

No. _____, Original

IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

**MOTION FOR LEAVE TO FILE BILL OF COMPLAINT,
BILL OF COMPLAINT, BRIEF IN SUPPORT, AND
APPENDIX**

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The State of New York respectfully moves this Court for leave to file the attached Bill of Complaint. The grounds for this Motion are set forth in the accompanying brief.

Respectfully submitted,

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March 2022

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IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

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State of NEW JERSEY,
Defendant.

BILL OF COMPLAINT

BILL OF COMPLAINT

The State of New York brings this action against the State of New Jersey, and for its causes of action asserts as follows:

NATURE OF THE ACTION

1. This is an action invoking the Court's original and exclusive jurisdiction to seek a declaratory judgment and both preliminary and permanent injunctions prohibiting Defendant, the State of New Jersey, from breaching the congressionally approved Waterfront Commission Compact between New York and New Jersey.

2. New York and New Jersey agreed to the Compact in 1953 and, through the Compact, jointly formed the Waterfront Commission of New York Harbor. The two States entered into the Compact and created the Commission for the purpose of addressing racketeering and other criminal, corrupt, and abusive conditions on the waterfront in the Port of New York and New Jersey. The deplorable conditions at the Port had been publicly exposed in the early 1950s by the New York State Crime Commission, the New Jersey Law Enforcement Council, and other investigative bodies.

3. To form the Compact, New York and New Jersey each passed identical statutes in their respective legislatures, which were signed into law. And, as required under the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3,¹ they

¹ The text of each provision of the United States Constitution and the United States Code cited herein is included in the Appendix to the Complaint ("Compl. App.") at pages 146a-152a.

obtained the consent of Congress to enter into the Compact, ch. 407, 67 Stat. 541 (1953) (*reproduced at* Compl. App. 1a-35a), on August 12, 1953.

4. Through geographical and historical happenstance, the boundary line between New York and New Jersey runs through the Port, which operates as a unified whole. But the organized crime families and other corrupt enterprises that seek to exert influence on Port operations do not respect state lines.

5. The bistate Commission works diligently to fulfill its mandate under the Compact to investigate, deter, combat, and remedy criminal activity and influence at the Port, and to ensure fair hiring and employment practices at the Port. The Compact grants the Commission broad regulatory and law-enforcement powers over all operations at the Port. The Compact authorizes the Commission to oversee the licensing and registration of the waterfront workforce, including by conducting background checks to screen applicants to prevent individuals with ties to criminal enterprises from joining the waterfront workforce. The Commission also works with employers and union leadership to ensure fair and non-discriminatory hiring and labor practices at the Port. The Commission conducts investigations and hearings to expose criminality and unfair labor practices. The Commission also works with federal and state law enforcement partners on investigations into criminal activity, many of which have resulted in federal or state prosecutions.

6. Despite the bistate Commission's many successes, criminal operations continue to seek to exert influence on both sides of the Port. The goal of eliminating corruption and racketeering at the Port,

and the extensive harms that result from such unlawful activities, requires the continued operation of the Commission and the continued cooperation of both compacting States, as they agreed in the Compact. New Jersey's unilateral and illegal withdrawal from the Compact would impair the Commission's necessary regulatory and law-enforcement oversight over Port operations, resulting in irreparable harm to New York.

7. Despite the need for the Commission to continue its work unimpeded, New Jersey notified its Legislature, Congress, and the Governor of New York on December 27, 2021, that it intends to withdraw unilaterally from the interstate Compact and terminate the bistate Commission.

8. New Jersey relies on a statute signed into law on January 15, 2018, by then-Governor Chris Christie, Chapter 324 of the 2017 New Jersey session laws. Compl. App. 36a-109a (Ch. 324, 2017 N.J. Laws 2102 (2018)). Under Chapter 324, the December 27, 2021 notification of withdrawal by New Jersey triggers a ninety-day period after which the Compact will purportedly be dissolved and the Commission it created will purportedly be abolished. *See* Compl. App. 45a, 103a-104a (Ch. 324, §§ 3, 31).

9. New Jersey, however, lacks the power to withdraw unilaterally from the Compact or abolish the Commission without New York's consent. New Jersey's unilateral withdrawal would effectively repeal the Compact. The Compact, however, is a binding contract, and its terms provide that it may be amended only by concurring legislation enacted by both States, *see* Compl. App. 34a-35a (Compact art. XVI, § 1, Ch. 407, 67 Stat. 541 (1953)), and that the

Compact Act may be repealed only by Congress, (Ch. 407 § 2, 67 Stat. 541, 557 (1953)).

10. Moreover, the Compact is a federal statute, and its breach is a violation of federal law. *See Kansas v. Nebraska*, 574 U.S. 445, 463 (2015).

11. Chapter 324 and New Jersey's recent efforts to enforce that statute conflict with the Compact's concurrency requirement and its provision reserving for Congress the power to unilaterally repeal the Compact Act. New Jersey's proposed withdrawal from the Compact, destruction of the bistate Commission, and seizure of the Commission's powers and assets that belong jointly to New York and New Jersey would unilaterally amend and repeal the Compact, in conflict with these provisions.

12. Chapter 324 and New Jersey's actions to implement this statute thus constitute breaches of the Compact in violation of federal law. They also constitute substantial contractual impairments without any legitimate government purpose, in violation of the Contract Clause of the United States Constitution. Chapter 324 is also preempted in its entirety because it directly conflicts with a federal statute. U.S. Const. art. I, § 10, cl. 1; *id.* art. VI, cl. 2.

JURISDICTION

13. The Court has exclusive and original jurisdiction over this suit under Article III, Section 2, Clause 2, of the Constitution of the United States and under Title 28, Section 1251(a), of the United States Code, this suit being an action in equity involving a controversy between two States of the United States.

14. This Court is the sole forum in which New York may enforce its sovereign rights under the

Compact, United States Constitution, and federal law. There is no alternative forum capable of fully resolving the serious claims asserted herein by New York against New Jersey. *See Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992); *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992).

PARTIES

15. Plaintiff, the State of New York, is a sovereign State of the United States of America, and is a party to the bistate Compact.

16. Defendant, the State of New Jersey, is a sovereign State of the United States of America, and is a party to the bistate Compact.

GENERAL ALLEGATIONS

THE WATERFRONT COMMISSION COMPACT

FORMATION OF THE COMPACT AND CREATION OF THE COMMISSION

17. In 1951, the New York State Crime Commission, assisted by the Law Enforcement Council of New Jersey, began investigations into corruption, extortion, racketeering, and organized crime at the Port. These abuses had initially been brought to the public's attention in 1949, in a series of articles published in the New York *Sun*. In May 1953, after extensive hearings, the Crime Commission published a report detailing extensive corruption and abuses in the hiring practices of laborers at the Port.

18. In response to the revelations in the Crime Commission's report, New York and New Jersey agreed to enter into the interstate Compact and, through that Compact, jointly created the bistate Commission with the authority to oversee licensing

and registration of the waterfront workforce and investigate and expose unfair labor practices and criminal activity at the Port. In June 1953, to effectuate their agreement, the respective legislatures of New York and New Jersey each passed identical statutes, and the Governors of each State signed those acts into law. *See* Ch. 202, 1953 N.J. Laws 1511, 1511-42 (codified at N.J. Stat. Ann. §§ 32:23-1 to -73);² Ch. 882, § 1, 1953 N.Y. Laws 2417, 2417-36 (N.Y. Unconsol. Laws §§ 9801-9873 (McKinney)).

19. Part I of these state statutes became the original Compact.

20. The Compact was submitted to Congress for approval, in accordance with the Compact Clause of the United States Constitution. That clause provides: “No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State.” U.S. Const. art. I, § 10, cl. 3.

21. After New York and New Jersey submitted the Compact for approval, Congress conducted its own investigation into corruption and racketeering at the Port. That investigation included congressional hearings, and Congress eventually issued findings endorsing the interstate cooperative approach taken by New York and New Jersey. *De Veau v. Braisted*, 363 U.S. 144, 149-50 (1960).

22. In 1953, the Compact was approved by an Act of Congress and signed into federal law by former

² As explained below (at ¶¶ 42, 50-51, 107-136), Chapter 324 unlawfully purports to repeal this legislation and other New Jersey statutes that are part of amendments to the Compact. *See* Compl. App. 36a.

President Dwight D. Eisenhower. *See* Compl. App. 1a-35a (Compact).

23. The fundamental purpose of the Compact and the bistate Commission is to bring together the law-enforcement and regulatory powers of both New York and New Jersey to root out corruption, organized crime, racketeering, and other unlawful activity at the Port.

24. The Compact's detailed findings and declarations, issued by both New York and New Jersey and endorsed by Congress, explain the pervasive criminal conduct and unfair labor practices that controlled operations at the Port:

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.

Compl. App. 1a-2a (Compact art. I, § 1).

25. In the Compact, New York, New Jersey, and Congress further stated:

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 of such labor organizations.

Compl. App. 3a (Compact art. I, § 3).

26. Each compacting State also found and declared, and Congress agreed, that the extensive criminal and corrupt practices at the Port were causing harm to Port employees and residents of both States. As they explained:

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.

Compl. App. 2a (Compact art. I, § 1).

27. New York and New Jersey further agreed, and Congress approved, that “the occupations of long-shoremen, 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.” Compl. App. 3a (Compact art. I, § 4).

28. To address these extensive interstate problems and harms, Article III of the Compact created the bistate Commission. Under the Compact, the Commission “shall be a body corporate and politic, an instrumentality of the States of New York and New Jersey.” Compl. App. 6a (Compact art. III, § 1).

29. Today, most of the cargo transfer takes place on the New Jersey side of the Port. When the Compact was formed and the Commission created, the majority of the cargo transfer took place on the New York side of the Port, and the majority of employment hours were worked on the New York side of the Port.

30. Nothing in the Compact states that any provision therein is contingent upon the distribution between the States of the volume of cargo transfer or employment hours.

THE COMMISSION’S POWERS UNDER THE COMPACT

31. The Commission consists of two Commissioners, one appointed by the Governor of New York and one appointed by the Governor of New Jersey. Compl. App. 6a (Compact art. III, § 2).

32. Commissioners serve for three-year terms, and they are required to hold office until the appointment of a successor. Compl. App. 6a (Compact art. III, § 2).

33. The Commission may act only by unanimous consent of both Commissioners. Compl. App. 6a (Compact art. III, § 3).

34. The Compact gives the Commission jurisdiction over the entire Port, *see* Compl. App. 8a (Compact art. IV, § 9), which constitutes an area of approximately 1500 square miles covering both New York and New Jersey, centering around New York Harbor. The Port stretches from Westchester County in the north to Nassau County in the east, and includes portions of all five boroughs of New York City, as well as areas in Bergen, Hudson, Union, and Essex Counties in New Jersey to the west and south.

35. To fulfill its mandate to root out crime at the waterfront, the Commission is granted extensive regulatory and criminal investigatory powers over the Port. The Commission is granted broad power to make rules and regulations as needed to effectuate, or to prevent circumvention of, the purposes of the Compact. Compl. App. 7a (Compact art. IV § 7). The Commission is further empowered to investigate and gather information regarding “all matters” within the Port that relate to the accomplishment of the objectives of the Compact. Compl. App. 8a (Compact art. IV, § 11).

36. The Compact grants the Commission the power to license, register, and regulate the waterfront employment of pier superintendents and hiring agents (Compl. App. 9a-13a (Compact art. V)); stevedores (Compl. App. 14a-18a (Compact art. VI)); longshore workers (Compl. App. 20a-24a (Compact arts. VIII-IX)); and port watchmen (Compl. App. 24a-26a (Compact art. X)). It provides that no one in those professions may work at the Port without first being

licensed and registered by the Commission. Compl. App. 9a (Compact art. V, § 1), 14a (Compact art. VI, § 1), 20a (Compact art. VIII, § 1), 24a (Compact art. X, § 1).

37. The Commission is empowered to deny such licensing and registration to applicants for reasons including having a criminal background or having engaged in fraud in the application process. Compl. App. 12a-13a (Compact art. V, § 3); 15a-16a (Compact art. VI, § 3), 20a-21a (Compact art. VIII, § 3), 23a (Compact art. X, § 3).

38. The Commission is empowered to remove from the Port pier superintendents and hiring agents who engage in such activities as extortion of longshore workers. Compl. App. 13a (Compact art. V, §7(k)).

39. The Commission is further empowered to investigate and remove from the Port longshore workers who present a danger to the public peace or safety, for example by causing injury to persons or property at the Port or on an adjacent highway, or by gaining entry to the Port through fraud. Compl. App. 21a-22a (Compact art. VIII, § 5).

40. The Commission similarly has power to remove from the Port members of other waterfront occupations, including stevedores and Port watchmen, who create dangers at the Port by engaging in criminal activity. Compl. App. 17a-18a (Compact art. VI, § 6); Compl. App. 26a (Compact art. X, § 6).

41. The Commission has the power to prohibit the presence in the Port of any individuals who are not authorized to engage in loading or unloading waterborne freight. Compl. App. 18a-19a (Compact art. VII). These unauthorized individuals known as “public

loaders” had been notorious for charging exorbitant rates for their services and engaging in extortion by force and threats of violence. Compl. App. 18a (Compact art. VII, § 1).

42. Since its formation, the Compact has been amended multiple times, always through concurring legislation enacted by New York and New Jersey. *See* Compl. App. 110a-113a (N.J. Stat. Ann. § 32:23-86 (2003)), 114a-118a (N.Y. Unconsol. Laws § 9906 (McKinney 2003)), 119a-125a (N.J. Stat. Ann. § 32:23-114 (1999)), 126a-132a (N.Y. Unconsol. Laws § 9920 (McKinney 1999)).³

43. The Compact as amended, in Section 5-b, gives the Commission expanded powers to conduct background screenings of individuals seeking employment on the waterfront and to prevent individuals who pose a danger to the public peace or safety, lack good character and integrity, or who are associated with members of an organized crime or terrorist group from being hired or remaining employed at the Port. *See* Compl. App. 113a (N.J. Stat. Ann. § 32:23-86(2), (6)-(8) (2003)), 117a-118a (N.Y. Unconsol. Laws § 9906(2), (6)-(8) (McKinney 2003)).

