.L.2017, c.324 (C.32:23-229 et al.) or of regulations of the division shall be deemed void;

(8) All operations of the commission within this State shall continue as operations of the division until altered by the division as provided or permitted pursuant to P.L.2017, c.324 (C.32:23-229 et al.); and

(9) The powers vested in the division by P.L.2017, c.324 (C.32:23-229 et al.) shall be construed as being in addition to, and not in diminution of, the powers heretofore vested by law in the commission to the extent not otherwise altered or provided for in P.L.2017, c.324 (C.32:23-229 et al.).

c. A license, registration, or permit issued by the commission prior to the date of notification pursuant to section 2 of P.L.2017, c.324 (C.32:23-230) shall, subject to the terms of its issuance, continue to be valid on and after the transfer date as a license, registration, or permit issued by the division. An application for a license, registration, or permit filed with the commission prior to and pending on that notification date shall, as of and from the notification date, be deemed to be filed with and pending before the division.

#### C.53:2-10 Additional powers, duties of division.

5. In addition to the powers and duties elsewhere prescribed in law, the division shall have the power:

a. To determine the location, size, and suitability of accommodations necessary and desirable for the establishment and maintenance of the employment information centers provided in section 16 of P.L.2017, c.324 (C.53:2-21) and for administrative offices for the division;

b. To administer and enforce the provisions of P.L.2017, c.324 (C.32:23-229 et al.);

c. Consistent with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to adopt and enforce rules and regulations as the division may deem necessary to effectuate the purposes

of P.L.2017, c.324 (C.32:23-229 et al.) or to prevent the circumvention or evasion thereof;

d. By its members and its properly designated officers, agents, and employees, with respect to the implementation and enforcement of P.L.2017, c.324 (C.32:23-229 et al.), to administer oaths and issue subpoenas to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

e. To have for its properly designated officers, agents and employees, full and free access, ingress, and egress to and from all vessels, piers, and other waterfront terminals or other places in the port of New York district within this State, for the purposes of making inspection or enforcing the provisions of P.L.2017, c.324 (C.32:23-229 et al.); and no person shall obstruct or in any way interfere with any officer, employee, or agent of the division in the making of an inspection, or in the enforcement of the provisions of P.L.2017, c.324 (C.32:23-229 et al.) or in the performance of any other power or duty under P.L.2017, c.324 (C.32:23-229 et al.);

f. To recover possession of any suspended or revoked license issued pursuant to sections 6, 7, and 13 of P.L.2017, c.324 (C.53:2-11, C.53:2-12, and C.53:2-18) within the port of New York district in this State;

g. To make investigations and collect and compile information concerning waterfront practices generally within the port of New York district in this State and upon all matters relating to the accomplishment of the objectives of P.L.2017, c.324 (C.32:23-229 et al.);

h. To advise and consult with representatives of labor and industry and with public officials and agencies concerned with the effectuation of the purposes of

P.L.2017, c.324 (C.32:23-229 et al.), upon all matters which the division may desire, including but not limited to, the form and substance of rules and regulations, the administration of the provisions of P.L.2017, c.324 (C.32:23-229 et al.), maintenance of the longshoremen's register, and issuance and revocation of licenses;

i. To make annual and other reports to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district in this State and for the effectuation of the purposes of P.L.2017, c.324 (C.32:23-229 et al.). The annual reports shall state the division's findings and determinations as to whether the public necessity still exists for: (1) the continued registration of longshoremen; (2) the continued licensing of any occupation or employment required to be licensed hereunder; and (3) the continued public operation of the employment information centers provided for in section 16 of P.L.2017, c.324 (C.53:2-21);

j. To co-operate with and receive from any department, division, bureau, board, commission, authority, or agency of this State, or of any county or municipality thereof, any assistance and data as will enable the division to properly to carry out its powers and duties hereunder; and to request a department, division, bureau, board, commission, authority, or agency, with the consent thereof, to execute the division's functions and powers, as the public interest may require; and

k. To exercise the powers and duties of the division as provided in P.L.2017, c.324 (C.32:23-229 et al.) to its officers, employees, and agents designated by the division;



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l. To issue temporary permits and permit temporary registrations under such terms and conditions as the division may prescribe which shall be valid for a period to be fixed by the division not in excess of six months;

m. To require any applicant for a license or registration or any prospective licensee to furnish facts and evidence as the division may deem appropriate to enable it to ascertain whether the license or registration should be granted;

n. In any case in which the division has the power to revoke, cancel or suspend any license, the division shall also have the power to impose as an alternative to that revocation, cancellation, or suspension, a penalty, which the licensee may elect to pay the division in lieu of the revocation, cancellation, or suspension. The maximum penalty shall be \$5,000 for each separate offense. The division may, for good cause shown, abate all or part of the penalty;

o. To designate any officer, agent, or employee of the division to be an investigator who shall be vested with all the powers of a peace or police officer of the State of New Jersey;

p. To confer immunity, in the following manner prescribed by section 20 of P.L.2017, c.324 (C.53:2-25);

q. To require any applicant or renewal applicant for registration as a longshoreman, any applicant or renewal applicant for registration as a checker, or any applicant or renewal applicant for registration as a telecommunications system controller and any person who is sponsored for a license as a pier superintendent or hiring agent, any person who is an individual owner of an applicant or renewal applicant stevedore, or any

persons who are individual partners of an applicant or renewal applicant stevedore, or any officers, directors, or stockholders owning five percent or more of any of the stock of an applicant or renewal applicant corporate stevedore or any applicant or renewal applicant for a license as a port watchman or any other category of applicant or renewal applicant for registration or licensing within the division's jurisdiction to be fingerprinted by the division at the cost and expense of the applicant or renewal applicant;

r. To exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the State Bureau of Identification for use in making the determinations required by this section; and

s. Notwithstanding any other provision of law, rule, or regulation to the contrary, to require any applicant for employment or employee of the division engaged in the implementation or enforcement of P.L.2017, c.324 (C.32:23-229 et al.) to be fingerprinted at the cost and expense of the applicant or employee and to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the State Bureau of Identification for use in the hiring or retention of those persons.

C.53:2-11 License required for pier superintendent, hiring agent.

6. a. A person shall not act as a pier superintendent or as a hiring agent within the port of New York district in this State without first having obtained from the division a license to act as a pier superintendent or hiring agent, as the case may be, and a person shall not

employ or engage another person to act as a pier superintendent or hiring agent who is not so licensed.

b. A license to act as a pier superintendent or hiring agent shall be issued only upon the written application, under oath, of the person proposing to employ or engage another person to act as a pier superintendent or hiring agent, verified by the prospective licensee as to the matters concerning the prospective licensee, and shall state the following:

(1) The full name and business address of the applicant;

(2) The full name, residence, business address, if any, place and date of birth, and social security number of the prospective licensee;

(3) The present and previous occupations of the prospective licensee, including the places where the person was employed and the names of the person's employers;

(4) Any further facts and evidence as may be required by the division to ascertain the character, integrity, and identity of the prospective licensee; and

(5) That if a license is issued to the prospective licensee, the applicant will employ the licensee as pier superintendent or hiring agent, as the case may be.

c. A license shall not be granted pursuant to this section:

(1) Unless the division shall be satisfied that the prospective licensee possesses good character and integrity;

(2) If the prospective licensee has, without subsequent pardon, been convicted by a court of the United States, or any State or territory thereof, of the commis-

sion of, or the attempt or conspiracy to commit, treason, murder, manslaughter, or any of the following offenses: illegally using, carrying, or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled dangerous substance or a controlled dangerous substance analog; or a violation prescribed in subsection g. of this section. Any prospective licensee ineligible for a license by reason of any conviction under this paragraph may submit satisfactory evidence to the division that the prospective licensee has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so acted as to warrant the grant of a license, in which event the division may, in its discretion, issue an order removing that ineligibility. The five-year period shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence; and

(3) If the prospective licensee knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of a group having that advocacy.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the prospective licensee possesses the qualifications and requirements prescribed in this section, the division shall issue and deliver to the

prospective licensee a license to act as pier superintendent or hiring agent for the applicant, as the case may be, and shall inform the applicant of this action. The division may issue a temporary permit to any prospective licensee for a license issued under this section pending final action on an application made for that license. Any temporary permit shall be valid for a period not in excess of 30 days.

e. A person shall not be licensed to act as a pier superintendent or hiring agent for more than one employer, except at a single pier or other waterfront terminal, but nothing in P.L.2017, c.324 (C.32:23-229 et al.) shall be construed to limit in any way the number of pier superintendents or hiring agents any employer may employ.

f. A license granted pursuant to this section shall continue through the duration of the licensee's employment by the employer who shall have applied for the license.

g. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(1) Conviction of a crime or act by the licensee or other cause which would require or permit the person's disqualification from receiving a license upon original application;

(2) Fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;

(3) Violation of any of the provisions of P.L.2017, c.324 (C.32:23-229 et al.);

(4) Unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled danger-

ous substance or a controlled dangerous substance analog;

(5) Employing, hiring, or procuring any person in violation of P.L.2017, c.324 (C.32:23-229 et al.) or inducing or otherwise aiding or abetting any person to violate the terms of P.L.2017, c.324 (C.32:23-229 et al.);

(6) Paying, giving, causing to be paid or given or offering to pay or give to any person any valuable consideration to induce the other person to violate any provision of P.L.2017, c.324 (C.32:23-229 et al.) or to induce any public officer, agent, or employee to fail to perform the person's duty hereunder;

(7) Consorting with known criminals for an unlawful purpose;

(8) Transfer or surrender of possession of the license to any person either temporarily or permanently without satisfactory explanation;

(9) False impersonation of another licensee under P.L.2017, c.324 (C.32:23-229 et al.);

(10) Receipt or solicitation of anything of value from any person other than the licensee's employer as consideration for the selection or retention for employment of any longshoreman;

(11) Coercion of a longshoreman by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

(12) Lending any money to or borrowing any money from a longshoreman for which there is a charge of interest or other consideration; or

(13) Membership in a labor organization which represents longshoremen or port watchmen; but nothing in this section shall be deemed to prohibit pier superin-

tendents or hiring agents from being represented by a labor organization or organizations which do not also represent longshoremen or port watchmen. The American Federation of Labor, the Congress of Industrial Organizations and any other similar federation, congress, or other organization of national or international occupational or industrial labor organizations shall not be considered an organization which represents longshoremen or port watchmen within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or port watchmen.

C.53:2-12 Licensure required for stevedore.

7. a. A person shall not act as a stevedore within the port of New York district in this State without having first obtained a license from the division, and a person shall not employ a stevedore to perform services as such within the port of New York district unless the stevedore is so licensed.

b. Any person intending to act as a stevedore within the port of New York district shall file in the office of the division a written application for a license to engage in that occupation, duly signed, and verified as follows:

c. If the applicant is a natural person, the application shall be signed and verified by that person and if the applicant is a partnership, the application shall be signed and verified by each natural person composing or intending to compose that partnership. The application shall state the full name, age, residence, business address, if any, present and previous occupations of each natural person so signing the application, and any other facts and evidence as may be required by the di-

vision to ascertain the character, integrity, and identity of each natural person signing the application.

d. If the applicant is a corporation, the application shall be signed and verified by the president, secretary, and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, the names and addresses of, and the amount of the stock held by stockholders owning five percent or more of any of the stock thereof, and of all officers, including all members of the board of directors. The requirements of subsection a. of this section as to a natural person who is a member of a partnership, and the requirements as may be specified in rules and regulations promulgated by the division pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall apply to each above-named officer or stockholder and their successors in office or interest, as the case may be.

In the event of the death, resignation, or removal of any officer, and in the event of any change in the list of stockholders who shall own five percent or more of the stock of the corporation, the secretary of the corporation shall forthwith give notice of that fact in writing to the division, certified by the secretary.

e. A license shall not be granted:

(1) If any person whose signature or name appears in the application is not the real party in interest, required by subsection d. of this section, to sign or to be identified in the application or if the person so signing or named in the application is an undisclosed agent or trustee for any real party in interest;

(2) Unless the division shall be satisfied that the applicant and all members, officers, and stockholders



required by subsection d. of this section to sign or be identified in the application for license possess good character and integrity;

(3) Unless the applicant is either a natural person, partnership, or corporation;

(4) Unless the applicant shall be a party to a contract then in force or which will take effect upon the issuance of a license, with a carrier of freight by water for the loading and unloading by the applicant of one or more vessels of such carrier at a pier within the port of New York district;

(5) If the applicant or any member, officer, or stockholder required by subsection d. of this section to sign or be identified in the application for license has, without subsequent pardon, been convicted by a court of the United States or any State or territory thereof of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter, or any of the offenses described in subsection h. of this section. Any applicant ineligible for a license by reason of any of those convictions may submit satisfactory evidence to the division that the person whose conviction was the basis of ineligibility has for a period of not less than five years, measured as hereinafter provided and up to the time of application, so acted as to warrant the grant of that license, in which event the division may, in its discretion issue an order removing that ineligibility. The aforesaid period of five years shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence;

(6) If the applicant has paid, given, caused to have been paid or given, or offered to pay or give to any of-

ficer or employee of any carrier of freight by water any valuable consideration for an improper or unlawful purpose or to induce that person to procure the employment of the applicant by the carrier for the performance of stevedoring services; or

(7) If the applicant has paid, given, caused to be paid or given, or offered to pay or give to any officer or representative of a labor organization any valuable consideration for an improper or unlawful purpose or to induce the officer or representative to subordinate the interests of the labor organization or its members in the management of the affairs of the labor organization to the interests of the applicant.

f. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed in this section, the division shall issue and deliver a license to that applicant. The division may issue a temporary permit to any applicant for a license under the provisions of this section pending final action on an application made for a license. A temporary permit shall be valid for a period not in excess of 30 days.

g. A stevedore's license shall be for a term of five years or fraction of that five-year period, and shall expire on the first day of December. In the event of the death of the licensee, if a natural person, or its termination or dissolution by reason of the death of a partner, if a partnership, or if the licensee shall cease to be a party to any contract of the type prescribed by paragraph (4) of subsection e. of section 7 of P.L.2017, c.324 (C.53:2-12), the license shall terminate 90 days after that event or upon its expiration date, whichever shall be sooner.

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A license may be renewed by the division for successive five-year periods upon fulfilling the same requirements as are established in this section for an original application for a stevedore's license.

h. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses on the part of the licensee or of any person required by this section to sign or be identified in an original application for a license:

(1) Conviction of a crime or other cause which would permit or require disqualification of the licensee from receiving a license upon original application;

(2) Fraud, deceit, or misrepresentation in securing the license or in the conduct of the licensed activity;

(3) Failure by the licensee to maintain a complete set of books and records containing a true and accurate account of the licensee's receipts and disbursements arising out of the licensee's activities within the port of New York district in this State;

(4) Failure to keep its books and records available during business hours for inspection by the division and its duly designated representatives until the expiration of the fifth calendar year following the calendar year during which occurred the transactions recorded therein; or

(5) Any other offense described in this section.

i. In addition to the grounds elsewhere established in P.L.2017, c.324 (C.32:23-229 et al.), the division shall not grant an application for a license as stevedore if the applicant has paid, given, caused to have been paid or given, or offered to pay or give to any agent of any car-

rier of freight by water any valuable consideration for an improper or unlawful purpose or, without the knowledge and consent of the carrier, to induce the agent to procure the employment of the applicant by the carrier or its agent for the performance of stevedoring services.

C.53:2-13 Longshoremen's register.

8. a. The division shall establish a longshoremen's register in which shall be included all qualified longshoremen eligible, as hereinafter provided, for employment as longshoremen in the port of New York district in this State. A person shall not act as a longshoreman within the port of New York district in this State unless at the time the person is included in the longshoremen's register, and a person shall not employ another to work as a longshoreman within the port of New York district in this State unless at the time the other person is included in the longshoremen's register.

b. Any person applying for inclusion in the longshoremen's register shall file at a place and in a manner as the division shall designate a written statement, signed, and verified by the applicant, setting forth the applicant's full name, residence address, social security number, and any further facts and evidence as the division may prescribe to establish the identity of that person and the person's criminal record, if any.

c. The division may in its discretion deny application for inclusion in the longshoremen's register by a person:

(1) Who has been convicted by a court of the United States or any State or territory thereof, without subsequent pardon, of treason, murder, manslaughter, or of any of the offenses described in subsection g. of section

6 of P.L.2017, c.324 (C.53:2-11) or of attempt or conspiracy to commit any of those crimes;

(2) Who knowingly or willingly advocates the desirability of overthrowing or destroying the government of the United States by force or violence or who shall be a member of a group which advocates that desirability knowing the purposes of the group advocating that desirability; or

(3) Whose presence at the piers or other waterfront terminals in the port of New York district in this State is found by the division, on the basis of the facts and evidence before it, to constitute a danger to the public peace or safety.

d. Unless the division shall determine to exclude the applicant from the longshoremen's register for violation of the offenses described in subsection g. of section 6 of P.L.2017, c.324 (C.53:2-11), it shall include that person in the longshoremen's register. The division may permit temporary registration of any applicant under the provisions of this section pending final action on an application made for temporary registration. Any temporary registration shall be valid for a period not in excess of 30 days.

e. The division shall have power to reprimand any longshoreman registered under this section or to remove the person from the longshoremen's register for a period of time as it deems in the public interest for any of the following offenses:

(1) Conviction of a crime or other cause which would permit disqualification of a person from inclusion in the longshoremen's register upon original application;

(2) Fraud, deceit, or misrepresentation in securing inclusion in the longshoremen's register;

(3) Transfer or surrender of possession to any person either temporarily or permanently of any card or other means of identification issued by the authority as evidence of inclusion in the longshoremen's register, without satisfactory explanation;

(4) False impersonation of another longshoreman registered under this section or of another person licensed pursuant to P.L.2017, c.324 (C.32:23-229 et al.);

(5) Willful commission of or willful attempt to commit at or on a waterfront terminal or adjacent highway any act of physical injury to any other person or of willful damage to or misappropriation of any other person's property, unless justified or excused by law; and

(6) Any other offense described in subsection g. of section 6 of P.L.2017, c.324 (C.53:2-11).

f. Whenever, as a result of amendments to P.L.2017, c.324 (C.32:23-229 et al.) or of a ruling by the division, registration as a longshoreman is required for any person to continue in employment, that person shall be registered as a longshoreman; provided, however, that the person satisfies all the other requirements of P.L.2017, c.324 (C.32:23-229 et al.) for registration as a longshoreman.

g. The division shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register in the event that the holder thereof has been removed from the longshoremen's register.

h. Nothing contained in P.L.2017, c.324 (C.32:23-229 et al.) shall be construed to limit in any way any labor rights reserved by P.L.2017, c.324 (C.32:23-229 et al.).