44. The amended Compact, in Section 5-b, empowers the Commission to “designate any officer, agent or employee of the commission to be an

³ *See also, e.g.*, Ch. 333, 2007 N.J. Laws 2090; Ch. 362, 2007 N.Y. Laws 3061; Ch. 206, Ch. 22, 1988 N.J. Laws 64; Ch. 157, 1988 N.Y. Laws 2096; Ch. 279, 1987 N.J. Laws 1382; Ch. 529, 1987 N.Y. Laws 2484; Ch. 33, 1982 N.J. Laws 76; Ch. 64, 1982 N.Y. Laws 1376; Ch. 128, 1969 N.J. Laws 403; Ch. 952, 1969 N.Y. Laws 2319; Ch. 18, 1966 N.J. Laws 51; Ch. 127, 1966 N.Y. Laws 701; Ch. 19, 1956 N.J. Laws 57; Ch. 457, 1956 N.Y. Laws 1160; Ch. 14, 1954 N.J. Laws 64; Ch. 220, 1954 N.Y. Laws 745.

investigator who shall be vested with all the powers of a peace or police officer of the state of New York in that state, and of the state of New Jersey in that state.” Compl. App. 111a (N.J. Stat. Ann. § 32:23-86(4) (2003)); 115a (N.Y. Unconsol. Law § 9906(4) (McKinney 2003)).

45. These investigators are permitted to, under certain circumstances, confer immunity from prosecution. *See* Compl. App. 111a-112a (N.J. Stat. Ann. § 32:23-86(5) (2003)); Compl. App. 115a-116a (N.Y. Unconsol. Law § 9906 (5) (McKinney 2003)).

46. The amended Compact, in Section 5-p, further empowers the Commission, through what is referred to as the closed-register provision, to close the register of longshore workers when the supply of registered longshore workers grows too large in proportion to the needs of employers. *See* Compl. App. 119a-121a (N.J. Stat. Ann. § 32:23-114(1) (1999)); 126a-127a (N.Y. Unconsol. Law § 9920(1) (McKinney 1999)). The ability to open and close the register allows the Commission to regulate the size of the work force. The historical surplus of available workers competing for waterfront jobs was a key factor that perpetuated the abusive and exploitative hiring and labor practices described in the Compact’s findings and determinations.

47. Section 5-p of the amended Compact further empowers the Commission to add workers to the closed register of longshore workers through an employer sponsorship procedure so long as the employers certify that the workers had been selected in a fair and non-discriminatory manner consistent with state and federal law. *See* Compl. App. 120a-121a

(N.J. Stat. Ann. § 32:23-114(1) (1999)); 130a-131a (N.Y. Unconsol. Law § 9920(4) (McKinney 1999)).

48. The Commission is empowered to acquire, hold, and dispose of real and personal property in furtherance of its corporate purposes. Compl. App. 7a (Compact art. IV, § 3).

49. The Commission is not funded by the taxpayers of New York or New Jersey. Instead, under the Compact, the Commission's budget comes from assessments on waterfront employers on the wages they pay to employees, not to exceed 2% of such wages. Compl. App. 31a-32a (Compact art. XIII, § 3).

50. Article XVI, § 1 of the Compact states that any amendments to the Compact must be made by legislation enacted by one State and "concurring in by the Legislature of the other." Compl. App. 34a-35a (Compact art. XVI, § 1).

51. In approving the Compact, Congress added a provision, Section 2, reserving for itself the right to repeal the Waterfront Compact Act. Compl. App. 35a (Ch. 407 § 2, 67 Stat. 541, 557 (1953)). New York and New Jersey are bound by this term imposed by Congress because States, in seeking congressional approval for a compact, "assume the conditions that Congress under the Constitution attached." See *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 281-82 (1959).

52. 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." Compl. App. 35a (Compact art. XVI, § 3).

**THE COMMISSION'S ONGOING EFFORTS TO
ENSURE SAFE AND EFFICIENT OPERATIONS AT
THE JOINT NEW YORK-NEW JERSEY PORT**

53. Many of the problems that led to the formation of the Commission persist on today's waterfront. For example, Commission investigations, often conducted in cooperation with federal and state law-enforcement agencies, continue to result in arrests of individuals associated with organized crime families, seizures of illegal drugs and firearms, and seizures of financial proceeds from illegal drug trafficking, loansharking, and gambling. In recent years the Commission has intensified its efforts.

54. For example, over the past thirteen years, through the Commission's efforts:

- a. numerous investigations 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;
- b. more than two dozen members and officials of the International Longshoremen's Association (ILA) and members of organized crime pleaded guilty to conspiring to extort millions from dockworkers, then funneling the money to the Genovese Crime Family, and another ILA official pleaded guilty to embezzling union funds;
- c. more than 25 members and associates of the Genovese Crime Family were convicted for reaping millions from loansharking,

unlicensed check cashing, gambling, and money laundering in the Port district;

- d. thousands of background checks of those applying for work in the Port have prevented the infiltration of the Port by hundreds of people who were convicted of serious crimes, but who failed to disclose those crimes in their applications, or who were members of, or associated with, known organized crime families; and
- e. the registrations of Port workers who were convicted of serious crimes or found to be members of, or associated with, organized crime have been suspended or revoked.

55. The Commission's ongoing work to eradicate the culture of organized crime and racketeering at the Port is not done. Testimony in numerous racketeering cases and civil Racketeer Influenced and Corrupt Organizations Act cases has described organized crime families' continuing efforts to exert influence over both sides of the Port. *See* Appendix to Motion for Preliminary Relief ("PI App.") 3a-4a, 6a-7a (Arsenault Decl. ¶¶ 7-8, 13).

56. Residents of the Port's surrounding communities also continue to have difficulties obtaining opportunities to work on the waterfront, while those who are connected to organized crime families or other corrupt enterprises are often rewarded with high paying, low-show or no-work special compensation packages. These special compensation packages have a detrimental economic impact on the Port and the New York metropolitan area. PI App. 5a-6a (Arsenault Decl. ¶ 11).

57. Continued screening of the workforce in the Port through background checks is critical to combat such corrupt and criminal practices. One of the most effective methods of combatting corruption and mob-related influence in the Port is to prevent individuals with prohibited mob ties from entering the waterfront workforce.

58. In the past, background checks generally consisted only of a review of applicant's criminal history records. Today, the Commission is the central repository of intelligence pertaining to criminality and organized crime influence in the Port. In screening prospective workers, the Commission employs sophisticated techniques not only to detect prior criminality, but also to root out associations between prospective longshore candidates and organized crime figures and career criminals. Individuals whose background checks revealed such criminal associations have been barred from entering the Port workforce. PI App. 5a (Arsenault Decl. ¶ 9).

59. Without the specialized expertise and oversight the Commission has developed, organized crime members and other dishonest individuals will have increased opportunities to operate at the Port—which is a critical point of interstate and international shipping. The Commission's presence discourages the placement of mob-connected workers directly in the Port, where their connections and criminal sources of employment are more likely to be exposed to law-enforcement investigation.

60. Terminating the Commission, as New Jersey seeks to do, would likely increase the opportunities for individuals associated with organized crime families or other criminal enterprises to obtain access to

waterfront employment at the Port and use that employment for criminal activities.

61. The Commission also engages in ongoing efforts to promote fair and nondiscriminatory hiring at the Port. For example, under its authority granted by Section 5-p of the amended Compact, the Commission amended its rules in September 2013 to require waterfront employers to submit a certification that the persons they are hiring have been selected in a fair and non-discriminatory manner, in accordance with state and federal equal employment opportunity laws. *See* Compl. App. 137a-138a (Am. Rule 4.4 (Sept. 9, 2013)); *see also* Compl. App. 120a-121a (N.J. Stat. Ann. § 32:23-114(1) (1999)); Compl. App. 130a-131a (N.Y. Unconsol. Law § 9920(4) (McKinney 1999)).

62. Subsequently, the Commission issued a Determination in December 2013, pursuant to which the Commission agreed to increase the size of the register of longshore workers so long as a representative of the board administering the hiring plan under the collective bargaining agreement between the New York Shipping Association, Inc. (NYSA) and the ILA certified that each individual added has been selected in a fair and non-discriminatory manner. Compl. App. 138a-145a (Determination 35 (Dec. 3, 2013)). The U.S. Court of Appeals for the Third Circuit upheld these regulatory actions as properly within the Commission's authority. *N.Y. Shipping Ass'n, Inc. v. Waterfront Comm'n of N.Y. Harbor*, 835 F.3d 344 (3d Cir. 2016).

**NEW JERSEY'S PREVIOUS ATTEMPTS TO WITHDRAW
FROM THE COMPACT AND ACKNOWLEDGMENT THAT
IT IS NOT PERMITTED BY LAW TO DO SO**

63. New Jersey has previously taken steps to unilaterally and illegally withdraw from the Compact, but those efforts did not come to fruition because the State's own Governor at the time recognized the legal infirmity of such an action.

64. In 2015, New Jersey's Legislature enacted Senate Bill 2277, S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015), which provided for New Jersey's withdrawal from the Waterfront Compact and dissolution of the Commission, without New York's consent. Then-Governor Chris Christie, however, vetoed that legislation, stating that he had been advised that federal law does not permit one State to unilaterally withdraw from a bistate compact approved by Congress. *See* PI App. 85a-86 (Veto, S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015)).

65. When asked in 2014 for an opinion regarding the legality of unilateral withdrawal from interstate compacts, the New Jersey Office of Legislative Services stated, in a memorandum dated October 24, 2014, that "United States Supreme Court and lower federal court opinions appear to suggest that state action unilaterally nullifying a congressionally approved interstate compact raises issues regarding both the Supremacy Clause and the Contract Clause of the United States Constitution." PI App. 93a (Mem. from John Kingston to Philip M. Mersinger, N.J. Office of Legis. Servs. (Oct. 23, 2014) (footnotes omitted)).

NEW JERSEY'S ENACTMENT OF CHAPTER 324

66. In 2017, the New Jersey Legislature passed Chapter 324, a law identical to Senate Bill 2277. Chapter 324 was signed into law on January 15, 2018, by then-Governor Christie. *See* Compl. App. 36a-109a. However, New Jersey's attempts to enforce Chapter 324 were stopped for three years. As set forth below, see *infra* ¶¶ 73-83, a federal district court barred enforcement of Chapter 324, thus allowing the Commission to continue its work. The injunction barring enforcement remained in effect until December 3, 2021.

67. Chapter 324 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." Compl. App. 38a (Ch. 324, § 2(a)).

68. The term "transfer date" is defined in Chapter 324 as ninety days after such notice is given, Compl. App. 45a (Ch., 324 § 3). Chapter 324 declares that on the transfer date, the Compact and Commission will be dissolved. Compl. App. 103a-104a (Ch. 324, § 31).

69. Chapter 324 unilaterally transfers to the New Jersey Division of State Police many of the powers that the interstate Compact gives to the bistate Commission—including the power to adopt rules and regulations governing employment in the Port areas geographically located in New Jersey; to issue and revoke licenses to pier superintendents and stevedores; and to establish a registry for longshore workers. *See* Compl. App. 41a, 49a-73a (Ch. 324, §§ 3, 5-12). Chapter 324 also permits the New Jersey

Division of State Police to rescind any regulations promulgated by the Commission. Compl. App. 48a (Ch. 324, § 4(b)(7)).

70. Chapter 324 provides that payroll assessments that Port employers currently pay to the Commission under the Compact for work performed in New Jersey must instead be paid to the New Jersey State Department of the Treasury under the new legislative regime. Compl. App. 91a-97a (Ch. 324, §§ 25, 26).

71. Chapter 324 also encourages employees currently working for the bistate Commission to apply for employment with the New Jersey Division of State Police. Compl. App. 47a (Ch. 324, § 4(b)(3)).

72. Chapter 324 also orders the transfer of the Commission's funds that are purportedly "applicable to" New Jersey to the Treasurer of the State of New Jersey and directs that the debts, liabilities, and contracts of the Commission are abandoned unless they relate solely to New Jersey. Compl. App. 47a (Ch. 324, § 4(b)(2), (4)).

THE COMMISSION'S LAWSUIT AGAINST NEW JERSEY

73. On January 16, 2018, the day after Chapter 324 was signed into law, the Commission filed a lawsuit in the U.S. District Court for the District of New Jersey, seeking a declaratory judgment and preliminary and permanent injunctions preventing the Governor of New Jersey from taking any action to implement or enforce Chapter 324. *See* Compl., *Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-cv-650 (D.N.J. Jan. 16, 2018), ECF No. 1.

74. In a decision dated June 1, 2018, the district court granted the Commission's motion for a preliminary injunction, finding that the Commission had satisfied all requirements for such relief. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-650, 2018 WL 2455927, at *8-12 (D.N.J. June 1, 2018), *vacated and remanded*, *Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234 (3d Cir. 2020), *cert. denied*, *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561 (2021).

75. The district court concluded that the Commission was likely to succeed on the merits of its claim because Chapter 324's "directives to unilaterally withdraw from and nullify the Compact directly conflict[] with the Compact." *Id.* at *9-10. The court also found that the Commission had shown irreparable harm because it would be divested of its lawful powers, rights, assets, and duties, and would be dissolved. *Id.* at *10.

76. The court further found that the public interest weighed in favor of injunctive relief because the alleged harms from having two entities overseeing the Port and from the weakening of the Commission's powers to control abuses in hiring and employment were "realistic and expansive." *Id.* at *11.

77. By decision dated May 29, 2019, the district court granted summary judgment in favor of the Commission, concluding that "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." *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 429 F. Supp. 3d 1, 12 (D.N.J. 2019), *vacated and remanded*, *Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234 (3d Cir. 2020), *cert. denied*, *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561 (2021).

78. The New Jersey Governor appealed. In a decision dated June 5, 2020, the U.S. Court of Appeals for the Third Circuit concluded that the Commission's lawsuit was barred by Eleventh Amendment sovereign immunity. The Third Circuit ruled solely on its jurisdiction and did not reach the merits. *Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234, 242 (3d Cir. 2020), *cert. denied*, *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561 (2021).

79. On December 4, 2020, the Commission filed a petition for a writ of certiorari. *Waterfront Comm'n of New York Harbor v. Murphy*, No. 20-772 (U.S. Dec. 4, 2020).

80. While the Commission's petition was pending before this Court, the Third Circuit's mandate was stayed. The district court's injunction barring enforcement of Chapter 324 thus remained in place. *See Order, Waterfront Comm'n*, No. 19-2458 (3d Cir. July 20, 2020), ECF No. 106.