C.53:2-14 Removal of certain persons from longshoremen's register.

9. a. The division shall, at regular intervals, remove from the longshoremen's register any person who shall have been registered for at least nine months and who shall have failed during the preceding six calendar months either to have worked as a longshoreman in the port of New York district in this State or to have applied for employment as a longshoreman at an employment information center established under section 16 of P.L.2017, c.324 (C.53:2-21) for the minimum number of days as shall have been established by the division pursuant to subsection b. of this section.

b. On or before the first day of June following the date on which P.L.2017, c.324 (C.32:23-229 et al.) becomes operative, and on or before each succeeding first day of June or December, the division shall, for the purposes of P.L.2017, c.324 (C.32:23-229 et al.), establish for the six-month period beginning on each date a minimum number of days and the distribution of the days during that period.

c. In establishing any minimum number of days or period, the division shall consult with the collective bargaining representatives of stevedores and other employers of longshoremen in the port of New York district and with labor organizations representing longshoremen in the district.

d. A longshoreman who has been removed from the longshoremen's register pursuant to subsection e. of section 8 of P.L.2017, c.324 (C.53:2-13) may seek reinstatement upon fulfilling the same requirements as for initial inclusion in the longshoremen's register, but not before the expiration of one year from the date of removal, except that immediate reinstatement shall be

made upon proper showing that the registrant's failure to work or apply for work for the minimum number of days, described in subsection c. of this section, was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause.

e. Notwithstanding any other provision of P.L.2017, c.324 (C.32:23-229 et al.), the division shall at any time have the power to register longshoremen on a temporary basis to meet special or emergency needs.

C. 53:2-15 Power of division to remove persons from longshoremen's register.

10. Notwithstanding any other provisions of P.L.2017, c.324 (C.32:23-229 et al.), the division shall have the power to remove from the longshoremen's register any person, including a person registered as longshoremen for less than nine months, who shall have failed to have worked as a longshoreman in the port of New York district in this State for a minimum number of days during a period of time as shall have been established by the division. In administering this section, the division, in its discretion, may count applications for employment as a longshoreman at an employment information center established pursuant to section 16 of P.L.2017, c.324 (C.53:2-21) as constituting actual work as a longshoreman, provided, however, that the division shall count as actual work the compensation received by any longshoreman pursuant to the guaranteed wage provisions of any collective bargaining agreement relating to longshoremen. Prior to the commencement of any period of time established by the division pursuant to this section, the division shall establish for that peri-



od the minimum number of days of work required and the distribution of days during that period and shall also determine whether or not application for employment as a longshoreman shall be counted as constituting actual work as a longshoreman. The division may classify longshoremen according to length of service as a longshoreman and develop other criteria as may be reasonable and necessary to carry out the provisions of P.L.2017, c.324 (C.32:23-229 et al.). The division shall have the power to vary the requirements of this section with respect to their application to the various classifications of longshoremen. In administering this section, the division shall observe the standards set forth in section 2 of P.L.1966, c.18 (C.32:23-114), as that section shall have been amended through the enactment of P.L.1999, c.206. Nothing in this section shall be construed to modify, limit, or restrict in any way any of the rights protected by section 23 of P.L.2017, c.324 (C.53:2-28).

C.53:2-16 List of qualified longshoremen for employment as checkers.

11. a. The division shall establish within the longshoremen's register a list of all qualified longshoremen eligible, as hereinafter provided, for employment as checkers in the port of New York district in this State. A person shall not act as a checker within the port of New York district in this State unless at the time the person is included in the longshoremen's register as a checker, and a person shall not employ another to work as a checker within the port of New York district in this State unless at the time such other person is included in the longshoremen's register as a checker.

b. Any person applying for inclusion in the longshoremen's register as a checker shall file at a place and in a manner as the division shall designate a written statement, signed, and verified by the applicant, setting forth the following:

(1) The full name, residence, place and date of birth, and social security number of the applicant;

(2) The present and previous occupations of the applicant, including the places where the applicant was employed and the names of the applicant's employers; and

(3) Any further facts and evidence as may be required by the authority to ascertain the character, integrity, and identity of the applicant.

c. A person shall not be included in the longshoremen's register as a checker:

(1) Unless the division shall be satisfied that the applicant possesses good character and integrity;

(2) If the applicant has, without subsequent pardon, been convicted by a court of the United States or any State or territory thereof, of the authority of, or the attempt or conspiracy to commit treason, murder, manslaughter, or any of the following offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog; petty larceny, where the evidence shows the property was stolen from a vessel, pier or other waterfront terminal; or a violation of P.L.2017, c.324 (C.32:23-229 et al.). An ap-

plicant ineligible for inclusion in the longshoremen's register as a checker by reason of a conviction may submit satisfactory evidence to the division that the applicant has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so acted as to warrant inclusion in the longshoremen's register as a checker, in which event the division may, in its discretion, issue an order removing the applicant's ineligibility. The five-year period shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence; or

(3) If the applicant knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of the group advocating that desirability.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed by this section, the division shall include the applicant in the longshoremen's register as a checker. The division may permit temporary registration as a checker to any applicant under this section pending final action on an application made for temporary registration, under the terms and conditions as the division may prescribe, which shall be valid for a period to be fixed by the division, not in excess of six months.

e. The division shall have power to reprimand any checker registered under this section or to remove the person from the longshoremen's register as a checker for a period of time as the division deems in the public interest for any of the following offenses:

(1) Conviction of a crime or other cause which would permit disqualification of the person from inclusion in the longshoremen's register as a checker upon original application;

(2) Fraud, deceit, or misrepresentation in securing inclusion in the longshoremen's register as a checker or in the conduct of the registered activity;

(3) Violation of any of the provisions of P.L.2017, c.324 (C.32:23-229 et al.);

(4) Unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled dangerous substance or a controlled dangerous substance analog;

(5) Inducing or otherwise aiding or abetting any person to violate the terms of P.L.2017, c.324 (C.32:23-229 et al.);

(6) Paying, giving, causing to be paid or given, or offering to pay or give to any person any valuable consideration to induce the other person to violate any provision of P.L.2017, c.324 (C.32:23-229 et al.) or to induce any public officer, agent, or employee to fail to perform the person's duty under P.L.2017, c.324 (C.32:23-229 et al.);

(7) Consorting with known criminals for an unlawful purpose;

(8) Transfer or surrender of possession to any person either temporarily or permanently of any card or

other means of identification issued by the division as evidence of inclusion in the longshoremen's register without satisfactory explanation; or

(9) False impersonation of another longshoreman or of another person licensed under P.L.2017, c.324 (C.32:23-229 et al.).

f. The division shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register as a checker in the event that the holder thereof has been removed from the longshoremen's register as a checker.

g. Nothing contained in this section shall be construed to limit in any way any rights of labor reserved by section 23 of P.L.2017, c.324 (C.53:2-28).

C.53:2-17 Applications for inclusion in longshoremen's register.

12. The division shall accept applications for inclusion in the longshoremen's register upon:

a. the joint recommendation in writing of stevedores and other employers of longshoremen in the port of New York district in this State, acting through their representative for the purposes of collective bargaining with a labor organization representing the longshoremen in the district, and that labor organization; or

b. the petition in writing of a stevedore or other employer of longshoremen in the port of New York district in this State which does not have a representative for the purposes of collective bargaining with a labor organization representing those longshoremen.

C.53:2-18 Licensure for port watchmen.