81. While the injunction remained in force, the Commission was able to keep operating as usual, and New Jersey was prohibited from taking any steps to withdraw from the Compact or abolish the Commission.

82. By order dated November 21, 2021, this Court denied the Commission's petition for certiorari.

Waterfront Comm'n of N.Y. Harbor v. Murphy, 142 S. Ct. 561 (2021).

83. The stay of the Third Circuit's decision was then lifted, and the Third Circuit's mandate was issued on November 22, 2021. *Waterfront Comm'n*, No. 19-2458 (3d Cir. Nov. 22, 2021), ECF Nos. 117-1 to -3. On December 3, 2021, the district court implemented the mandate and dismissed the case. Order, *Waterfront Comm'n*, No. 18-cv-650 (D.N.J. Dec. 3, 2021), ECF No. 76.

**NEW JERSEY'S IMMINENT ATTEMPT TO WITHDRAW
UNILATERALLY FROM THE COMPACT AND
TERMINATE THE COMMISSION**

84. On December 27, 2021, Sheila Y. Oliver, then-Acting Governor of New Jersey, sent letters to Kathy Hochul, who had become of Governor of New York on August 24, 2021 upon the resignation of her predecessor, and to the Commission, the New Jersey Legislature, and the United States Congress, announcing New Jersey's intention to "withdraw from the interstate compact that established the Waterfront Commission of New York Harbor." PI App. 32a-39a (letters from S. Oliver, 12/27/2021).

85. By letter dated February 9, 2022, Philip D. Murphy, Governor of New Jersey, sent the Commission sweeping demands for documents. Among the materials requested were staff personnel files, police work assignments, information detailing the Commission's ongoing criminal investigations, and the Commission's confidential intelligence database. Governor Murphy also requested financial statements, receipts, reserves and cash/investments, and all information related to the Commission's contracts and its assets

and liabilities. PI App. 43a-55a (letter from P. Murphy, 2/9/2021).

86. In his February 9 letter, Governor Murphy, acting pursuant to Chapter 324, demanded that the documents and information sought be turned over to the New Jersey Division of State Police, and asserted that the Commission's authority over Port areas located in New Jersey will cease on March 28, 2022. PI App. 44a (letter from P. Murphy, 2/9/2021).

87. By letter dated February 9, 2022, from Governor Hochul's Counsel to Governor Murphy's Chief Counsel, New York notified New Jersey that the interstate Compact does not permit New Jersey's unilateral withdrawal, and that the bistate Commission continues to be a key investigative partner in both federal and state criminal prosecutions. New York reminded New Jersey that organized crime remains a threat at the Port and that the two States should continue their cooperative approach through the Commission. PI App. 40a-42a (letter from E. Fine, 2/9/2022).

88. By letter dated February 11, 2021, to Counsel for Governor Hochul, Governor Murphy's Chief Counsel reasserted New Jersey's intention to withdraw from the Compact effective March 28, 2022. PI App. 57a-58a (letter from P. Garg, 2/11/2022).

89. After being notified that the Commission would not comply with New Jersey's unlawful document requests (*see* PI App. 59a-60a (letter from W. Arsenault, 2/9/2021)), New Jersey threatened to withhold the New Jersey Commissioner's vote on any Commission matters, and warned that if the Commission does not cooperate with New Jersey's unilateral withdrawal, operations at the Port will be endangered,

and disruptions may occur to the economy, supply chains, and commerce in the region. PI App. 61a-64a (letter from P. Garg, 3/1/2022).

90. The disruptions that New Jersey warned about, caused by that State's intended unilateral withdrawal from the Compact, are beginning to occur.

91. By letter dated March 4, 2022, the Superintendent of the New Jersey Division of State Police wrote to the employees of the Commission inviting them to apply for employment with the New Jersey Division of State Police. PI App. 67a-68a (letter from P. Callahan, 3/4/2022).

92. Also on March 4, 2022, the NYSA asserted in a letter to the Commission that the Commission no longer has the authority to levy assessments on employers at the Port and that its member employers owe no assessments as of January 1, 2022. PI App. 65-66a (letter from J. Nardi, 3/4/2022).

93. The New Jersey Legislature then reiterated the State's earlier threats to the Commission and stated that New Jersey will no longer appropriate any funds to support the Commission. PI App. 75a-77a (letter from N. Scutari, 3/9/2022).

**HARMS TO NEW YORK IF NEW JERSEY IS
PERMITTED TO WITHDRAW FROM THE COMPACT**

94. Under Chapter 324, New Jersey purports to seize the Commission's assets and powers. Chapter 324 transfers to the New Jersey Division of State Police many of the regulatory and law enforcement powers of the Commission and directs the New Jersey Division of State Police to levy assessments on payroll paid by Port employers for work done in New Jersey.

Under the Compact, these powers are lawfully subject to the joint control of New York and New Jersey.

95. If New Jersey is permitted to go through with its attempt to seize many of the Commission's law enforcement and regulatory functions, including the Commission's power to levy assessments, the Commission will face severe logistical and budgetary challenges. Given that New Jersey's threatened actions are unlawful, the Commission may seek to continue operating and fulfilling its law-enforcement and regulatory responsibilities under the Compact. However, New Jersey's imminent enforcement of Chapter 324 will weaken the Commission's ability to operate and may ultimately cause the Commission to cease operating. Whether or not the Commission continues operations, irreparable harm to New York will result.

96. The Commission's authority and its expertise are unique. Although it crosses two States, the Port is a single entity. It is a unified whole, with workers, companies, and freight operating in, and moving through, both States. Many of the criminal organizations that continue to operate and seek to exert influence over the Port do so on both sides of the Port. For more than sixty years, the Commission has had jurisdiction over the entire Port. It is thus qualified to oversee activity on both sides of the Port.

97. If New Jersey is permitted to withdraw unilaterally from the Compact, the Commission's ongoing criminal investigations will likely be compromised. Many of the Commission's investigations, often conducted in partnership with other law-enforcement agencies, require cross-jurisdictional investigation in both New York and New Jersey. Because Commission

detectives have police powers in both New York and New Jersey, they are able to conduct surveillance and employ other investigative techniques to track criminality in both States effectively.

98. If New Jersey refuses to recognize the Commission's jurisdiction in that State, Commission investigators may face obstacles and bistate investigations may be compromised. And if the Commission becomes unable to continue its work, the Port will likely suffer in both States from the loss of the Commission's expertise and ability to conduct its operations across state lines—operations that have led to successful prosecutions of numerous crimes.

99. Moreover, under Chapter 324, as of March 28, 2022, the New Jersey Division of State Police and the Commission Police will each exercise authority over the same New Jersey waterfront. This will create a volatile situation because the New Jersey Division of State Police have stated that they will not recognize the jurisdiction of the Commission Police in New Jersey. Under the Compact, the Commission is authorized to enter all areas of the Port, including vessels and piers, without interference. But if their jurisdiction is not recognized by the New Jersey Division of State Police, their access may be blocked and clashes may occur between the waterfront workers and Commission Police.

100. If there are two sets of regulators exercising conflicting authority over the Port, there will also likely be substantial uncertainty about which set of government officials has authority to issue or revoke licenses for waterfront employment, maintain a register of longshore workers eligible and available to work at the Port, and levy assessments on wages paid

to waterfront employees in New Jersey. Indeed, the NYSA—which represents terminal operators, ocean carriers, stevedores, and marine related businesses that operate ships and move cargo at the port—has already sent a letter to the Commission asserting that its member employers will refuse to pay assessments on their payroll to the Commission.

101. The provisions of Chapter 324 that imperil the Commission's funding will endanger the lives of law enforcement personnel who work for the Commission undercover. New Jersey's demands for the Commission's files and data, including confidential information regarding its investigations, will further undermine the safety of the Commission's law-enforcement personnel. Multiple undercover detectives employed by the Commission are involved in covert operations in both New York and New Jersey. Even if the Commission continues its work, not all of these detectives will be able to continue their employment with the Commission because of the budget challenges that will be caused by New Jersey's withdrawal from the Compact. These undercover operations are inherently dangerous, and disclosure of the identities of these detectives would directly endanger their safety. Such disclosures are likely to occur if undercover detectives are forced to suddenly abandon their assignments without a properly laid exit strategy. And if the Commission is forced to cease operations, the sudden absence of the Commission's undercover detectives will be conspicuous. Whether or not the Commission continues its work, the safety of the Commission's undercover detectives and cooperating individuals who vouched for them will be endangered.

102. Allowing New Jersey to withdraw unilaterally from the Compact will also weaken the screening

of Port workers. The Commission maintains the central repository of intelligence on criminality and organized crime influences at the Port. The Commission has also developed expertise in detecting criminal backgrounds and associations with organized crime. Under Chapter 324, however, regardless of whether the Commission remains in operation, New Jersey will begin conducting its own background checks without the Commission's resources and expertise, likely resulting in more individuals with criminal ties being employed at the Port and more individuals experiencing unfair and discriminatory hiring practices.

103. Weakening or ultimately terminating the Commission's ability to conduct criminal investigations, conduct background checks, and regulate the hiring, registration, and licensing of waterfront employees will likely increase the opportunities for individuals associated with organized crime families or other criminal enterprises to obtain employment at the Port or otherwise exert control over Port operations. As a result, there would likely be increased opportunities for the Port to be used for criminal activity that irreparably harms New York, such as the importation and distribution of dangerous contraband—including, for example, narcotics and guns. Increased criminal activity at the Port would also likely result in increased prices for goods that flow through the Port and into New York and the surrounding region. *See* Compl. App. 2a (Compact art. I, § 1).

104. Terminal operators conduct business on both sides of the Port, and longshore workers who are backgrounded and registered to work Port-wide move back and forth between the two States according to where they are needed. Under the current system, Port employers hire from a centralized pool of all

eligible workers. This centralized system is critical because hiring at the Port is a fluid, dynamic process. Separating this central hiring system into two separate systems will likely cause substantial chaos and confusion. Confusion, misunderstandings, and disputes about licensing, registration, and work assignments will likely disrupt Port operations, with potential disruptions to supply chains and the flow of commerce into New York and other areas of the nation.

105. New Jersey's intention to significantly decrease the funding of the Commission will also prevent the Commission from meeting its current financial obligations, which will have a harmful impact on New York. One way Chapter 324 undercuts the Commission's ability to operate is by purporting to disclaim any of the Commission's liabilities allegedly associated with New York. As a result, for example, New Jersey's withdrawal from the Compact will cause the Commission to default on the ten-year lease for its headquarters in Manhattan.

106. The overall effect of New Jersey's withdrawal from the Compact on New York will likely include higher prices on incoming goods, increased crime, including violent crime, higher unemployment, and continued racial and gender inequities.

**FIRST CAUSE OF ACTION:
BREACH OF THE INTERSTATE COMPACT**

107. New York repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

108. In addition to being a binding contract, the Compact "is also an Act of Congress, and its breach a violation of federal law." *Kansas*, 574 U.S. at 463.

109. This Court therefore construes the Compact as a matter of federal law. *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1497-98 (2019) (“[N]o State can apply its own law to . . . the interpretation of interstate compacts.” (citing *Petty*, 359 U.S. at 278-279)).

110. The Compact unambiguously prohibits New Jersey from unilaterally terminating the Compact, dissolving the Commission, or transferring the Commission’s powers to New Jersey. The Compact requires concurring legislation for any amendments, and only Congress may unilaterally repeal the Compact Act.

111. The Court must give effect to these plain, unambiguous terms. *Wayne Land & Min. Grp. LLC v. Del. River Basin Comm’n*, 894 F.3d 509, 527-28 (3d Cir. 2018).

112. Even if ambiguity could be found in the Compact with respect to unilateral withdrawal or repeal, any ambiguity should be resolved to prohibit such action.

113. One distinguishing feature of a compact is that a State is not “free to modify or repeal its law unilaterally.” See *Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

114. For the Court to find Chapter 324 valid, it would have to read into the Compact a term that is not present. But courts are “especially reluctant to read absent terms into an interstate compact.” *Alabama v. North Carolina*, 560 U.S. 330, 351 (2010).

115. In addition, construing the Compact to allow unilateral withdrawal would contravene its instruction 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.” *See* Compl. App. 35a (Compact art. XVI, § 3).

116. For these reasons, New York seeks a declaratory judgment, pursuant to 28 U.S.C. § 2201, that any and all actions taken by New Jersey at any time in furtherance of its unilateral withdrawal from the Compact constitute a breach of the Compact.

117. New York further seeks a declaratory judgment, pursuant to 28 U.S.C. § 2201, that any and all actions taken by New Jersey to enforce any provision of Chapter 324 constitute a breach of the Compact.

118. New York further seeks preliminary and permanent injunctions, pursuant to 28 U.S.C. § 2202, prohibiting New Jersey from taking any action in breach of the Compact.

119. New York further seeks an order directing specific performance by New Jersey of all of its duties and obligations prescribed to it under the Compact.

**SECOND CAUSE OF ACTION:
ENFORCEMENT OF STATE LAW THAT CONFLICTS
WITH AND IS PREEMPTED BY FEDERAL LAW**

120. New York repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

121. The Supremacy Clause of the United States Constitution provides: “This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.” U.S. Const. art. VI, cl. 2.

122. Because “congressional consent transforms an interstate compact . . . into a law of the United States,” *Texas v. New Mexico*, 462 U.S. 554, 564 (1983) (quotation marks omitted), the Compact, in addition to being a contract, is a law of the United States, *Alabama*, 560 U.S. at 351.

123. Chapter 324’s directives would violate the Compact and thereby violate a law of the United States. The Compact, therefore, preempts Chapter 324.

124. Article XVI of the Compact provides that any amendments require an “action of the Legislature of either State concurred in by the Legislature of the other.” Compl. App. 34a-35a (Compact art. XVI, § 1). In addition, only Congress has the power to unilaterally repeal the Compact Act. Compl. App. 35a (Ch. 407, § 2, 67 Stat. 541, 557 (1953)).

125. Chapter 324, therefore, conflicts with the Compact because it directs New Jersey to dissolve the Compact and the Commission without concurrent legislation by New York, and effectively repeals the Compact.

126. “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 ‘obstacle 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)).

127. Chapter 324 is preempted under either of these tests. Compliance with both Chapter 324 and the Compact is impossible, and Chapter 324 seeks to

erect an absolute obstacle to Congress's purposes and objectives set forth in the Compact.