13. a. A person shall not act as a port watchman within the port of New York district in this State without first having obtained a license from the division, and a person shall not employ a port watchman who is not so licensed.

b. A license to act as a port watchman shall be issued only upon written application, duly verified, which shall state the following:

(1) The full name, residence, business address, if any, place, and date of birth, and social security number of the applicant;

(2) The present and previous occupations of the applicant, including the places where the applicant was employed and the names of the applicant's employers;

(3) The citizenship of the applicant and, if the person is a naturalized citizen of the United States, the court and date of naturalization; and

(4) Any further facts and evidence as may be required by the division to ascertain the character, integrity, and identity of the applicant.

c. A port watchman license shall not be granted:

(1) Unless the division shall be satisfied that the applicant possesses good character and integrity;

(2) If the applicant has, without subsequent pardon, been convicted by a court of the United States or of any State or territory thereof of the authority of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any of the offenses described in subsection g. of section 6 of P.L.2017, c.324 (C.53:2-11);

(3) Unless the applicant shall meet reasonable standards of physical and mental fitness for the discharge of a port watchman's duties as may from time to time be established by the division;

(4) If the applicant shall be a member of any labor organization which represents longshoremen or pier superintendents or hiring agents; but nothing in P.L.2017, c.324 (C.32:23-229 et al.) shall be deemed to prohibit port watchmen from being represented by a labor organization or organizations which do not also represent longshoremen or pier superintendents or hiring agents. The American Federation of Labor, the Congress of Industrial Organizations (AFL-CIO) and any other similar federation, congress, or other organization of national or international occupational or industrial labor organizations shall not be considered a labor organization which represents longshoremen or pier superintendents or hiring agents within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or pier superintendents or hiring agents;

(5) If the applicant knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of the group's advocacy.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the authority shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed in this section and regulations issued pursuant thereto, the division shall issue and deliver a license to the applicant.

The division may issue a temporary permit to any applicant for a license under the provisions of this section pending final action on an application made for that license. Any temporary permit shall be valid for a period not in excess of 30 days.

e. A license granted pursuant to this section shall continue for a term of three years. A license may be renewed by the division for successive three-year periods upon fulfilling the same requirements established in this section for an original application.

f. Notwithstanding any provision of this section, a license to act as a port watchman shall continue indefinitely and need not be renewed, provided that the licensee shall, as required by the division:

(1) Submit to a medical examination and meet the physical and mental fitness standards may be established by the division;

(2) Complete a refresher course of training; and

(3) Submit supplementary personal history information.

g. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(1) Conviction of a crime or other cause which would permit or require the holder's disqualification from receiving a license upon original application;

(2) Fraud, deceit, or misrepresentation in securing the license; and

(3) Any other offense described in subsection g. of section 6 of P.L.2017, c.324 (C.53:2-11).



h. The division shall, at regular intervals, cancel the license or temporary permit of a port watchman who has failed during the preceding 12 months to work as a port watchman in the port of New York district in this State a minimum number of hours as established by the division, except that the division shall immediately restore the license or temporary permit upon a proper showing that the failure to so work was caused by the fact that the licensee or permit holder was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause.

i. Any port watchman ineligible for a license by reason pursuant to this section may petition for and the division may issue an order removing the ineligibility. A petition for an order to remove an ineligibility may be made to the division before or after the hearing required by section 14 of P.L.2017, c.324 (C.53:2-19).

C.53:2-19 Reasonable prior notice, hearing prior to denial of license, registration.

14. a. The division shall not deny any application for a license or registration without giving the applicant or prospective licensee reasonable prior notice and an opportunity to be heard at a hearing conducted by the division.

b. Any application for a license or for inclusion in the longshoremen's register, and any license issued or registration made, may be denied, revoked, cancelled, or suspended as the case may be, only in the manner prescribed in this section.

c. The division may on its own initiative or on complaint of any person, including any public official or agency, institute proceedings to revoke, cancel, or sus-

pend any license or registration after a hearing at which the licensee or registrant and any person making a complaint shall be given an opportunity to be heard, provided that any order of the division revoking, cancelling, or suspending any license or registration shall not become effective until 15 days subsequent to the serving of notice thereof upon the licensee or registrant unless in the opinion of the division the continuance of the license or registration for that period would be inimical to the public peace or safety. The hearing shall be held in a manner and upon notice as may be prescribed by the rules of the division, but the notice shall be of not less than 10 days and shall state the nature of the complaint.

d. Pending the determination of a hearing pursuant to this section, the division may temporarily suspend a license or registration if, in the opinion of the division, the continuance of the license or registration for that 15-day period, pursuant to subsection c. of this section, is inimical to the public peace or safety.

e. The division, or a member, officer, employee, or agent of the division as may be designated by the division for such purpose, shall have the power to issue subpoenas to compel the attendance of witnesses and the giving of testimony or production of other evidence and to administer oaths in connection with a hearing. It shall be the duty of the division or of any member, officer, employee, or agent of the division designated by the division for that purpose to issue subpoenas at the request of and upon behalf of the licensee, registrant, or applicant. The person conducting the hearing on behalf of the division shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in conducting the hearing.

f. Upon the conclusion of the hearing, the division shall take action upon the findings and determination as the division deems proper and shall execute an order carrying its findings into effect. The action in the case of an application for a license or registration shall be the granting or denial thereof. The action in the case of a licensee shall be revocation of the license or suspension thereof for a fixed period or reprimand or a dismissal of the charges. The action in the case of a registered longshoreman shall be dismissal of the charges, reprimand, or removal from the longshoremen's register for a fixed period or permanently.

g. The action of the division, in denying any application for a license or in refusing to include any person in the longshoremen's register established pursuant to section 8 of P.L.2017, c.324 (C.53:2-13), or in suspending or revoking a license or removing any person from the longshoremen's register or in reprimanding a licensee, or registrant, shall be subject to judicial review by a proceeding instituted in this State at the instance of the applicant, licensee, or registrant in the manner provided by State law for review of the final decision or action of an administrative agency of the State; provided, however, that notwithstanding any other provision of law, the court shall have power to stay for not more than 30 days an order of the division suspending or revoking a license or removing a longshoreman from the longshoremen's register.

C.53:2-20 Hearings, right to counsel, reopening, rehearing.

15. a. At hearings conducted by the division, pursuant to section 14 of P.L.2017, c.324 (C.53:2-19), applicants, prospective licensees, licensees, and registrants

shall have the right to be accompanied and represented by counsel.

b. After the conclusion of a hearing but prior to the making of an order by the division, a hearing may, upon petition and in the discretion of the hearing officer, be reopened for the presentation of additional evidence. A petition to reopen the hearing shall state in detail the nature of the additional evidence, together with the reasons for the failure to submit such evidence prior to the conclusion of the hearing. The division may upon its own motion and upon reasonable notice reopen a hearing for the presentation of additional evidence. Upon petition, after the making of an order of the division, rehearing may be granted in the discretion of the division. A petition for rehearing shall state in detail the grounds upon which the petition is based and shall separately set forth each error of law and fact alleged to have been made by the division in its determination, together with the facts and arguments in support thereof. The petition shall be filed with the division not later than 30 days after service of the division's order, unless the division for good cause shown shall otherwise direct. The division may upon its own motion grant a rehearing after the making of an order.

C.53:2-21 Designation of division on own behalf, agent of the State.

16. a. The division is hereby designated on its own behalf or as agent of the State of New Jersey, as provided by the act of Congress of the United States, effective June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system and for other purposes," as amended, for the

purpose of obtaining the benefits of that act of Congress as are necessary or appropriate to the establishment and operation of employment information centers authorized by this section.

b. The division shall have all powers necessary to take steps to formulate plans and to execute projects related to the establishment and operation of employment information centers, as may be necessary to obtain any benefits for the operation of employment information centers in accomplishing the purposes of P.L.2017, c.324 (C.32:23-229 et al.).

c. Any officer or agency designated by this State, pursuant to the act of June 6, 1933, as amended, is authorized and empowered, upon the request of the division and subject to its direction, to exercise the powers and duties conferred upon the division by the provisions of this section.

d. The division shall establish and maintain one or more employment information centers within the port of New York district in this State at locations as the division may determine. A person shall not, directly or indirectly, hire any person for work as a longshoreman or port watchman within the port of New York district in this State, except through an employment information center as may be prescribed by the division. A person shall not accept any employment as a longshoreman or port watchman within the port of New York district in this State, except through an employment information center. At each employment information center, the division shall keep and exhibit the longshoremen's register and any other records the division shall determine to the end that longshoremen and port watchmen shall have the maximum information as to available employment at any time within the port of

New York district in this State and that employers shall have an adequate opportunity to fill their requirements of registered longshoremen and port watchmen at all times.

e. Every employer of longshoremen or port watchmen within the port of New York district in this State shall furnish information as may be required by the rules and regulations prescribed by the division with regard to the name of each person hired as a longshoreman or port watchman, the time and place of hiring, the time, place, and hours of work, and the compensation therefor.

C.53:2-22 Telecommunication hiring system.

17. a. The division may designate one of the employment information centers it is authorized to establish and maintain under section 16 of P.L.2017, c.324 (C.53:2-21) for the implementation of a telecommunications hiring system through which longshoremen and checkers may be hired and accept employment without any personal appearance at the center. The telecommunications hiring system shall incorporate hiring and seniority agreements between the employers of longshoremen and checkers and the labor organizations representing longshoremen and checkers in the port of New York district in this State, provided the agreements are not in conflict with the provisions of P.L.2017, c.324 (C.32:23-229 et al.).

b. The division shall permit employees of the management organizations representing employers of longshoremen and checkers in the port of New York district in this State, and of the labor organizations representing longshoremen and checkers in the port of New York district in this State, or of a joint board of these

management and labor organizations, to participate in the operation of the telecommunications hiring system, if these employees are registered by the division as “telecommunications system controllers,” with respect to the registration of checkers. A person shall not act as a “telecommunications system controller” unless that person is registered. An application for registration and a registration made or issued may be denied, revoked, cancelled, or suspended, as the case may be, only in the manner prescribed in section 11 of P.L.2017, c.324 (C.53:2-16). Participation in the operation of the telecommunications hiring system shall be monitored by the division.

c. The records, documents, tapes, discs, and other data compiled, collected or maintained by a management organization, a labor organization, and a joint board of these management and labor organizations pertaining to the telecommunications hiring system shall be available for inspection, investigation, and duplication by the division.

C.53:2-23 Additional grounds for denial of application, registration.

18. In addition to the grounds elsewhere established in P.L.2017, c.324 (C.32:23-229 et al.), the division may deny an application for a license or registration for any of the following:

a. Conviction by a court of the United States or any State or territory thereof of coercion;

b. Conviction by a court described in subsection a. of this section, after having been previously convicted by that court of any crime or of the offenses hereinafter set forth, or any of the following offenses: assault, malicious injury to property, malicious mischief, unlawful

taking of a motor vehicle, corruption of employees or possession of illegal betting number slips;

c. Fraud, deceit or misrepresentation in connection with any application or petition submitted to, or any interview, hearing or proceeding conducted by the division or commission;

d. Violation of any provision of P.L.2017, c.324 (C.32:23-229 et al.) or commission of any offense thereunder;

e. Refusal on the part of any applicant, or prospective licensee, or of any member, officer or stockholder required by section 7 of P.L.2017, c.324 (C.53:2-12) to sign or be identified in an application for a stevedore license, to answer any material question or produce any material evidence in connection with the person's application or any application made on the person's behalf for a license or registration pursuant to section 7 of P.L.2017, c.324 (C.53:2-12);

f. Association with a person who has been identified by a federal, State, or local law enforcement agency as a member or associate of an organized crime group, a terrorist group, or a career offender cartel, or who is a career offender, under circumstances where that association creates a reasonable belief that the participation of the applicant in any activity required to be licensed or registered under P.L.2017, c.324 (C.32:23-229 et al.) would be inimical to the purposes of P.L.2017, c.324 (C.32:23-229 et al.); or

g. Conviction of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any State or territory thereof under circumstances where that association creates a reasonable belief that



the participation of the applicant in any activity required to be licensed or registered under P.L.2017, c.324 (C.32:23-229 et al.) would be inimical to the purposes of P.L.2017, c.324 (C.32:23-229 et al.).

C.53:2-24 Additional grounds for revocation, suspension of license, registration.

19. In addition to the grounds elsewhere set forth in P.L.2017, c.324 (C.32:23-229 et al.), any license or registration issued or made pursuant thereto may be revoked or suspended for a period as the division deems in the public interest or the licensee or registrant may be reprimanded, for:

a. Conviction of any crime or offense in relation to illegal gambling, bookmaking, or similar crimes or offenses if the crime or offense was committed at or on a pier or other waterfront terminal or within 500 feet thereof;

b. Willful authority of, or willful attempt to commit at or on a waterfront terminal or adjacent highway, any act of physical injury to any other person or of willful damage to or misappropriation of any other person's property, unless justified or excused by law;

c. Receipt or solicitation of anything of value from any person other than a licensee's or registrant's employer as consideration for the selection or retention for employment of a licensee or registrant;

d. Coercion of a licensee or registrant by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

e. Refusal to answer any material question or produce any evidence lawfully required to be answered or produced at any investigation, interview, hearing, or

other proceeding conducted by the division pursuant to section 14 of P.L.2017, c.324 (C.53:2-19), or, if the refusal is accompanied by a valid plea of privilege against self-incrimination, refusal to obey an order to answer the question or produce any evidence made by the division pursuant to section 14 of P.L.2017, c.324 (C.53:2-19); or

f. Association with a person who has been identified by a federal, State, or local law enforcement agency as a member or associate of an organized crime group, a terrorist group, or a career offender cartel, or who is a career offender, under circumstances where that association creates a reasonable belief that the participation of the licensee or registrant in any activity required to be licensed or registered under P.L.2017, c.324 (C.32:23-229 et al.) would be inimical to the purposes of P.L.2017, c.324 (C.32:23-229 et al.); or

g. Conviction of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any State, or territory thereof under circumstances where that association creates a reasonable belief that the participation of the licensee or registrant in any activity required to be licensed or registered under P.L.2017, c.324 (C.32:23-229 et al.) would be inimical to the purposes of P.L.2017, c.324 (C.32:23-229 et al.).

C.53:2-25 Refusal to answer question; immunity; prosecution.

20. a. In any investigation, interview, or other proceeding conducted under oath by the division or any duly authorized officer, employee, or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that the person

may be incriminated thereby, and notwithstanding the refusal, an order is made upon 24 hours' prior written notice to the Attorney General of the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the Superintendent of the division or the superintendent's designee, that the person answer the question or produce the evidence, the person shall comply with the order. If the person complies with the order, and if, but for this section, would have been privileged to withhold the answer given or the evidence produced by the person, then immunity shall be conferred upon the person, as provided for herein. Immunity shall not be conferred upon any person except in accordance with the provisions of this section. If, after compliance with the provisions of this section, a person is ordered to answer a question or produce evidence of any other kind and complies with the order, and it is thereafter determined that the Attorney General or appropriate district attorney or prosecutor having an official interest therein was not notified, that failure or neglect shall not deprive that person of any immunity otherwise properly conferred upon the person. But the person may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any answer given or evidence produced shall be admissible against the person upon any criminal proceeding concerning such perjury or contempt.

b. If a person, in obedience to a subpoena directing the person to attend and testify, is in this State or comes into this State from the State of New York, the person shall not, while in this State pursuant to such subpoena, be subject to arrest or the service of process,

civil or criminal, in connection with matters which arose before the person's entrance into this State under the subpoena.

C.53:2-26 Temporary suspension.

21. a. The division may temporarily suspend a temporary permit or a permanent license or a temporary or permanent registration issued pursuant to the provisions of P.L.2017, c.324 (C.32:23-229 et al.) until further order of the division or final disposition of the underlying case, only where the permittee, licensee, or registrant has been indicted for, or otherwise charged with, a crime which is equivalent to a crime of the third, second, or first degree in this State or only where the permittee or licensee is a port watchman who is charged by the division pursuant to section 13 of P.L.2017, c.324 (C.53:2-18) with misappropriating any other person's property at or on a pier or other waterfront terminal.

b. In the case of a permittee, licensee, or registrant who has been indicted for, or otherwise charged with, a crime, the temporary suspension shall terminate immediately upon acquittal or upon dismissal of the criminal charge. A person whose permit, license, or registration has been temporarily suspended may, at any time, demand that the division conduct a hearing as provided for in section 14 of P.L.2017, c.324 (C.53:2-19). Within 60 days of the demand, the division shall commence the hearing and, within 30 days of receipt of the administrative law judge's report and recommendation, the division shall render a final determination thereon; provided, however, that these time requirements, shall not apply for any period of delay caused or requested by the permittee, licensee, or registrant. Upon failure of

the division to commence a hearing or render a determination within the time limits prescribed herein, the temporary suspension of the permittee, licensee, or registrant shall immediately terminate. Notwithstanding any other provision of this subsection, if a federal, State, or local law enforcement agency or prosecutor's office shall request the suspension or deferment of any hearing on the ground that the hearing would obstruct or prejudice an investigation or prosecution, the division may in its discretion, postpone or defer the hearing for a time certain or indefinitely. Any action by the division to postpone a hearing shall be subject to immediate judicial review as provided in subsection b. of this section.

c. The division may, within its discretion, bar any permittee, licensee, or registrant who has been suspended pursuant to the provisions of subsection a. of this section, from any employment by a licensed stevedore or a carrier of freight by water, if that individual has been indicted or otherwise charged in any federal, State, or territorial proceeding with any crime involving the possession with intent to distribute, sale, or distribution of a controlled dangerous substance or controlled dangerous substance analog, racketeering, or theft from a pier or waterfront terminal.

C.53:2-27 Division authorized to co-operate with commission, other public entity.