128. For these reasons, New York seeks a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Chapter 324 violates the Compact and is therefore invalid, void, and preempted by the Compact, and that any action taken at any time by New Jersey to enforce any provision of Chapter 324 is invalid and void.

129. New York also seeks preliminary and permanent injunctions, pursuant to 28 U.S.C. § 2202, prohibiting New Jersey from enforcing any of the provisions of Chapter 324 and from taking any action under Chapter 324.

**THIRD CAUSE OF ACTION:
VIOLATION OF THE CONTRACT CLAUSE**

130. New York repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

131. The Compact is a binding contract. *See Alabama*, 560 U.S. at 351.

132. The Contract Clause of the United States Constitution provides, in relevant part: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1.

133. A State violates the Contract Clause when it enacts a law that substantially impairs its contractual obligations, and the law is not "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose." *Sveen v. Melin*, 138 S. Ct. 1815, 1821-22 (2018) (quotation marks omitted).

134. Section 324 not only impairs but entirely abolishes New Jersey's contractual obligations under the Compact, and no legitimate public purpose underlies the law.

135. For these reasons, New York seeks a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Section 324 substantially impairs New Jersey's obligations under the Compact in violation of the Contract Clause.

136. New York further seeks preliminary and permanent injunctions, pursuant to 28 U.S.C. § 2202, prohibiting New Jersey from enforcing any of the provisions of Chapter 324 and from taking any action under Chapter 324.

PRAYER FOR RELIEF

WHEREFORE, New York requests that the Court order the following relief:

A. Declare that any action taken at any time by New Jersey in furtherance of unilaterally withdrawing from the Compact constitutes a breach of the Compact and is invalid and void.

B. Declare that no provision of Chapter 324 may be enforced because it is preempted by the Compact, which is a federal law that would be violated by enforcement of Chapter 324;

C. Declare that Chapter 324, in its entirety, is unlawful, invalid, void, and without force and effect, in violation of the Contract Clause, and the Compact itself, which is a federal law;

D. Declare that any action taken at any time by New Jersey to enforce Chapter 324 is unlawful, void, and without force and effect;

E. Preliminarily and permanently enjoin New Jersey from implementing or enforcing any provision of Chapter 324;

F. Preliminarily and permanently enjoin the State of New Jersey from taking any action in furtherance of its unilateral withdrawal from the Compact;

G. Preliminary and permanently enjoin the State of New Jersey from taking any action in breach of the Compact;

H. Order specific performance by New Jersey of all of its duties and obligations prescribed to it under the Compact;

I. Award to New York costs and reasonable attorneys' fees; and

J. Award to New York such other and further relief as the Court may deem just and proper.

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IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

BRIEF IN SUPPORT

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INTRODUCTION

New York brings this case to address New Jersey's unconstitutional and unlawful attempt to withdraw unilaterally from an interstate compact, abolish a bistate agency created by that interstate compact, and seize the bistate agency's law-enforcement and regulatory powers—powers that, under the compact, belong jointly to both States. This Court's original and exclusive jurisdiction is needed to address this urgent and substantial interstate dispute.

New York and New Jersey agreed to the interstate compact at issue, the Waterfront Commission Compact, in 1953, to combat widespread corruption and racketeering at the New York–New Jersey Port. Through the Compact, New York and New Jersey created the Waterfront Commission, together conferring on this bistate agency authority to investigate criminal conduct at the Port as well as regulatory authority over hiring and employment at the Port. The Commission's investigations have often uncovered information and evidence that has been used by prosecutorial agencies to combat organized crime, racketeering, and other unlawful conduct. The Commission has also used its regulatory powers to combat discriminatory hiring at the Port.

The Compact was approved by Congress and thus became federal law. For over six decades, New York and New Jersey have exercised joint control over the Commission, which has been instrumental in fighting organized crime, racketeering, and discriminatory hiring at the Port.

But New Jersey now seeks to repudiate the agreement. In 2018, New Jersey enacted state law Chapter 324, which purports to authorize New Jersey

to withdraw unilaterally from the Compact and abolish the Commission without New York's consent. *See* Ch. 324, 2017 N.J. Laws 2102 (2018). Until December 2021, New York did not need to resort to filing an original action in this Court to address New Jersey's unlawful actions because the Waterfront Commission had obtained an injunction stopping New Jersey officials from enforcing Chapter 324.

But that injunction was recently vacated on the ground that New Jersey enjoyed sovereign immunity against the Commission's lawsuit, triggering the need for this original action. Indeed, New Jersey has announced that it will effectuate its unlawful withdrawal from the Compact on March 28, 2022. On that date, New Jersey will seek to abolish the Commission and transfer its authorities and assets—which are subject to New York's joint control under the Compact—to the New Jersey Division of State Police.

The Court should grant New York leave to file the accompanying Bill of Complaint against New Jersey for its ongoing violations of the interstate Compact and imminent attempt to terminate the bistate Commission. This matter falls squarely within the Court's original and exclusive jurisdiction over controversies between States. The Compact is an agreement entered into by the States of New York and New Jersey and ratified by the United States Congress. New York seeks to vindicate its core sovereign interests in enforcing the Compact and in preventing New Jersey from seizing the Commission's assets and law-enforcement and regulatory authorities over the Port—sovereign powers that were jointly conferred on the Commission by both States.

The exercise of the Court’s original jurisdiction is further warranted here because no other forum is available to resolve the issues presented. No pending lawsuit challenges New Jersey’s unlawful violations of the Compact, and no future lawsuit by a private party could vindicate New York’s unique sovereign interests in enforcing the Compact and preserving the Commission’s existence. This Court should exercise its original and exclusive jurisdiction to hear this dispute.

STATEMENT

A. The Waterfront Commission Compact

For years, “the New York waterfront presented a notoriously serious situation.” *De Veau v. Braisted*, 363 U.S. 144, 147 (1960). In 1951, the New York State Crime Commission, assisted by the Law Enforcement Council of New Jersey, began investigating rampant corruption, extortion, racketeering, and organized crime at the Port. *Id.* The States found that labor at the Port was controlled by “criminals and persons notoriously lacking in moral character and integrity,” resulting in “depressing and degrading” conditions for workers. Compl. App. 1a-2a (Compact art. I, § 1). The “encouragement of crime” also imposed “a levy of greatly increased costs on food, fuel and other necessities” channeled through the Port. Compl. App. 2a (Compact art. I, § 1).

To address these pressing issues, New York and New Jersey each enacted concurring legislation to enter into the Compact. *See* Ch. 202, 1953 N.J. Laws 1511, 1511-42 (codified at N.J. Stat. Ann. §§ 32:23-1 to -73); Ch. 882, § 1, 1953 N.Y. Laws 2417, 2417-36 (N.Y. Unconsol. Laws §§ 9801-9873 (McKinney)). The Compact established the Commission to combat crime

and corruption at the Port. *See* Compl. App. 1a-3a (art. 1, §§ 1-4), 6a (art. III, § 1), 8a (art. IV, §§ 9, 11).

As required by the Compact Clause of the United States Constitution (Compl. App. 147a (U.S. Const. art. I, § 10, cl. 3)), New York and New Jersey presented the Compact to Congress for approval. As the States explained to Congress, their compact was necessary to address the severe and pervasive problems at the Port because they were “dealing with a single shipping industry operating in a single harbor.” *New Jersey-New York Waterfront Commission Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary*, 83d Cong. 19 (1953) (statement of Hon. Alfred E. Driscoll, Governor of N.J.). Thus, “the only real solution” to rooting out crime and corruption from the Port was to create “a single bistate agency.” *Id.* The States further recognized that, for the Compact to succeed, each State had to bear “equal responsibility” for the Commission’s work regardless of the number of employees on either side of the Port. *Id.*

The Compact was approved by an Act of Congress and signed into federal law. Compl. App. 1a-35a (Waterfront Commission Compact Act, ch. 407, 67 Stat. 541 (1953)). As this Court has observed, Congress’s approval of this particular Compact “was no perfunctory consent.” *De Veau*, 363 U.S. at 149. Rather, through a series of congressional hearings, Congress independently investigated the conditions at the Port and came to the same conclusions as New York and New Jersey, i.e., that the interstate Compact and bistate Commission were “urgently needed” to combat racketeering, corruption, and unfair labor practices at the Port. *Id.* at 149-50 (quotation marks omitted).

B. Powers and Duties of the Waterfront Commission

Under the interstate Compact, the Commission “shall be a body corporate and politic, an instrumentality of the States of New York and New Jersey.” Compl. App. 6a (art. III, § 1). The Commission consists of two commissioners, one appointed by each of the two member States. Compl. App. 6a (art. III, § 2). Through the Compact, New York and New Jersey jointly conferred on the Commission broad regulatory and law-enforcement authority to oversee labor and hiring at the Port and to root out crime at the waterfront.

For instance, the Commission has extensive powers to license, register, and regulate the employment of various waterfront workers, including pier superintendents, hiring agents, stevedores, longshoremen, and port watchmen. *See* Compl. App. 9a-26a (arts. V-X). The Compact provides that no one in those professions may work in the Port without first being licensed and registered by the Commission. Compl. App. 9a (art. V, § 1), 14a (art. VI, § 1), 20a (art. VIII, § 1), 24a (art. X, § 1). And the Commission is empowered to remove from the Port workers who create dangers at the Port by engaging in criminal activity. *See, e.g.*, Compl. App. 17a-18a (art. VI § 6 (stevedores)), 21a-22a (art. VIII, § 5 (longshoremen)), 26a (art. X, § 6 (port watchmen)). The Compact, as amended, gives the Commission expanded powers to conduct background screenings of individuals seeking employment at the Port, prevent individuals with criminal ties from being hired at the Port, and ensure that workers who are hired are selected in a fair and nondiscriminatory manner. Compl. App. 119a-125a

(N.J. Stat. Ann. § 32:23-114 (1999)), 120a-132a (N.Y. Unconsol. Laws § 9920 (McKinney 1999)).

The Compact further provides the Commission with broad investigatory power, including the power to investigate crimes. To ensure compliance with the Compact and the Commission's rules and regulations, the Compact broadly authorizes the Commission to "make investigations . . . upon all matters relating to the accomplishment of the objectives of [the] compact" Compl. App. 8a (art. IV, § 11) and to issue subpoenas (Compl. App. 7a-8a (art. IV, § 8). And, as amended, the Compact expressly empowers the Commission to maintain a police force, conduct criminal investigations, and take appropriate administrative action against violators. *See* Compl. App. 110a-111a (N.J. Stat. Ann. § 32:23-86(3)-(5) (2003)), 114a-115a (N.Y. Unconsol. Law § 9906(3)-(5) (McKinney 2003)). In particular, the Commission is authorized to designate investigators "who shall be vested with all the powers of a peace or police officer of the State of New York in that State, and of the State of New Jersey in that State." Compl. App. 110a-111a (N.J. Stat. Ann. § 32:23-86(4) (2003)), 115a (N.Y. Unconsol. Law § 9906(4) (McKinney 2003)). And these investigators are permitted to, under certain circumstances, confer immunity from prosecution. *See* Compl. App. 111a-112a (N.J. Stat. Ann. § 32:23-86(5) (2003)), 115a (N.Y. Unconsol. Law § 9906 (5) (McKinney 2003)).

To fund its budget, the Commission is authorized to levy assessments on waterfront employers on the wages paid to their employees. Compl. App. 31a-32a (art. XIII, § 3).

Finally, and of particular relevance here, the Compact does not permit either New York or New

Jersey to withdraw from the Compact or dissolve the Commission unilaterally. Instead, article XVI, § 1 of the Compact requires that any changes to the Compact must be made by legislation enacted by one compacting State and “concurrent in by the Legislature of the other.” Compl. App. 34a-35a (art. XVI, § 1). Congress also “expressly reserved” for itself the power to repeal the authorizing Act unilaterally. Compl. App. 35a (Ch. 407, § 2).

C. The Commission’s Ongoing Efforts to Ensure Safe and Efficient Operations at the Port

The bistate Commission has operated for the past sixty-eight years, taking myriad actions to combat corruption and extortion at the Port. For example, the Commission has conducted hundreds of investigations that have successfully led to convictions of individuals for drug trafficking, racketeering, and murder. Prelim. Inj. (PI) App. 4a (Arsenault Decl. ¶ 8). And it also has performed background checks on potential port employees to prevent members of New York and New Jersey organized crime families from infiltrating the Port. PI App. 4a (Arsenault Decl. ¶¶ 8d, 9). In recent years, the Commission has also worked to prevent discrimination in hiring by requiring local unions to certify that each new hire is selected in a fair and nondiscriminatory manner. PI App. 7a, 21a-22a (Arsenault Decl. ¶¶ 15, 60-61).

Despite achieving many successes, the Commission’s work is not done. Corruption, racketeering, and unfair employment practices remain serious issues at the Port. *See* PI App. 3a, 5a-7a (Arsenault Decl. ¶¶ 7, 10-14); PI App. 29a (Weinstein Decl. ¶ 11). For example, organized crime families and other corrupt

individuals continue to seek to infiltrate the Port, exert influence over hiring and employment, and use the Port to conduct criminal activities. PI App. 3a (Arsenault Decl ¶ 7). The Commission continues to conduct its own investigations and regulatory work, and continues to serve as an instrumental partner to other state and federal law-enforcement authorities.¹ As a former United States Attorney for the Southern District of New York has recognized, “partnership with the Waterfront Commission, which provides . . . invaluable intelligence, evidence, and investigative assistance, is essential” to the “vigorous prosecution of organized crime to eliminate labor racketeering and the victimization of legitimate union members and Port business.” PI App. 81a (letter from A. Strauss, 6/16/2021).

D. New Jersey’s Attempts to Withdraw Unilaterally from the Compact

After six decades of honoring its obligations under the Compact, New Jersey changed course. In 2015, the New Jersey Legislature passed Senate Bill No. 2277, which directed then-Governor Christie to withdraw New Jersey from the Compact. S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015). Governor Christie vetoed the bill, explaining that “federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress.” PI App. 85a. And he expressly acknowledged that “it is premature for New

¹ See, e.g., PI App. 29a-30a (Weinstein Decl. ¶¶ 10-11), 78a-83a (letters from U.S. Department of Labor, Federal Bureau of Investigation, and Office of the United States Attorney for the Southern District of New York).

Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation.” PI App. 85a.

However, Governor Christie signed into law a nearly identical bill on his last day in office in January 2018. This law, Chapter 324, immediately repealed the New Jersey legislation that had contributed to the formation of the Compact and set forth additional steps to further the State’s unilateral withdrawal from the Compact. Specifically, Chapter 324 required the New Jersey Governor 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.’” Compl. App. 38a (§ 2(a)). And the law further provides that, ninety days after that notification, the Compact and the Commission would be “dissolved” (Compl. App. 45a (Ch. 324, § 3), 103a-104a (Ch. 324, § 31)), even though New York never enacted concurring legislation.

Chapter 324 also purportedly authorizes New Jersey to appropriate for itself the Commission’s powers and assets. For example, the law declares that when the Commission is purportedly dissolved, the New Jersey Division of State Police “shall assume all of the powers, rights, assets, and duties of the commission within” New Jersey. Compl. App. 46a (§ 4(b)(1)). And the law provides that New Jersey may seize Commission funds “applicable to” New Jersey and transfer those funds to the New Jersey treasury. Compl. App. 47a (§ 4(b)(2)). Finally, the law grants the New Jersey Division of State Police many of the powers that the Compact confers on the bistate Commission, including the power to adopt rules and regulations governing employment; to issue and revoke licenses to pier superintendents and stevedores; and to establish

a registry for longshoremen in the portions of the Port located geographically in New Jersey. Compl. App. 49a-72a (§§ 5–11). Pursuant to Chapter 324, assessments currently payable to the Commission under the Compact would also be paid instead to the New Jersey Division of State Police. Compl. App. 91a-97a (§§ 25-26).

The day after Chapter 324 was enacted, the Commission filed suit in the U.S. District Court for the District of New Jersey, seeking an order enjoining Chapter 324's enforcement and declaring the statute unlawful. The district court issued a preliminary injunction, which prohibited New Jersey from enforcing the law, kept the Commission operating, and maintained the status quo that had governed the Port for more than sixty years. *See Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-650, 2018 WL 2455927, at *12 (D.N.J. June 1, 2018). The court later granted summary judgment in favor of the Commission. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 429 F. Supp. 3d 1, 12 (D.N.J. 2019).

New Jersey appealed the district court's decision to the U.S. Court of Appeals for the Third Circuit. The Third Circuit declined to reach the merits of the case and instead held that the Commission's lawsuit was barred by state sovereign immunity. *See Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234, 242 (3d Cir. 2020). But the court stayed its mandate pending this Court's resolution of the Commission's petition for a writ of certiorari. Order, *Waterfront Comm'n*, No. 19-2458 (3d Cir. July 20, 2020), ECF No. 106. Accordingly, the injunction barring enforcement of the law remained in effect. On November 21, 2021, this Court denied certiorari. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561

(2021). The Third Circuit subsequently issued its mandate, which the district implemented on December 3, 2021. Order, *Waterfront Comm'n v. Murphy*, No. 18-cv-650 (D.N.J. Dec. 3, 2021), ECF No. 76.

E. New Jersey's Imminent Attempts to Forcibly Terminate the Commission's Operations on March 28, 2022

After the Commission's litigation ended, New Jersey doubled down on its efforts to enforce Chapter 324. On December 27, 2021, Sheila Y. Oliver, then-Acting Governor of New Jersey, sent letters to New York Governor Kathy Hochul, the Commission, the New Jersey Legislature, and the United States Congress, announcing New Jersey's intention to "withdraw from the interstate compact that established the Waterfront Commission of New York Harbor." PI App. 32a-37a. In response, New York sought to address New Jersey's concerns through further dialogue and cooperation. For example, in a letter dated February 9, 2022, New York offered to work "with the State of New Jersey to promote further economic growth and prosperity in the Port," and proposed conducting a joint inquiry into the "ongoing needs of our shared Port" and "what aspects of the Commission's work can be improved." PI App. 42a. That offer was promptly rebuffed. *See* PI App. 56a-58a. At the same time, New Jersey sent to the Commission sweeping demands for documents, including staff personnel files, police work assignments, information detailing the Commission's ongoing criminal investigations, and the Commission's confidential intelligence database. PI App. 43a-55a.

After the Commission refused New Jersey’s unlawful demands for confidential information, PI App. 59a-60a, New Jersey escalated its threats. On March 1, 2022, Chief Counsel to New Jersey Governor Murphy notified the Commission, copying New York Governor Hochul, that “[d]espite the Commission’s apparent refusal” to comply with New Jersey’s demands, “New Jersey’s withdrawal will take effect on March 28, 2022.” PI App. 62a. He indicated that New Jersey will be unilaterally withdrawing its Commissioner on that day. PI App. 62a. And he stated that if the Commission did not cede its authority to the New Jersey Division of State Police, the result will “endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region.” PI App. 63a.

ARGUMENT

The Constitution provides that this Court has original jurisdiction over cases and controversies between States. *See* U.S. Const. art. III, § 2, cl. 2. And since the nation’s founding, Congress has mandated that this Court’s original jurisdiction over “controversies between two or more States” is “*exclusive*.” 28 U.S.C. § 1251(a) (emphasis added); Judiciary Act of 1789, ch. 20, § 13, 1 Stat. 73, 80-81. Here, the exercise of this Court’s original and exclusive jurisdiction is necessary to resolve two States’ competing interpretations of their interstate compact. The Court’s jurisdiction is also required to prevent New Jersey from unilaterally and unlawfully terminating the bistate Commission, taking its assets, and appropriating the law-enforcement and regulatory powers that the Compact confers on the Commission—

sovereign powers that belong jointly to New York and New Jersey.

The Court has historically considered two factors in deciding whether the exercise of that jurisdiction is “appropriate” in a particular case. *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972); see *Arizona v. New Mexico*, 425 U.S. 794, 796-98 (1976) (per curiam). First, the Court looks to “the nature of the interest of the complaining state,’ focusing on ‘the seriousness and dignity of the claim.’” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (citation omitted). Second, the Court considers “the availability of an alternative forum in which the issue tendered may be resolved.” *Id.*

In this case, both factors weigh heavily in favor of granting New York leave to file the accompanying Bill of Complaint. New York’s claims implicate its core sovereign interests, i.e., securing its rights under the interstate Compact and preventing New Jersey from unilaterally terminating an entity created by both States. Moreover, no other court can grant New York relief for New Jersey’s ongoing violations of the Compact and federal law.

I. The Seriousness and Dignity of New York’s Claims Warrant Exercise of the Court’s Original and Exclusive Jurisdiction.

A. New York’s Core Sovereign Interests in Enforcing the Compact Bring this Case Squarely Within the Court’s Original and Exclusive Jurisdiction.

“The model case for invocation of this Court’s original jurisdiction is a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign.” *Texas v. New Mexico*, 462 U.S. 554, 571 n.18 (1983); accord *Mississippi v. Louisiana*, 506 U.S. at 77 (quoting *Texas*). When the States joined together to form the United States, they surrendered their sovereign right to resolve disputes between each other by force, agreeing instead to resolve their differences by compact or by submitting to the original jurisdiction of this Court. See *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275, 279 n.5 (1959) (identifying “two methods under our Constitution of settling controversies between States” (citation omitted)). Following these principles of federalism, New York and New Jersey entered into the Compact and, through the Compact, created the bistate Commission to jointly regulate hiring and employment at the Port. New Jersey’s attempt to withdraw unilaterally from the Compact and terminate the Commission strikes at New York’s core sovereign interests and thus warrants the exercise of this Court’s original jurisdiction.

Indeed, this Court has long recognized that disputes between States regarding their rights and obligations under interstate compacts fall directly within the heartland of its original jurisdiction. See

West Virginia ex rel. Dyer v. Sims (Dyer), 341 U.S. 22, 31 (1951); *see also* Stephen M. Shapiro et al., *Supreme Court Practice* ch. 10-2, at 10-7, 10-9 (11th ed. 2019) (Court has “most frequently” exercised its original jurisdiction to consider disputes “sounding in sovereignty and property” and “to construe and enforce an interstate compact”). As the Court has explained, interstate compacts “adapt[] to our Union of sovereign States the age-old treaty-making power of independent sovereign nations.” *Dyer*, 341 U.S. at 31. One compacting State’s violation of such a compact thus constitutes a direct and substantial affront to the other compacting States’ sovereign interests and dignity. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982) (“demand for recognition from other sovereigns” is core sovereign interest).

And the Court has further recognized its unique duty to entertain claims concerning the interpretation and application of interstate compacts. *See Dyer*, 341 U.S. at 28 (“[T]he nature and scope of obligations as between States, whether they arise through the legislative means of compact or the ‘federal common law’ governing interstate controversies, is the function and duty of the Supreme Court of the Nation.” (citation omitted)). Fulfilling this duty, the Court has often exercised its original jurisdiction to enforce interstate compacts, including in a dispute between the same parties here over another bistate compact. *See New Jersey v. New York*, 523 U.S. 767 (1998); *see also, e.g., Kansas v. Nebraska*, 574 U.S. 445 (2015); *Montana v. Wyoming*, 563 U.S. 368 (2011); *Alabama v. North Carolina*, 560 U.S. 330 (2010); *Kansas v. Colorado*, 514 U.S. 673 (1995); *Texas v. New Mexico*, 462 U.S. 554.

Here, the claims in New York’s Bill of Complaint likewise arise from the parties’ disagreement over their rights under an interstate compact: New York alleges that New Jersey is unlawfully and unconstitutionally breaching the Waterfront Commission Compact and violating federal law by, among other acts, withdrawing unilaterally from the Compact, seeking to abolish the bistate Commission, and trying to assume for itself the law-enforcement and regulatory authority of the Commission. *See* Compl. ¶¶ 67-72, 107-115, 120-127, 130-134. And New York seeks to enforce the Compact and require New Jersey to honor the promises that it made to New York. *See* Compl. ¶¶ 116-119, 128-129, 135-136; *see also* Compl., Prayer for Relief ¶¶ A-H. New York’s claims regarding the proper interpretation and enforcement of the Compact thus present a classic and serious interstate dispute that must be resolved by this Court.

Moreover, New York’s claims here are further addressed to its core sovereign interests because New Jersey seeks not only to breach the Compact but to do so in a manner that purports to abolish a bistate agency, take its assets, and seize for itself the Commission’s powers—sovereign powers that, under the Compact, belong jointly to both States. For example, beginning on March 28, New Jersey will purport to take control of the Commission’s ongoing investigations “related” to New Jersey; displace the Commission’s licensing and registration authority over hiring and employment at the Port; and transfer to the New Jersey Division of State Police the Commission’s power to levy assessments. *See supra* at 8-12.

But New York and New Jersey jointly created the Commission as “a body corporate and politic” and “an instrumentality” of *both* States. Compl. App. 6a (art.

III, § 1); *see also De Veau*, 363 U.S. at 149 (“heart” of Compact established “bi-state agency” “with power to license, register and regulate” waterfront employment). And through the Compact, both States conferred on the Commission sovereign law-enforcement and regulatory powers, which then became powers shared equally and indivisibly between both States. As this Court has explained, “the powers exercised by an interstate agency are powers no longer inhering in any one compacting State; they are powers shared.” *See Port Auth. Trans-Hudson Corp v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and concurring in judgment); *see also Hess v. Port Auth. Trans-Hudson Corp*, 513 U.S. 30, 42 (1984) (“An interstate compact, by its very nature, shifts a part of a state’s authority to another state or states, or to the agency the several states jointly create to run the compact.” (quotation marks omitted)). New Jersey’s ongoing and escalating attempts to seize these shared powers for itself are a direct affront to New York’s sovereign interests in the Commission.

Additional harms to New York and its residents that will result from New Jersey’s unlawful actions further demonstrate the “seriousness and dignity” of New York’s claims, thus warranting the exercise of the Court’s original jurisdiction. *See Mississippi v. Louisiana*, 506 U.S. at 77 (citation omitted). New Jersey’s ultra vires actions will result in chaos and confusion throughout the Port—to the detriment of public safety and the flow of interstate commerce into New York. For example, the presence of two sets of government officials each asserting conflicting claims to jurisdiction over law-enforcement operations and employee licensing and registration at the Port sets the stage for regulatory confusion and potential clashes between

law enforcement and waterfront personnel. Subjecting waterfront companies and workers to conflicting regulatory authorities also risks injecting significant uncertainties into cargo movement at the Port. And New Jersey's attempt to abolish the Commission will open the door to organized crime members and other criminal enterprises infiltrating the Port and controlling its operations. See Mot. for Prelim. Inj. at 16-18. New York has important sovereign interests in mitigating these disruptions to public safety and interstate commerce, particularly given that many of the organized crime families at issue operate out of New York and a substantial portion of the goods arriving at the Port are transported into New York. PI App. 3a (Arsenault Decl. ¶ 7); PI App. 29a (Weinstein Decl. ¶¶ 10-11). As this Court has long recognized, States have a sovereign duty to protect the "economic and commercial interests" of its citizens, *Alfred L. Snapp*, 458 U.S. at 609, and their "health and well-being," *id.* at 607.

B. Resolution of New York's Claims Here Has Important Implications for Other Interstate Compacts.

This Court's exercise of its original jurisdiction is further warranted here because resolution of the present dispute has significant ramifications for the use of interstate compacts and interstate agencies as cooperative mechanisms to address "interests and problems that do not coincide nicely . . . with State lines." *Hess*, 513 U.S. at 40 (quotation marks omitted); *see also South Carolina v. Regan*, 465 U.S. 367, 382 (1984) (granting leave where dispute presented significant question about States' "borrowing power"); *Maryland v. Louisiana*, 451 U.S. 725, 744 (1981)

(granting leave where challenged tax affected consumers in many States).

There are nearly 200 interstate compacts currently in existence governing a diverse array of issues that raise interstate concerns and the need for interstate cooperation—such as law enforcement, transportation, infrastructure, water resources, flood control, and waste management.² See Council of State Gov'ts, Nat'l Ctr. for Interstate Compacts Database, <https://apps.csg.org/ncic/> (Compact Name Search) (last visited Mar. 14, 2022). While some interstate compacts expressly authorize one compacting State to withdraw from the compact unilaterally, many compacts creating interstate agencies do not expressly provide such authority.³ And some compacts, like the one at issue here (Compl. App. 34a-35a (Compact art. XVI, § 1)), expressly provide that the compact may be

² See *infra* 19-20 nn.3-4.

³ See, e.g., Thames River Valley Flood Control Compact, Pub. L. No. 85-526, 72 Stat. 364 (1958); Conn. Gen. Stat. Ann. § 25-101; Mass. Gen. Laws Ann. ch. 91 app., § 3-3; Delaware River Port Authority Compact, ch. 258, 47 Stat. 308 (1932); 36 Pa. Stat. § 3503; N.J. Stat. Ann. § 32:3-2; Delaware River Joint Toll Bridge Compact, ch. 833, 49 Stat. 1051 (1935); N.J. Stat. Ann. § 32:8-1; 36 Pa. Stat. § 3401.1; Arkansas-Mississippi Great River Bridge Construction Compact, Pub. L. No. 99-560, 100 Stat. 3146 (1986); New Hampshire-Vermont Interstate School Compact, Pub. L. No. 91-21, 83 Stat. 14 (1969); N.H. Rev. Stat. Ann. § 200-B:1; Vt. Stat. Ann. tit. 16, ch. 15; Potomac Highlands Airport Authority Compact, Pub. L. No. 105-348, 112 Stat. 3212 (1998); Md. Code Ann., Transp. § 10-103; Kansas City Area Transportation District and Authority Compact, Pub. L. No. 89-599, 80 Stat. 826 (1966); Mo. Ann. Stat. § 238.010; Kan. Stat. Ann. § 12-2524; New York-New Jersey Port Authority Compact of 1921, ch. 77, 42 Stat. 174; N.J. Stat. Ann. § 32:1-1; N.Y. Unconsol. Law § 6401 (McKinney).

altered or amended solely with the mutual agreement of both compacting States.⁴

Resolution of the compact interpretation issue presented here—i.e., whether New Jersey may unilaterally withdraw when the Compact does not expressly authorize such withdrawal and instead requires mutual agreement by both States to alter the Compact—will thus affect how similar language in other interstate compacts is interpreted and enforced. Moreover, if left unreviewed by this Court, New Jersey’s ongoing and escalating efforts to withdraw unilaterally from the Compact and terminate the bistate Commission will set a dangerous precedent. Mutual trust and cooperation between States are the cornerstones of interstate compacts. *See Hess*, 513 U.S. at 41-42; *see also id.* at 47 (“[N]o one state alone can control the course of a Compact Clause entity.”); *Northeast Bancorp., Inc. v. Board of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985) (inability to unilaterally modify or repeal a compact is among “the classic indicia of a compact”). Allowing New Jersey to engage in unauthorized unilateral action that terminates the Compact and bistate Commission thus threatens the stability of many other interstate compacts and undermines the ability of States to trust one another to abide by their interstate compact obligations.

⁴ *See, e.g.*, Breaks Interstate Park Compact, ch. 588, 68 Stat. 571 (1954); Ky. Rev. Stat. Ann. § 148.220; Va. Code Ann. § 10.1-205.1; Palisades Interstate Park Compact, ch. 706, 50 Stat. 719 (1937); N.J. Stat. Ann. § 32:17-4; N.Y. Parks Rec. & Hist. Preserv. Law § 9.01.

II. New York Has No Alternative Forum to Seek Relief.

The second jurisdictional factor also weighs decisively in favor of granting New York's Motion for Leave to File Bill of Complaint. Given Congress's express admonition that "[t]he Supreme Court shall have original and *exclusive* jurisdiction of all controversies between two or more States," 28 U.S.C. § 1251(a) (emphasis added), New York may not sue New Jersey for its breaches of the Compact, violations of federal law, and other unlawful actions in any other court.

Nor is there any "alternative forum in which the issue[s] tendered can be resolved." *Mississippi v. Louisiana*, 506 U.S. at 77. *First*, there is no other pending state or federal lawsuit that challenges New Jersey's enforcement of Section 324 to withdraw unilaterally from the Compact and terminate the Commission. *Cf. Arizona v. New Mexico*, 425 U.S. at 797 (declining to exercise original jurisdiction where pending state-court lawsuit raised same constitutional challenges to defendant State's tax). Indeed, the Third Circuit dismissed the Waterfront Commission's prior federal lawsuit against New Jersey based solely on sovereign immunity grounds, and this Court denied the Waterfront Commission's petition for certiorari. *Waterfront Commission*, 961 F.3d at 240, *cert. denied* 142 S. Ct. 561. That prior lawsuit has thus terminated without resolving the merits of the important issues raised here, and no other lawsuit addressing these issues is currently pending.

Second, New York cannot obtain declaratory and injunctive relief against enforcement of Chapter 324 by suing another party in a different court. Although some

lower courts have permitted suits against a state official to enjoin enforcement of a state law, *see, e.g., Connecticut v. Cahill*, 217 F.3d 93, 104 (2d Cir. 2000), those courts have expressly recognized that where the State is “the real party in interest,” the State—and not its officer—“must be named as a defendant,” *id.* at 99-100. New Jersey is indisputably the real party in interest here. This is not a case where “the alleged injury was caused by arbitrary or improper administration of valid State laws.” *Id.* at 99. To the contrary, Section 324 expressly authorizes and, indeed, requires, New Jersey officials to withdraw from the Compact, abolish the Commission, and transfer the Commission’s powers to the New Jersey Division of State Police. And, as explained above (at 14-18), New York’s claims about the proper interpretation and enforcement of the Compact squarely implicate both States’ core sovereign interests. Indeed, New Jersey acknowledged in the prior *Waterfront Commission* litigation that, “[i]f New York takes issue with New Jersey’s withdrawal” from the Compact and brings a lawsuit to address that dispute, “that action belongs in the Supreme Court.” Def.’s Br. in Opp’n to Mot. for Summ. J. & in Supp. of Def.’s Cross-Mot for Summ. J. at 31, *Waterfront Comm’n*, No. 18-cv-650 (D.N.J.), ECF No. 61-1.

Third, no private party can sue to enjoin New Jersey from unilaterally withdrawing from the Compact and terminating the Commission, let alone bring a lawsuit that would vindicate New York’s unique sovereign interests in this dispute. For one thing, under the Third Circuit’s *Waterfront Commission* decision, any such lawsuit would be barred by sovereign immunity. *See* 961 F.3d at 241. More fundamentally, any claims brought by a private party would not redress New York’s sovereign injuries. No

private litigant is a signatory to the Compact. Rather, as New Jersey repeatedly argued in the *Waterfront Commission* litigation, New York is the only other signatory State to the Compact and thus the only party who can sue New Jersey for breach of the Compact. Def.'s Br., *supra* at 31. Thus, this Court is the only forum where New York and New Jersey can settle their urgent and significant impasse over the correct interpretation of the Compact and the fate of the bistate Commission.

III. New York's Claims Are Meritorious.

The nature of this dispute and lack of an alternative forum conclusively establish that this lawsuit warrants the Court's exercise of its original and exclusive jurisdiction. *See Mississippi v. Alabama*, 506 U.S. at 77. But to the extent the Court examines the underlying merits of New York's claims in determining whether to exercise its original jurisdiction, *cf. Alabama v. Texas*, 347 U.S. 272, 278 (1954) (Black, J., dissenting) (noting that the majority denied leave to file bill of complaint based on its perceived lack of merit), that consideration also weighs decisively in favor of allowing New York to file its Bill of Complaint. At bottom, the claims here turn on a clear issue of compact interpretation: whether New Jersey may unilaterally withdraw from the bistate Compact when the express terms of the Compact do not allow for unilateral termination.

As this Court has recognized, interstate compacts "are construed as contracts under the principles of contract law." *Tarrant Reg'l Water Dist. v. Hermann*, 569 U.S. 613, 627 (2013); *see also Texas v. New Mexico*, 482 U.S. 124, 218 (1987). Accordingly, the express terms of the Compact offer "the best indication of the

intent of the parties.” *Tarrant Reg’l Water Dist.*, 569 U.S. at 627.

Here, New Jersey’s attempt to withdraw unilaterally from the Compact and terminate the Commission violates the express terms of the Compact. Indeed, the Compact provides only two ways in which the agreement can be terminated. First, article XVI, § 1, requires that changes to the Compact by the compacting States must “be adopted by the action of the Legislature of either State *concurrent* by the Legislature of the other.” See Compl. App. 34a-35a (emphasis added). Second, Congress reserved for itself the right to repeal the Compact Act unilaterally. See Compl. 35a (Ch. 407, § 2).

The New York Legislature has not passed concurring legislation agreeing to any of Chapter 324’s alterations to the Compact. And Congress has not enacted legislation repealing the Compact Act. Thus, New Jersey’s attempt to engraft a third method of termination into the Compact—its own unilateral withdrawal—and to appropriate the Commission’s assets and powers plainly violates the Compact and federal law. Chapter 324 further conflicts with article XVI, § 3 of the Compact, which expressly requires that the Compact be “liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.” Compl. App. 35a. As explained above (at 3-5), the purpose of the Compact is to coordinate a *bistate* approach to combatting crime and corruption at the Port. Allowing the unilateral dissolution of the Commission indisputably defeats this purpose. The Compact thus unambiguously prohibits unilateral withdrawal.

In any event, even if there were ambiguity about whether the Compact prohibits unilateral withdrawal, other interpretive tools further confirm that unilateral withdrawal is not allowed. *See Tarrant Reg'l Water Dist.*, 569 U.S. at 627, 633-37 (relying on treatment of similar issues in other interstate compacts and parties' course of conduct to interpret ambiguous language); *Oklahoma v. New Mexico*, 501 U.S. 221, 234-35 n.5 (1991) (relying on negotiation history and legislative history).

Among other things, the treatment of contract termination in other interstate compacts demonstrates that the Compact at issue here does not permit unilateral withdrawal. Where compacting States intend to permit unilateral termination or withdrawal, they include express provisions to that effect in the interstate compact. *See supra* at n.3. But New York and New Jersey did not include any such unilateral withdrawal provision in the Compact, and this Court should not "read absent terms into an interstate compact." *Alabama v. North Carolina*, 560 U.S. at 352.

Indeed, this Court has repeatedly made clear that one compacting State may not unilaterally terminate an interstate compact or control a bistate agency absent an express compact provision allowing such unilateral action. *See, e.g., Dyer*, 341 U.S. at 28 (rejecting suggestion that compact "can be unilaterally nullified, or given final meaning by an organ of one of the contracting States"); *Feeney*, 495 U.S. at 314 (Brennan, J., concurring in part) ("While a State has plenary power to create and destroy its political subdivisions, a State enjoys no such hegemony over an interstate agency."). As the Court has explained, "bistate entities created by compact . . . are not subject

to the unilateral control of any one of the States that compose the federal system.” *Hess*, 513 U.S. at 42.

This default rule makes sense: because a compact is not only a contract between States but also federal law, it prevails over any conflicting state law purporting to repeal or modify its terms. *See Alabama v. North Carolina*, 560 U.S. at 351 (“an interstate compact is not just a contract; it is a federal statute enacted by Congress”); *Dyer*, 341 U.S. at 33 (Reed, J., concurring) (“the compact controls over a state’s application of its own law through the Supremacy Clause”). And allowing unilateral alteration or termination of a compact in the absence of an express compact term allowing such actions would fatally undermine the fundamental purpose of interstate compacts—to forge stable and lasting solutions to problems affecting multiple States. *See* Federick L. Zimmerman & Mitchell Wendell, *The Law and Use of Interstate Compacts* 40 (1976).

Moreover, New York and New Jersey’s course of performance with respect to the Compact further confirms that the parties intended and understood the concurrency requirement to apply to *all* changes to the Compact, including termination. For example, the States have successfully amended the Compact on multiple occasions by enacting concurrent legislation. *See* Compl. ¶ 42. And where New Jersey did not have the consent of New York, it expressly acknowledged that its laws seeking to change the Compact could not take effect without concurring legislation from New York. *See* PI App. 95a (then–New Jersey Governor Christie informing Commission that “the measure I signed into law today will take effect upon enactment of a similar law by the State of New York”).

Indeed, New Jersey previously acknowledged that New York’s consent is necessary to terminate the Compact. In 2015, then–New Jersey Governor Christie vetoed a bill nearly identical to Chapter 324, which purported to authorize New Jersey’s unilateral withdrawal from the Compact. *See* S. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015). In so doing, he explained that the basis of his veto was that “federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress.” PI App. 85a. And he cautioned that it was “premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation.” PI App. 85a.

New York is thus likely to prevail in showing that New Jersey’s attempts to withdraw unilaterally from the Compact are a direct and serious breach of its terms. And because the Compact is both federal law and a binding contract, *see Alabama v. North Carolina*, 560 U.S. at 351, New York will further show that Chapter 324, which purports to authorize New Jersey’s actions here, is preempted by the Compact and violates the Contract Clause of the U.S. Constitution. *See Tarrant Reg’l Water Dist.*, 569 U.S. at 628 n.8 (“The Supremacy Clause ensures that a congressionally approved compact, as a federal law, pre-empts any state law that conflicts with the Compact.” (citations omitted)); *Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018) (state law violates Contract Clause where it substantially impairs the State’s contractual obligations and is not “drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose” (quotation marks omitted)). Chapter 324 serves no legitimate public purpose: the law entirely repudiates New Jersey’s

obligations under the Compact, terminates the Commission, and attempts to cleave the indivisible powers of the Commission, threatening immediate and substantial harm to public safety at the Port and the flow of goods in interstate commerce.

CONCLUSION

For these reasons, the State of New York respectfully requests that the Court grant the Motion for Leave to File Bill of Complaint.

Respectfully submitted,

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APPENDIX A

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 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;

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-

assessments, 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.

APPENDIX B
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;

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.

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.

APPENDIX C

**N.J.S.A. § 32:23-86
(Section 5-b of amended
Waterfront Commission Compact)**

**§ 32:23-86. Additional powers of the commission
Repealed by L.2017, c. 324, § 33, eff. Jan. 16, 2018**

In addition to the powers and duties elsewhere described in this act, the commission shall have the following powers:

(1) To issue temporary permits and permit temporary registrations under such terms and conditions as the commission may prescribe which shall be valid for a period to be fixed by the commission not in excess of 6 months.

(2) To require any applicant for a license or registration or any prospective licensee to furnish such facts and evidence as the commission may deem appropriate to enable it to ascertain whether the license or registration should be granted.