22. The division is authorized to co-operate with the commission, a similar authority, or other public entity of the State of New York, to exchange information on any matter pertinent to the purposes of P.L.2017, c.324 (C.32:23-229 et al.), and to enter into reciprocal agree-

ments for the accomplishment of those purposes, including, but not limited to, the following objectives:

a. To provide for the reciprocal recognition of any license issued or registration made by the commission;

b. To give reciprocal effect to any revocation, suspension, or reprimand with respect to any licensee, and any reprimand or removal from a longshoremen's register;

c. To provide that any act or omission by a licensee or registrant in either State which would be a basis for disciplinary action against the licensee or registrant if it occurred in the state in which the license was issued or the person registered shall be the basis for disciplinary action in either state; and

d. To provide that longshoremen registered in either state, who perform work or who apply for work at an employment information center within the other State shall be deemed to have performed work or to have applied for work in the State in which they are registered.

C.53:2-28 Construction of act.

23. a. The provisions of P.L.2017, c.324 (C.32:23-229 et al.) are not designed and shall not be construed to limit in any way any rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in P.L.2017, c.324 (C.32:23-229 et al.) shall be construed to limit in any way the right of employees to strike.

b. The provisions of P.L.2017, c.324 (C.32:23-229 et al.) are not designed and shall not be construed to limit in any way any rights of longshoremen, hiring agents, pier superintendents, or port watchmen or their employers to bargain collectively and agree upon any method for the selection of those employees by way of seniority, experience, regular gangs, or otherwise; provided, that those employees shall be licensed or registered hereunder and longshoremen and port watchmen shall be hired only through the employment information centers established hereunder and that all other provisions of P.L.2017, c.324 (C.32:23-229 et al.) be observed.

C.53:2-29 Transfer of officers, employees.

24. a. Any officer or employee in the State, county, or municipal civil service in either State who shall transfer to service with the division may be given one or more leaves of absence without pay and may, before the expiration of the leave or leaves of absence, and without further examination or qualification, return to the person's former position or be certified by the appropriate civil service agency for retransfer to a comparable position in the State, county, or municipal civil service if a comparable position is then available.

b. The division may, by agreement with any federal agency from which any officer or employee may transfer to service with the division to undertake any of the duties or responsibilities established pursuant to P.L.2017, c.324 (C.32:23-229 et al.), make similar provision for the retransfer of the officer or employee to that federal agency.

c. Notwithstanding the provisions of any other law, rule, or regulation, any officer or employee in the State,

county, or municipal service in either State who shall transfer to service with the division and who is a member of any existing State, county, or municipal pension or retirement system in New Jersey or New York, shall continue to have all rights, privileges, obligations, and status with respect to that fund, system, or systems as if the person had continued in State, county, or municipal office or employment, but during the period of service as a member, officer, or employee of the division, all contributions to any pension or retirement fund or system to be paid by the employer on account of the member, officer, or employee, shall be paid by the State Treasurer. The division may, by agreement with the appropriate federal agency, make similar provisions relating to continuance of retirement system membership for any federal officer or employee so transferred.

C.53:2-30 Annual adoption of budget.

25. a. The division shall annually adopt a budget of its expenses for each year for the purposes of its duties and responsibilities under P.L.2017, c.324 (C.32:23-229 et al.). Each budget shall be submitted to the Governor and the budget shall be adjusted accordingly.

b. After taking into account funds as may be available to the division from reserves, federal grants or otherwise, the balance of the division's budgeted expenses for the performance of its functions and duties under P.L.2017, c.324 (C.32:23-229 et al.) shall be assessed upon employers of persons registered or licensed pursuant to P.L.2017, c.324 (C.32:23-229 et al.). Each employer shall pay to the State Treasurer, for placement within the General Fund, an assessment computed upon the gross payroll payments made by that employer to longshoremen, pier superintendents,



hiring agents, and port watchmen for work or labor performed within the port of New York district in this State, at a rate, not in excess of two percent, computed by the division in the following manner: the division shall annually estimate the gross payroll payments to be made by employers subject to assessment and shall compute a rate thereon which will yield revenues sufficient to finance the division's budget for the performance of those functions and duties under P.L.2017, c.324 (C.32:23-229 et al.) for each year. That budget may include a reasonable amount for a reserve, but the amount shall not exceed 10 percent of the total of all other items of expenditure contained therein. The reserve shall be used for the stabilization of annual assessments, the payment of operating deficits, and for the repayment of advances made by the State, if any.

c. The amount required to balance the division's budgeted expenses for the performance of its functions and duties under P.L.2017, c.324 (C.32:23-229 et al.), in excess of the estimated yield of the maximum assessment, shall be certified by the division, with the approval of the Governor, in proportion to the gross annual wage payments made to longshoremen for work within the port of New York district in this State. The Legislature shall annually appropriate to the division the amount so certified.

d. The division may provide by regulation for the collection and auditing of assessments. In addition to any other sanction provided by law, the division may revoke or suspend any license held by any person under P.L.2017, c.324 (C.32:23-229 et al.), or the person's privilege of employing persons registered or licensed hereunder, for non-payment of any assessment when due.

e. The assessment hereunder shall be in lieu of any other charge for the issuance of licenses to stevedores, pier superintendents, hiring agents, and port watchmen or for the registration of longshoremen or use of an employment information center. The division shall establish reasonable procedures for the consideration of protests by affected employees concerning the estimates and computation of the rate of assessment.

C.53:2-31 Payment of assessment.

26. a. (1) Every person subject to the payment of any assessment under the provisions of section 25 of P.L.2017, c.324 (C.53:2-30) shall file on or before the 15th day of the first month of each calendar quarter-year a separate return, together with the payment of the assessment due, for the preceding calendar quarter-year during which any payroll payments were made to longshoremen, pier superintendents, hiring agents, or port watchmen for work performed by those employees within the port of New York district in this State. Returns covering the amount of assessment payable shall be filed with the division on forms to be furnished for that purpose and shall contain data, information, or matter as the division may require to be included therein. The division may grant a reasonable extension of time for filing returns, or for the payment of assessment, whenever good cause exists. Every return shall have annexed thereto a certification to the effect that the statements contained therein are true.

(2) Every person subject to the payment of assessment hereunder shall keep an accurate record of that person's employment of longshoremen, pier superintendents, hiring agents, or port watchmen, which shall show the amount of compensation paid and other in-

formation as the division may require. Those records shall be preserved for a period of three years and be open for inspection at reasonable times. The division may consent to the destruction of the records at any time after that period or may require that they be kept longer, but not in excess of six years.

(3) (a) The division shall audit and determine the amount of assessment due from the return filed and such other information as is available to it. Whenever a deficiency in payment of the assessment is determined, the division shall give notice of the determination to the person liable therefor. The determination shall finally and conclusively fix the amount due, unless the person against whom the assessment is assessed shall, within 30 days after the giving of notice of the determination, apply in writing to the division for a hearing, or unless the division on its own motion shall reduce the assessment. After the hearing, the division shall give notice of its decision to the person liable therefor. A determination of the division under this section shall be subject to judicial review, if application for that review is made within 30 days after the giving of notice of the decision. Any determination under this section shall be made within five years from the time the return was filed and if no return was filed, the determination may be made at any time.

(b) Any notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended at the last address that the person shall have given to the division, or in the last return filed with the division under this section, or, if a return has not been filed, then to an address as may be obtainable. The mailing of the notice shall be presumptive evidence of the receipt of it by the person to whom the notice is addressed. Any period of time, which is

determined for the giving of notice shall commence to run from the date of mailing of the notice.

(4) Whenever any person shall fail to pay, within the time limited herein, any assessment which the person is required to pay to the division under the provisions of this section, the division may enforce payment of the assessment by civil action for the amount of the assessment with interest and penalties.

(5) The employment by a nonresident of a longshoreman, or a licensed pier superintendent, hiring agent, or port watchman in this State or the designation by a nonresident of a longshoreman, pier superintendent, hiring agent, or port watchman to perform work in this State shall be deemed equivalent to an appointment by the nonresident of the Secretary of State to be the nonresident's true and lawful attorney upon whom may be served the process in any action or proceeding against the nonresident growing out of any liability for assessments, penalties, or interest, and a consent that any process against the nonresident which is served shall be of the same legal force and validity as if served personally within the State and within the territorial jurisdiction of the court from which the process issues. Service of process within the State shall be made by either:

(a) personally delivering to and leaving with the Secretary of State duplicate copies thereof at the office of the Department of State, in which event the Secretary of State shall forthwith send by registered mail one of the copies to the person at the last address designated by the person to the division for any purpose under this section or in the last return filed by the person under this section with the division or as shown on the records of the division, or if no return has been

filed, at the person's last known office address within or outside of the State; or

(b) personally delivering to and leaving with the Secretary of State a copy thereof at the office of the Department of State and by delivering a copy thereof to the person, personally outside of the State. Proof of personal service outside of the State shall be filed with the clerk of the court in which the process is pending within 30 days after that service and the service shall be deemed complete 10 days after proof thereof is filed.