(3) In any case in which the commission has the power to revoke, cancel or suspend any stevedore license the commission shall also have the power to impose as an alternative to such revocation, cancellation or suspension, a penalty, which the licensee may elect to pay the commission in lieu of the revocation, cancellation or suspension. The maximum penalty shall be \$5,000.00 for each separate offense. The commission may, for good cause shown, abate all or part of such penalty.

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(4) To designate any officer, agent or employee of the commission to be an investigator who shall be vested with all the powers of a peace or police officer of the State of New York in that State, and of the State of New Jersey in that State.

(5) To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission 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 he may be incriminated thereby, and notwithstanding such refusal, an order is made upon 24 hours' prior written notice to the appropriate Attorney General of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of Article III1 of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

“Immunity” as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of

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Article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he 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 such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate Attorney General or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him.

(6) 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

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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 commission's jurisdiction to be fingerprinted by the commission at the cost and expense of the applicant or renewal applicant.

(7) 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.

(8) Notwithstanding any other provision of law to the contrary, to require any applicant for employment or employee of the commission 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 such person.

APPENDIX D

**McKinney's Unconsol. Laws § 9906
(Section 5-b of amended
Waterfront Commission Compact)**

§ 9906. Additional powers of the commission

In addition to the powers and duties elsewhere described in this act,¹ the commission shall have the following powers:

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

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

3. In any case in which the commission has the power to revoke, cancel or suspend any stevedore license the commission shall also have the power to impose as an alternative to such revocation, cancellation or suspension, a penalty, which the licensee may elect to pay to the commission in lieu of the revocation, cancellation or suspension. The maximum penalty shall be five thousand dollars for each separate offense. The commission may, for good cause shown, abate all or part of such penalty.

¹ McK. Unconsol. Laws §§ 9801 to 10060.

4. To designate any officer, agent or employee of the commission to be an investigator who shall be vested with all the powers of a peace or police officer of the state of New York in that state, and of the state of New Jersey in that state.

5. To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission 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 he may be incriminated thereby, and, notwithstanding such refusal, an order is made upon twenty-four hours' prior written notice to the appropriate attorney general of the state of New York or the state of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section three of article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

“Immunity” as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees

appointed pursuant to the provisions of section three of article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he 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 such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate attorney general or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him.

6. [Eff. upon enactment by New Jersey of legislation having identical effect, pursuant to L.2003, c. 164, § 31. See, NJ ST 53:2-10, subsec. q.] To require any applicant for registration as a longshoreman, any applicant for registration as a checker or any 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 stevedore or any persons who are individual partners

of an applicant stevedore, or any officers, directors or stockholders owning five percent or more of any of the stock of an applicant corporate stevedore or any applicant for a license as a port watchman or any other category of applicant for registration or licensing by law within the commission's jurisdiction to be fingerprinted by the commission.

6-a. [Eff. upon enactment by New Jersey of legislation having identical effect, pursuant to L.2003, c. 164, § 31. See, NJ ST 53:2-10, subsec. q.] To require any applicant for registration as a longshoreman, any applicant for registration as a checker or any 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 stevedore or any persons who are individual partners of an applicant stevedore, or any officers, directors or stockholders owning five percent or more of any of the stock of an applicant corporate stevedore or any applicant for a license as a port watchman or any other category of applicant for registration or licensing by law within the commission's jurisdiction who has: previously applied and had an application denied upon submission; been removed from registration; or, had a license suspended, or revoked and is reapplying for registration or licensing within the commission's jurisdiction to be fingerprinted by the commission.

7. [Eff. upon enactment by New Jersey of legislation having identical effect, pursuant to L.2003, c. 164, § 31. See, NJ ST 53:2-10, subsec. r.] To exchange fingerprint data with and receive state criminal history record information from the division of criminal

justice services, as defined in subdivision one of section three thousand thirty-five of the education law, and federal criminal history record information from the federal bureau of investigation for use in making the determinations required by this act.²

8. [Eff. upon enactment by New Jersey of legislation having identical effect, pursuant to L.2003, c. 164, § 31. See, NJ ST 53:2-10, subsec. s.] Notwithstanding any other provision of law to the contrary, to require any applicant for employment by of the commission or person described in subdivision six-a of this section to be fingerprinted and to exchange fingerprint data with and receive state criminal history record information from the division of criminal justice services, as defined in subdivision one of section three thousand thirty-five of the education law, and federal criminal history information from the federal bureau of investigation for the purposes of this subdivision and subdivisions six, six-a and seven of this section.

² McK. Unconsol. Laws § 9809.

APPENDIX E

**N.J.S.A. § 32:23-114
(Section 5-p of amended
Waterfront Commission Compact)**

**§ 32:23-114. Acceptance of application
for inclusion in longshoremen's register
upon recommendation or petition**

Repealed by L.2017, c. 324, § 33, eff. Jan. 16, 2018

1. The commission shall suspend the acceptance of applications for inclusion in the longshoremen's register for a period of 60 days after the effective date of this act. Upon the termination of such 60-day period the commission shall thereafter have the power to make determinations to suspend the acceptance of applications for inclusion in the longshoremen's register for such periods of time as the commission may from time to time establish and, after any such period of suspension, the commission shall have the power to make determinations to accept applications, which shall be processed in the order in which they are filed with the commission, for such period of time as the commission may establish or in such number as the commission may determine, or both. Such determinations to suspend or accept applications shall be made by the commission on its own initiative or upon the joint recommendation in writing of stevedores and other employers of longshoremen in the Port of New York District, acting through their representative for the purposes of collective bargaining with a labor organization representing such longshoremen in such district and such labor organization which joint recommendation the commission

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shall have the power to accept or reject or (c) upon the petition in writing of a stevedore or other employer of longshoremen in the Port of New York District which does not have a representative for the purposes of collective bargaining with a labor organization representing such longshoremen. The commission shall have the power to accept or reject such joint recommendation or petition;

A joint recommendation or petition filed for the acceptance of applications with the commission for inclusion in the longshoremen's register shall include:

- (a) The number of employees requested;
- (b) The category or categories of employees requested;
- (c) A detailed statement setting forth the reasons for the joint recommendation or petition;
- (d) In cases where a joint recommendation is made under this section, the collective bargaining representative of stevedores and other employers of longshoremen in the Port of New York District and the labor organization representing such longshoremen shall provide the allocation of the number of persons to be sponsored by each employer of longshoremen in the Port of New York District; and
- (e) Any other information requested by the commission.

Upon the granting of any joint recommendation or petition under this section for the acceptance of applications for inclusion in the longshoremen's register, the commission shall accept applications upon written sponsorship from the prospective employer of

longshoremen. The sponsoring employer shall furnish the commission with the name, address and such other identifying or category information as the commission may prescribe for any person so sponsored. The sponsoring employer shall certify that the selection of the persons so sponsored was made on a fair and non-discriminatory basis in accordance with the requirements of the laws of the United States and the states of New York and New Jersey dealing with equal employment opportunities.

Notwithstanding any of the foregoing, where the commission determines to accept applications for inclusion in the longshoremen's register on its own initiative, that acceptance shall be accomplished in the manner deemed appropriate by the commission.

2. In administering the provisions of this section, the commission shall observe the following standards:

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

(b) To bring the number of eligible longshoremen 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 encourage the mobility and full utilization of the existing work force of longshoremen;

(d) To protect the job security of the existing work force of longshoremen by considering the levels of wages and employment benefits of prospective registrants;

(e) To eliminate oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the Port of New York District, including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor;

(f) To consider the effect of technological change and automation and such other economic data and facts as are relevant to a proper determination; and

(g) To protect the public interest of the Port of New York District.

In observing the foregoing standards and before determining to suspend or accept applications for inclusion in the longshoremen's register, the commission shall consult with and consider the views of, including any statistical data or other factual information concerning the size of the longshoremen's register submitted by, carriers of freight by water, stevedores, waterfront terminal owners and operators, any labor organization representing employees registered by the commission, and any other person whose interests may be affected by the size of the longshoremen's register.

Any joint recommendation or petition granted hereunder shall be subject to such terms and conditions as the commission may prescribe.

3. Any determination by the commission pursuant to this section to suspend or accept applications for inclusion in the longshoremen's register shall be made upon a record, shall not become effective until five days after notice thereof to the collective bargaining representative of stevedores and other

employers of longshoremen in the Port of New York District and to the labor organization representing such longshoremen and the petitioning stevedore or other employer of longshoremen in the Port of New York District and shall be subject to judicial review for being arbitrary, capricious, and an abuse of discretion in a proceeding jointly instituted by such representative and such labor organization or by the petitioning stevedore or other employer of longshoremen in the Port of New York District. Such judicial review proceeding may be instituted in either state 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 such proceeding shall be decided directly by the appellate division as the court of first instance (to which the proceeding shall be transferred by order of transfer by the Supreme Court in the State of New York or in the State of New Jersey by notice of appeal from the commission's determination), and provided further that notwithstanding any other provision of law in either state no court shall have power to stay the commission's determination prior to final judicial decision for more than 15 days. In the event that the court enters a final order setting aside the determination by the commission to accept applications for inclusion in the longshoremen's register, the registration of any longshoremen included in the longshoremen's register as a result of such determination by the commission shall be canceled.

This section shall apply, notwithstanding any other provision of this act, provided, however, such action section shall not in any way limit or restrict the provision of section 5 of article IX of this act

empowering the commission to register longshoremen on a temporary basis to meet special or emergency needs or the provisions of section 4 of article IX of this act relating to the immediate reinstatement of persons removed from the longshoremen's register pursuant to article IX of this act. Nothing in this section shall be construed to modify, limit or restrict in any way any of the rights protected by article 15 of this act.

4. Notwithstanding any other provision of this act, the commission may include in the longshoremen's register under such terms and conditions as the commission may prescribe:

(a) A person issued registration on a temporary basis to meet special or emergency needs, who, on the effective date of this act, is still so registered by the commission;

(b) A person defined as a "longshoreman" in subdivision (6) of section 1(5-a) of P.L.1954, c. 14 (C.32:23-85), who is employed by a stevedore as defined in paragraph (b) or (c) of subdivision (1) of the same section (C.32:23-85) and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen;

(c) No more than 20 persons issued and holding registration pursuant to paragraph (b) of this subdivision who are limited to acting as scalemen and who are no longer employed as scalemen on the effective date of this 1987 amendatory act;

(d) A person issued registration on a temporary basis as a checker to meet special or emergency needs

who applied for such registration prior to January 15, 1986 and who is still so registered by the commission;

(e) A person issued registration on a temporary basis as a checker to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission;

(f) A person issued registration on a temporary basis as a container equipment operator to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission; and

(g) A person issued registration on a temporary basis as a longshoreman to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission.

5. The commission may include in the longshoremen's register, under such terms and conditions as the commission may prescribe, persons issued registration on a temporary basis as a longshoreman or a checker to meet special or emergency needs and who are still so registered by the commission upon the effective date of P.L.1999, c. 206.

¹ N.J.S.A. 32:23-114.

² N.J.S.A. 32:23-114 Note.

³ N.J.S.A. 32:23-114 Note.

⁴ N.J.S.A. 32:23-114 Note.

APPENDIX F

**McKinney's Unconsol. Laws § 9920
(Section 5-p of amended
Waterfront Commission Compact)**

**§ 9920. Suspension or acceptance of
applications for inclusion in longshoremen's
register; exceptions**

1. The commission shall suspend the acceptance of applications for inclusion in the longshoremen's register for a period of sixty days after the effective date of this act. Upon the termination of such sixty day period the commission shall thereafter have the power to make determinations to suspend the acceptance of application for inclusion in the longshoremen's register for such periods of time as the commission may from time to time establish and, after any such period of suspension, the commission shall have the power to make determinations to accept applications for such period of time as the commission may establish or in such number as the commission may determine, or both. Such determinations to suspend or accept applications shall be made by the commission: (a) on its own initiative or (b) upon the joint recommendation in writing of stevedores and other employers of longshoremen in the port of New York district, acting through their representative for the purpose of collective bargaining with a labor organization representing such longshoremen in such district and such labor organization or (c) upon the petition in writing of a stevedore or another employer of longshoremen in the port of New York district which does not have a representative for the purpose of collective bargaining with a labor organization repre-

senting such longshoremen. The commission shall have the power to accept or reject such joint recommendation or petition.

All joint recommendations or petitions filed for the acceptance of applications with the commission for inclusion in the longshoremen's register shall include:

- (a) the number of employees requested;
- (b) the category or categories of employees requested;
- (c) a detailed statement setting forth the reasons for said joint recommendation or petition;
- (d) in cases where a joint recommendation is made under this section, the collective bargaining representative of stevedores and other employers of longshoremen in the port of New York district and the labor organization representing such longshoremen shall provide the allocation of the number of persons to be sponsored by each employer of longshoremen in the port of New York district; and
- (e) any other information requested by the commission.

2. In administering the provisions of this section, the commission shall observe the following standards:

- (a) To encourage as far as practicable the regularization of the employment of longshoremen;
- (b) To bring the number of eligible longshoremen 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 longshoremens in the port of New York district;

(c) To encourage the mobility and full utilization of the existing work force of longshoremens;

(d) To protect the job security of the existing work force of longshoremens by considering the wages and employment benefits of prospective registrants;

(e) To eliminate oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the port of New York district, including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor;

(f) To consider the effect of technological change and automation and such other economic data and facts as are relevant to a proper determination;

(g) To protect the public interest of the port of New York district.

In observing the foregoing standards and before determining to suspend or accept applications for inclusion in the longshoremens' register, the commission shall consult with and consider the views of, including any statistical data or other factual information concerning the size of the longshoremens' register submitted by, carriers of freight by water, stevedores, waterfront terminal owners and operators, any labor organization representing employees registered by the commission, and any other person whose interests may be affected by the size of the longshoremens' register.

Any joint recommendation or petition granted hereunder shall be subject to such terms and conditions as the commission may prescribe.