(6) Whenever the division shall determine that any monies received as assessments were paid in error, it may cause the same to be refunded, provided an application therefor is filed with the division within two years from the time the erroneous payment was made.

(7) In addition to any other powers authorized hereunder, the division shall have power to make reasonable rules and regulations, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this section.

(8) Any person who shall willfully fail to pay any assessment due hereunder shall be assessed interest at a rate of one percent per month on the amount due and unpaid and penalties of five percent of the amount due for each 30 days or part thereof that the assessment remains unpaid. The division may, for good cause shown, abate all or part of that penalty.

(9) Any person who shall willfully furnish false or fraudulent information or shall willfully fail to furnish pertinent information, as required, with respect to the amount of assessment due, shall be guilty of a disorderly persons offense.

(10) All funds of the division received as payment of any assessment or penalty under this section shall be deposited with the State Treasurer. The State Treasurer may require that all deposits be secured by obligations of the United States or of the State of New Jersey of a market value equal at all times to the amount of the deposits, and all banks and trust companies are authorized to give security for the deposits.

(11) The accounts, books, and records of the division related to the purposes established pursuant to P.L.2017, c.324 (C.32:23-229 et al.), including its receipts, disbursements, contracts, leases, investments, and any other matters relating to its financial standing shall be examined and audited annually by independent auditors to be retained for such purpose by the division.

b. The division shall reimburse the State Treasurer for any funds advanced to the division exclusive of sums appropriated pursuant to section 25 of P.L.2017, c.324 (C.53:2-30).

#### C.53:2-32 Unlawful actions.

27. It shall be unlawful for any person to load or unload waterborne freight onto or from vehicles other than railroad cars at piers or at other waterfront terminals within the port of New York district, for a fee or other compensation, other than the following persons and their employees:

a. Carriers of freight by water, but only at piers at which their vessels are berthed;

b. Other carriers of freight, including but not limited to, railroads and truckers, but only in connection with freight transported or to be transported by those other carriers;

c. Operators of piers or other waterfront terminals, including railroads, truck terminal operators, warehousemen and other persons, but only at piers or other waterfront terminals operated by them;

d. Shippers or consignees of freight, but only in connection with freight shipped by the shipper or consigned to the consignee; and

e. Stevedores licensed under section 7 of P.L.2017, c.324 (C.53:2-12), whether or not waterborne freight has been or is to be transported by a carrier of freight by water with which the stevedore shall have a contract of the type prescribed by paragraph (4) of subsection e. of this section.

Nothing herein contained shall be deemed to permit any loading or unloading of any waterborne freight at any place by any person by means of any independent contractor, or any other agent other than an employee, unless the independent contractor is a person permitted by section 7 of P.L.2017, c.324 (C.53:2-12) to load or unload freight at a place in the person's own right.

#### C.53:2-33 Certain solicitations prohibited.

28. a. A person shall not solicit, collect, or receive any dues, assessments, levies, fines, or contributions, or other charges within the State of New Jersey for or on behalf of any labor organization, which represents employees registered or licensed pursuant to the provisions of P.L.2017, c.324 (C.32:23-229 et al.) in their capacities as registered or licensed employees or which derives its charter from a labor organization representing 100 or more of its registered or licensed employees, if any officer, agent, or employee of the labor organization for which dues, assessments, levies, fines, or con-

tributions, or other charges are solicited, collected, or received, or of a welfare fund or trust administered partially or entirely by the labor organization or by trustees or other persons designated by the labor organization, has been convicted by a court of the United States, or any State or territory thereof, of treason, murder, manslaughter, or any felony, crime involving moral turpitude, or any crime or offense enumerated subsection g. of section 6 of P.L.2017, c.324 (C.53:2-11), unless that person has been subsequently pardoned therefor by the Governor or other appropriate authority of the State in which the conviction was had or has received a certificate of good conduct or other relief from disabilities arising from the fact of conviction from a parole board or similar authority.

b. Any person who shall violate this section shall be guilty of a petty disorderly persons offense.

c. Any person who shall violate, aid and abet the violation, or conspire or attempt to violate this subsection shall be guilty of a petty disorderly persons offense.

d. If upon application to the division by an employee who has been convicted of a crime or offense specified in subsection b. of this section, the authority, in its discretion, determines in an order that it would not be contrary to the purposes and objectives of P.L.2017, c.324 (C.32:23-229 et al.) for that employee to work in a particular employment for a labor organization, welfare fund, or trust, the provisions of subsection b. of this section shall not apply to the particular employment of the employee with respect to that conviction or convictions as are specified in the division's order. This subsection is applicable only to those employees, who for wages or salary, perform manual, mechanical, or physical work of a routine or clerical nature at the premises



of the labor organization, welfare fund, or trust by which they are employed.

e. A person who has been convicted of a crime or offense specified in subsection b. of this section shall not directly or indirectly serve as an officer, agent, or employee of a labor organization, welfare fund, or trust, unless the person has been subsequently pardoned for that crime or offense by the Governor or other appropriate authority of the State in which the conviction was had or has received a certificate of good conduct or other relief from disabilities arising from the fact of conviction from a parole board or similar authority or has received an order of exception from the division. A person, including a labor organization, welfare fund, or trust, shall not knowingly permit any other person to assume or hold any office, agency, or employment in violation of this section.

f. The division may maintain a civil action against any person, labor organization, welfare fund, or trust, or officers thereof to compel compliance with this section, or to prevent any violations, the aiding and abetting thereof, or any attempt or conspiracy to violate this section, either by mandamus, injunction, or action or proceeding in lieu of prerogative writ and upon a proper showing a temporary restraining order or other appropriate temporary order shall be granted ex parte and without bond pending final hearing and determination. Nothing in this subsection shall be construed to modify, limit, or restrict in any way the provisions of subsection a. of this section.

#### C.53:2-34 Violations, penalties.

29. a. Any person who, having been duly sworn or affirmed as a witness in any investigation, interview,

hearing or other proceeding conducted by the division pursuant to section 15 of P.L.2017, c.324 (C.53:2-20), shall willfully give false testimony shall be guilty of a disorderly persons offense.

b. The division may maintain a civil action on behalf of the State against any person who violates or attempts or conspires to violate P.L.2017, c.324 (C.32:23-229 et al.) or who fails, omits, or neglects to obey, observe, or comply with any order or direction of the division, to recover a judgment for a money penalty not exceeding \$500 for each and every offense. Every violation of any provision of P.L.2017, c.324 (C.32:23-229 et al.), or any division order or direction, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct offense. Any civil action may be compromised or discontinued on application of the division upon the terms as the court may approve and a judgment may be rendered for an amount less than the amount demanded in the complaint as justice may require.

c. The division may maintain a civil action against any person to compel compliance with any of the provisions of P.L.2017, c.324 (C.32:23-229 et al.), or to prevent violations, attempts, or conspiracies to violate any provisions of P.L.2017, c.324 (C.32:23-229 et al.), or interference, attempts, or conspiracies to interfere with or impede the enforcement of any provisions of P.L.2017, c.324 (C.32:23-229 et al.) or the exercise or performance of any power or duty thereunder, either by mandamus, injunction, or action or proceeding in lieu of prerogative writ.

d. Any person who shall violate any of the provisions of P.L.2017, c.324 (C.32:23-229 et al.), for which no

other penalty is prescribed, shall be guilty of a petty disorderly persons offense.

e. Any person who shall, without a satisfactory explanation, loiter upon any vessel, dock, wharf, pier, bulkhead, terminal, warehouse, or other waterfront facility or within 500 feet thereof in that portion of the port of New York district in this State, shall be guilty of a petty disorderly persons offense.

f. Any person who, without justification or excuse in law, directly or indirectly, intimidates or inflicts any injury, damage, harm, loss, or economic reprisal upon any person licensed or registered by the division, or any other person, or attempts, conspires, or threatens so to do, in order to interfere with, impede, or influence the licensed or registered person in the performance or discharge of the licensed or registered person's duties or obligations shall be punishable as provided in this section.

C.53:2-35 Witnesses, other violations.

30. a. The failure of any witness, when duly subpoenaed to attend, give testimony, or produce other evidence in connection with any matter arising under the provisions of P.L.2017, c.324 (C.32:23-229 et al.), whether or not at a hearing, shall be punishable by the Superior Court in New Jersey in the same manner as that failure is punishable by the court in a case therein pending.

b. Any person who, having been sworn or affirmed as a witness in any hearing pursuant to subsection a. of this section, shall willfully give false testimony or who shall willfully make or file any false or fraudulent report or statement required by P.L.2017, c.324 (C.32:23-

229 et al.) to be made or filed under oath, shall be guilty of a disorderly persons offense.

c. Any person who violates or attempts or conspires to violate any other provision of P.L.2017, c.324 (C.32:23-229 et al.) shall be punishable as may be provided by section 28 of P.L.2017, c.324 (C.53:2-33).

d. Any person who interferes with or impedes the orderly registration of longshoremen pursuant to P.L.2017, c.324 (C.32:23-229 et al.) or who conspires to or attempts to interfere with or impede such registration shall be punishable as may be provided by section 28 of P.L.2017, c.324 (C.53:2-33).

e. Any person who, directly or indirectly, inflicts or threatens to inflict any injury, damage, harm, or loss or in any other manner practices intimidation upon or against any person in order to induce or compel such person or any other person to refrain from registering pursuant to section 8 of P.L.2017, c.324 (C.53:2-13) shall be punishable as may be provided by section 28 of P.L.2017, c.324 (C.53:2-33).

f. In any prosecution under this section, it shall be sufficient to prove only a single act, or a single holding out or attempt, prohibited by law, without having to prove a general course of conduct, in order to prove a violation.

#### C.53:2-36 Compacts dissolved.

31. As of the transfer date, the waterfront commission compact, entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1953, c.202 (C.32:23-1 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1953, c.882 (NY Unconsol. Ch.307, s.1), as amended and sup-

plemented, the airport commission compact, entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1970, c.58 (C.32:23-150 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1970, c.951 (NY Unconsol. Ch.307, s.10), and the commission, are dissolved.

32. R.S.52:14-7 is amended to read as follows:

Residency requirements for State officers, employees; exceptions.

52:14-7. a. Every person holding an office, employment, or position

(1) in the Executive, Legislative, or Judicial Branch of this State, or

(2) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or

(3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or

(4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district, shall have his or her principal residence in this State and shall execute such office, employment, or position.

This residency requirement shall not apply to any person: (a) who is employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher by any State college, university, or other higher educational institution, or county or community

college, or in a full or part-time position as a member of the faculty, the research staff, or the administrative staff by any State college, university, or other higher educational institution, or county or community college, that the college, university, or institution has included in the report required to be filed pursuant to this subsection; (b) who is employed full-time by the State who serves in an office, employment, or position that requires the person to spend the majority of the person's working hours in a location outside of this State; or (c) an officer of the waterfront commission of New York harbor, employed by the commission on the effective date of P.L.2017, c.324 (C.32:23-229 et al.), who seeks to be transferred to the Division of State Police in the Department of Law and Public Safety pursuant to section 4 of P.L.2017, c.324 (C.53:2-9).

For the purposes of this subsection, a person may have at most one principal residence, and the state of a person's principal residence means the state (1) where the person spends the majority of the person's non-working time, and (2) which is most clearly the center of the person's domestic life, and (3) which is designated as the person's legal address and legal residence for voting. The fact that a person is domiciled in this State shall not by itself satisfy the requirement of principal residency hereunder. A person, regardless of the office, employment, or position, who holds an office, employment, or position in this State on the effective date of P.L.2011, c.70 but does not have principal residence in this State on that effective date shall not be subject to the residency requirement of this subsection while the person continues to hold office, employment, or position without a break in public service of greater than seven days.

Any person may request an exemption from the provisions of this subsection on the basis of critical need or hardship from a five-member committee hereby established to consider applications for exemptions. The committee shall be composed of three persons appointed by the Governor, a person appointed by the Speaker of the General Assembly, and a person appointed by the President of the Senate, each of whom shall serve at the pleasure of the person making the appointment and shall have a term not to exceed five years. A vacancy on the committee shall be filled in the same manner as the original appointment was made. The Governor shall make provision to provide such clerical, secretarial, and administrative support to the committee as may be necessary for it to conduct its responsibilities pursuant to this subsection.

The decision on whether to approve an application from any person shall be made by a majority vote of the members of the committee, and those voting in the affirmative shall so sign the approved application. If the committee fails to act on an application within 30 days after the receipt thereof, no exemption shall be granted and the residency requirement of this subsection shall be operative. The head of a principal department of the Executive Branch of the State government, a Justice of the Supreme Court, judge of the Superior Court, and judge of any inferior court established under the laws of this State shall not be eligible to request from the committee an exemption from the provisions of this subsection.

The exemption provided in this subsection for certain persons employed by a State college, university, or other higher educational institution, or a county or community college, other than those employed on a temporary or per-semester basis as a visiting profes-

sor, teacher, lecturer, or researcher, shall apply only to those persons holding positions that the college, university, or institution has included in a report of those full or part-time positions as a member of the faculty, the research staff, or the administrative staff requiring special expertise or extraordinary qualifications in an academic, scientific, technical, professional, or medical field or in administration, that, if not exempt from the residency requirement, would seriously impede the ability of the college, university, or institution to compete successfully with similar colleges, universities, or institutions in other states. The report shall be compiled annually and shall also contain the reasons why the positions were selected for inclusion in the report. The report shall be compiled and filed within 60 days following the effective date of P.L.2011, c.70. The report shall be reviewed, revised as necessary, and filed by January 1 of each year thereafter. Each report shall be filed with the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with the Legislature, and a report may be revised at any time by filing an amendment to the report with the Governor and Legislature.

As used in this section, "school district" means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes and any jointure commission, county vocational school, county special services district, educational services commission, educational research and demonstration center, environmental education center, and educational information and resource center.

b. If any person holding any office, employment, or other position in this State shall attempt to let, farm out, or transfer office, employment, or position or any part thereof to any person, the person shall forfeit the



sum of \$1,500, to be recovered with costs by any person who shall sue for the same, one-half to the prosecutor and the other half to the State Treasurer for the use of the State.

c. No person shall be appointed to or hold any position in this State who has not the requisite qualifications for personally performing the duties of such position in cases where scientific engineering skill is necessary to the performance of the duties thereof.

d. Any person holding or attempting to hold an office, employment, or position in violation of this section shall be considered as illegally holding or attempting to hold the same; provided that a person holding an office, employment, or position in this State shall have one year from the time of taking the office, employment, or position to satisfy the requirement of principal residency, and if thereafter the person fails to satisfy the requirement of principal residency as defined herein with respect to any 365-day period, that person shall be deemed unqualified for holding the office, employment, or position. The Superior Court shall, in a civil action in lieu of prerogative writ, give judgment of ouster against the person, upon the complaint of any officer or citizen of the State, provided that any complaint shall be brought within one year of the alleged 365-day period of failure to have the person's principal residence in this State.

Repealer.

33. The following are repealed:

P.L.1953, c.202 (C.32:23-1 et seq.);

P.L.1991, c.248 (C.32:23-23.1);

P.L.1985, c.32 (C.32:23-43.1 and 32:23-44.1);

Section 2 of P.L.1956, c.20 (C.32:23-75.1);

P.L.1954, c.3 (C.32:23-77.1 et seq.);

Sections 4 and 5 of P.L.1962, c.5 (C.32:23-80.1 and 32:23-80.2);  
P.L.1954, c.14 (C.32:23-85 et seq.);  
P.L.1956, c.19 (C.32:23-99 et seq.);  
Sections 6, 8, 9, and 10 of P.L.1956, c.194 (C.32:23-105 through 32:23-108);  
P.L.1990, c.59 (C.32:23-105.1 through 32:23-105.3);  
Sections 2 and 6 through 9 of P.L.1962, c.5 (C.32:23-109 through 32:23-113);  
Sections 2 through 5 of P.L.1966, c.18 (C.32:23-114 through 32:23-117);  
P.L.1976, c.102 (C.32:23-118 through 32:23-121); and  
Sections 4 through 17 and section 19 of P.L.1970, c.58 (C.32:23-150 through 32:23-225).

34. This act shall take effect immediately, but sections 3 through 32 shall be inoperative until the transfer date has occurred pursuant to section 31 of P.L.2017, c.324 (C.53:2-36).

Approved January 16, 2018.

179a

**APPENDIX F**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-2458 & 19-2459  
(D.N.J. No. 2-18-cv-00650)

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WATERFRONT COMMISSION OF NEW YORK HARBOR,

*v.*

GOVERNOR OF NEW JERSEY,

*Appellant*

PRESIDENT OF THE NEW JERSEY STATE SENATE;  
SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY;  
NEW JERSEY SENATE;  
GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY,  
*Intervenors*

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Filed July 20, 2020

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Present: SMITH, *Chief Judge*, HARDIMAN and  
KRAUSE, *Circuit Judges*

1. Motion filed by Appellee Waterfront Commission of New York Harbor in 19-2458, 19-2459 to Stay the Mandate.

Respectfully,  
Clerk/lmr

**ORDER**

The motion to stay the mandate is granted. The Court will extend the stay for the 150 day period allowed by the U.S. Supreme Court for the filing of the petition for writ of certiorari. *See* Fed. R. App. P. 41(d)(2)(B)(i). The parties are directed to immediately notify the Clerk when the petition has been filed and again when the Supreme Court has ruled on the petition. If the petition is granted, the stay will continue until the Supreme Court's final disposition. *See* Fed. R. App. P. 41(d)(2)(B)(ii).

By the Court,

s/D. Brooks Smith  
Circuit Judge

Dated: July 20, 2020

CJG/cc: All Counsel of Record