3. Any determination by the commission pursuant to this section to suspend or accept applications for inclusion in the longshoremen's register shall be made upon a record, shall not become effective until five days after notice thereof to the collective bargaining representative of stevedores and other employers of longshoremen in the port of New York district and to the labor organization representing such longshoremen and/or the petitioning stevedore or other employer of longshoremen in the port of New York district and shall be subject to judicial review for being arbitrary, capricious, and an abuse of discretion in a proceeding jointly instituted by such representative and such labor organization and/or by the petitioning stevedore or other employer of longshoremen in the port of New York district. Such judicial review proceeding may be instituted in either state 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 such proceeding shall be decided directly by the appellate division as the court of first instance (to which the proceeding shall be transferred by order of transfer by the supreme court in the state of New York or in the state of New Jersey by notice of appeal from the commission's determination) and provided further that notwithstanding any other provision of law in either state no court shall have power to stay the commission's determination prior to final judicial decision for more than fifteen days. In the event that the court enters a final order setting aside the determination by the commission to

accept applications for inclusion in the longshoremen's register, the registration of any longshoremen included in the longshoremen's register as a result of such determination by the commission shall be cancelled.

This section shall apply, notwithstanding any other provision of this act,¹ provided however, such section shall not in any way limit or restrict the provisions of section five² of article nine of this act empowering the commission to register longshoremen on a temporary basis to meet special or emergency needs or the provisions of section four³ of article nine of this act relating to the immediate reinstatement of persons removed from the longshoremen's register pursuant to article nine of this act. Nothing in this section shall be construed to modify, limit or restrict in any way any of the rights protected by article fifteen⁴ of this act.

4. Upon the granting of any joint recommendation or petition under this section for the acceptance of applications for inclusion in the longshoremen's register, the commission shall accept applications upon written sponsorship from the prospective employer of longshoremen. The sponsoring employer shall furnish the commission with the name, address and such other identifying or category information as the commission may prescribe for any person so sponsored. The sponsoring employer shall certify that the selection of the persons so sponsored was made

¹ McK Unconsol. Laws §§ 9801 to 10060.

² McK Unconsol. Laws § 9838.

³ McK Unconsol. Laws § 9837.

⁴ McK Unconsol. Laws §§ 9868, 9869.

in a fair and non-discriminatory basis in accordance with the requirements of the laws of the United States and the states of New York and New Jersey dealing with equal employment opportunities.

Notwithstanding any of the foregoing, where the commission determines to accept applications for inclusion in the longshoremen's register on its own initiative, such acceptance shall be accomplished in such manner deemed appropriate by the commission.

5. Notwithstanding any other provision of this act, the commission may include in the longshoremen's register under such terms and conditions as the commission may prescribe:

(a) a person issued registration on a temporary basis to meet special or emergency needs who is still so registered by the commission;

(b) a person defined as a longshoreman in subdivision six of section five-a⁵ of this act who is employed by a stevedore defined in paragraph (b) or (c) of subdivision one of said section five-a and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen;

(c) no more than twenty persons issued registration limited to acting as scalemen pursuant to the provisions of chapter 953 of the laws of 1969 and chapter 64 of the laws of 1982 who are still so registered by the commission and who are no longer

⁵ McK Unconsol. Laws § 9905.

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employed as scalemen on the effective date of this subdivision;

(d) a person issued registration on a temporary basis as a checker to meet special or emergency needs who applied for such registration prior to January 15, 1986 and who is still so registered by the commission;

(e) a person issued registration on a temporary basis as a checker to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission;

(f) a person issued registration on a temporary basis as a container equipment operator to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission; and

(g) a person issued registration on a temporary basis as a longshoreman to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission.

6. The commission may include in the longshoremen's register, under such terms and conditions as the commission may prescribe, persons issued registration on a temporary basis as a longshoreman or a checker to meet special or emergency needs and who are still so registered by the commission upon the enactment of this amendment.

APPENDIX G**Chapter I, Part 4, Section 4.4 of
the Rules and Regulations of the
Waterfront Commission of New York Harbor**

WHEREAS, pursuant to Chapter I, Part 4, Section 4.4 of the Rules and Regulations of the Waterfront Commission of New York Harbor, the “A” or “1969 amendment” longshoremen’s register includes all persons registered by the Commission as longshoremen to perform, *inter alia*, maintenance and other tasks involving, or incidental to, cargo handling pursuant to the 1969 amendments of the Waterfront Commission Act; and

WHEREAS, Chapter I, Part 4, Section 4.4(d) of the Rules and Regulations of the Waterfront Commission of New York Harbor provides that no application shall be accepted from any person seeking inclusion in the “A” register unless that person is sponsored for employment by a stevedore or any person, within the meaning of those terms contained in the 1969 amendments to the Waterfront Commission Act (NY Laws 1969, ch. 953; NJ Laws 1969; ch. 128); and

WHEREAS, several New York Shipping Association, Inc. (NYSA) employers have declared a desire to hire individuals directly to perform maintenance and other tasks incidental to cargo handling, as memorialized in the NYSA-ILA Contract Board Resolution executed on July 25, 2013; and

WHEREAS, Part I, Article IX, Section 5-p of the Waterfront Commission Act grants the Commission the authority to make determinations to suspend or

accept applications for inclusion in the longshoremen's register; and

WHEREAS, Part I, Article IX, Section 5-p of the Waterfront Commission Act provides that where the Commission determines to accept applications for inclusion in the longshoremen's register on its own initiative, such acceptance shall be accomplished in such manner deemed appropriate by the Commission; and

WHEREAS, Part I, Article IX, Section 5-p of the Waterfront Commission Act provides that the Commission may, under such terms and conditions as the Commission may prescribe, include in the longshoremen's register certain longshoremen who perform, *inter alia*, maintenance and other tasks involving, or incidental to, cargo handling pursuant to the 1969 amendments of the Waterfront Commission Act, and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen; and

WHEREAS, the Commission has reviewed the hiring procedures for "A" registrants set forth in the collective bargaining agreement between the NYSA and the International Longshoremen's Association (ILA), and the hiring procedures set forth in the collective bargaining agreement between the Metropolitan Marine Maintenance Contractors' Association, Inc. (MMMCA) and the ILA; and

WHEREAS, the hiring procedures set forth in those collective bargaining agreements with regard to "A" registrants provide, with respect to new employees, that the employers shall notify the ILA of the

number and classifications required and it shall be the responsibility of the ILA to furnish the necessary employees requested by the NYSA or MMMCA employer; and

WHEREAS, the Commission has determined that the hiring procedures set forth in those collective bargaining agreements with regard to “A” registrants promote various conditions that are expressly enumerated in the Findings and Declarations set forth at Part I, Article I of the Waterfront Commission Act, including, *inter alia*, the lack of a systematic method of hiring, irregularity of employment, the lack of adequate information as to the availability of employment, and the selection of employees by those who are neither responsive nor responsible to the employers; and

WHEREAS, the Commission has determined that Chapter I, Part 4, Section 4.4(d) of the Rules and Regulations of the Waterfront Commission of New York Harbor needs revision and amendment to prevent the circumvention or evasion of the Waterfront Commission Act by the NYSA-ILA and the MMMCA-ILA hiring procedures with regard to the “A” register, and to ensure that such hiring procedures are consistent with the provisions of the Waterfront Commission Act; and

WHEREAS, these revisions and amendments are attached and identified as Exhibit A; and

WHEREAS, these revisions and amendments were forwarded to the NYSA on August 26, 2013, and receipt of these revisions and amendments was

thereafter acknowledged by counsel for the NYSA-ILA Contract Board;

WHEREAS, these revisions and amendments were made available for public review on the Commission's website prior to the date of this Resolution; and

WHEREAS, the Commission has considered the comments submitted on behalf of the NYSA on September 6, 2013 in opposition to proposed revisions and amendments; and

NOW, THEREFORE, be it hereby

RESOLVED, that effective September 9, 2013, Chapter I, Part 4, Section 4.4(d) of the Rules and Regulations of the Waterfront Commission of New York Harbor shall be revised and amended as set forth in the attachment identified as Exhibit A; and, be it further

RESOLVED, that a copy of the revisions and amendments of Chapter I, Part 4, Section 4.4(d) of the Rules and Regulations of the Waterfront Commission of New York Harbor shall be sent forthwith to the Secretary of State of New York and the Secretary of State of New Jersey for appropriate filing.

EXHIBIT A

Grey Highlight = Additions

~~**Double Strike Through = Deletions**~~

Section 4.4 Longshoremen's register; division into sections; designation and sponsorship of "1969 amendment" longshoremen.

(a) A longshoremen's register shall be maintained in the offices of the commission. Copies shall be kept and exhibited at each commission employment information center.

(b) The register shall be divided as follows:

(1) A "deep-sea" register which shall include all persons registered by the commission as longshoremen and checkers except those persons registered as longshoremen pursuant to the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128). exert

(2) An "A" or "1969 amendment" register which shall include all persons registered by the commission as longshoremen pursuant to the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128).

(c) No application shall be accepted from any person seeking inclusion in the deep-sea register unless the commission at such time has determined to accept such applications.

(d) No application shall be accepted from any person seeking inclusion in the "A" register unless that person is sponsored for employment by a stevedore or by any person, within the meaning of

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those terms contained in the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128). The sponsoring employer shall submit a letter setting forth the name and address of the person, and the labor service(s) to be performed, and shall certify that the selection of the person so sponsored was made in a fair and nondiscriminatory basis in accordance with the requirements of the laws of the United States and the States of New York and New Jersey dealing with equal employment opportunities.

APPENDIX H

**WATERFRONT COMMISSION OF
NEW YORK HARBOR**

At a meeting of the Waterfront Commission of
New York Harbor held in the City of New York,
State of New York, on the 3rd day of December 2013.

COMMISSIONERS PRESENT:

Ronald Goldstock
Jan Gilhooly

DETERMINATION 35 In the Matter of Determining, Pursuant to Section 5-p of the Waterfront Commission Act, To Include Persons in the Longshoremen's Register.

WHEREAS, the Commission, having suspended the acceptance of applications for inclusion in the Longshoremen's Register until further order by the Commission; and

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

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

WHEREAS, Part I, Article IX, Section 5-p(2) of the Waterfront Commission Act enumerates certain standards that the Commission must observe in administering the provisions of the Act pertaining to the opening of the register, including, *inter alia*: encouraging as far as practicable the regularization of the employment of longshoremen; bringing the number of eligible longshoremen more closely into balance with the demand for longshoremen's services within the Port of New York district without reducing the number of eligible longshoremen below that necessary to meet the requirements of longshoremen in the Port of New York district; encouraging the mobility and full utilization of the existing work force of longshoremen; eliminating oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the Port of New York district including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor; considering the effect of technological change and such other economic data and facts as are relevant to a proper determination; and protecting the public interest in the Port of New York district; and

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

the expected retirements of longshore employees and checkers who will be leaving the industry in April 2014; and

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

WHEREAS the Commission has consulted with industry representatives of management and labor concerning their request for longshore employees, and has determined that the immediate addition of 150 longshore employees is appropriate in light of current shortages and that the future addition of 382 longshore employees is appropriate in light of the expected retirements in April 2014; and

WHEREAS the Commission has consulted with industry representatives of management and labor concerning their request for checkers, and has determined that the immediate addition of 75 checkers is appropriate in light of current shortages and that the future addition of checkers is appropriate in light of the expected retirements in April 2014; and

WHEREAS, the NYSA-ILA Contract Board has advised that new additions to the longshore force will be recruited, referred and selected in accordance with the terms of the collectively bargained NYSA-ILA Recruitment and Hiring Plan ("Hiring Plan"), which provides that the referral process for new hires which is designed to increase diversity and employment possibilities to qualified individuals will include three

designated sources: Military Veterans (51%), ILA (25%) and NYSA/Employers (24%); and

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

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

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

NOW, THEREFORE, be it hereby

ORDERED, that the Commission accept a total of 150 applications from persons recommended by the NYSA-ILA Contract Board and prequalified by the Commission for temporary inclusion in the Longshoremen's Register as longshore employees (craft 5), and from those individuals recommended by the NYSA-ILA Contract Board who, on or before January 31, 2014, have submitted a Request for Prequalifi-

cation to Make Application to the Longshoremen's Register and who have been prequalified by the Commission; and it is further

ORDERED, that the Commission accept at total of 75 applications from persons recommended by the NYSA-ILA Contract Board and prequalified by the Commission for temporary inclusion in the Longshoremen's Register as checkers (craft 6), and from those additional individuals recommended by the NYSA-ILA Contract Board who, on or before January 31, 2014, have submitted a Request for Prequalification to Make Application to the Longshoremen's Register and who have been prequalified by the Commission; and it is further

ORDERED, that such individuals who have been recommended by the NYSA-ILA Contract Board and prequalified by the Commission will be reviewed by the Commission to determine their appropriate referral source, and to ensure that the new hires are in accordance with the goals and percentages set forth in the Hiring Plan; and it is further

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

accordance with the requirements of the laws of the United States and the States of New York and New Jersey dealing with equal employment opportunities; and it is further

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

ORDERED, that any individual temporarily included in the Longshoremen's Register pursuant to this Determination shall be assigned "V" seniority; and it is further

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

ORDERED, that any individual temporarily included in the Longshoremen's Register pursuant to this Determination shall not be eligible for permanent inclusion in the Longshoremen's Register until such time as he or she is approved by the Commission for

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addition to and placement on a regular list in accordance with, and pursuant to, Section 7 of the *Rules and Regulations of the Waterfront Commission*; and it is further

ORDERED, that the Commission will accept applications for inclusion in the Longshoremen's Register for individuals pursuant to this Determination until December 3, 2014.

By the Commission,
Meralis Lopez
Secretary

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APPENDIX I

U.S. Const. Art. I, § 10, cl. 1

**Section 10, Clause 1. Impairment of Contracts;
Title of Nobility**

No State shall . . . pass any . . . Law impairing the
Obligation of Contracts, or grant any Title of Nobility.

APPENDIX J

U.S. Const. Art. I, § 10, cl. 3

**Section 10, Clause 3. Duty on Tonnage,
State Compacts, War**

No State shall, without the Consent of Congress, lay any Duty on 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.

APPENDIX K

U.S. Const. Art. III, § 2, cl. 2

**Section 2, Clause 2. Supreme Court,
Original and Appellate Jurisdiction**

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

APPENDIX L

U.S. Const. Art. VI, cl. 2

Clause 2. Supreme Law of Land

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.

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APPENDIX M

28 U.S.C. § 1251

§ 1251. Original jurisdiction

[Subsection (a)]

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

APPENDIX N

28 U.S.C. § 2201

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

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APPENDIX O

28 U.S.C.A. § 2202

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.