



FEDERAL MARITIME COMMISSION

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Bureau of Trade Analysis
Office of Agreements

October 4, 2004

Richard P. Lerner
Lambos & Junge
29 Broadway - 9th Floor
New York, NY 10006

Andre Mazzola
Gleason & Mathews, P.C.
26 Broadway - 17 Floor
New York, New York 10004

Re: NYSA-ILA Assessment Agreement
FMC Agreement No. 201162
Date Received: October 1, 2004
Date Effective: October 1, 2004

Dear Messrs. Lerner and Mazzola:

This acknowledges receipt of the subject agreement filed with the Commission under section 5(a) of the Shipping Act of 1984. A copy of the agreement with its agency number and effective date is enclosed for your records. Please refer to the assigned number when corresponding with the Commission.

Under the Commission's agreement rules, this agreement filing is exempt from the waiting period requirements of the 1984 Act. Therefore, it become effective of filing.

Sincerely,

for Doretta A. Brewer
Robert J. Klapouchy
Office of Agreements

Enclosure

207162

RECEIVED

NYSA-ILA ASSESSMENT AGREEMENT

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This Agreement was made and entered into this 24th day of September, 2004, between New York Shipping Association, Inc. ("NYSA") and International Longshoremen's Association, AFL-CIO ("ILA").

ARTICLE I

PURPOSE

This Agreement establishes the assessment program for the funding of obligations arising under NYSA-ILA collective bargaining agreements. These obligations include fringe benefit costs and related expenses for pension, welfare and clinics, including contributions required under the Master Contract to the Management-ILA Managed Health Care Trust Fund, guaranteed annual income costs, vacations, holidays, supplemental cash benefits, and labor contract administrative costs, including the administrative expenses of NYSA. NYSA-ILA Assessment Agreement No. 201140 and amendatory agreement No. 201140-001 thereto, heretofore in effect are hereby revoked and replaced by this Agreement, effective October 1, 2004.

ARTICLE II

DEFINITIONS

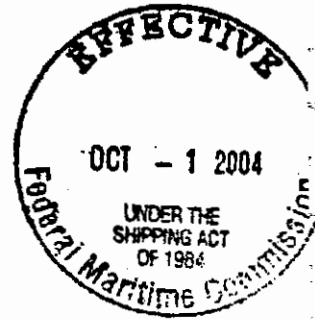
For purposes of this Agreement, the following definitions shall apply:

Section 1

The term "Assessment Ton" shall mean 2,240 pounds or 40 cubic feet, whichever is greater.

Section 2

The term "Automobile Assessment" shall mean a unit assessment on automobiles, buses, and trucks at a rate per each automobile, bus, and truck.



Section 3

The term "Banana Assessment" shall mean a unit assessment on shipments of bananas, whether or not containerized, at a rate per individual box or carton of bananas.

Section 4

The term "Bermuda Trade" shall apply to all cargoes and containers originating in or destined to Bermuda and shall exclude cargoes and containers which are merely transshipped, relayed, or restowed in a Bermudan port.

Section 5

The term "Center of the Port" shall mean Columbus Circle in the City, County, and State of New York.

Section 6

The term "Container" shall mean a receptacle or conveyance for the transport of cargo that measures at least 20 feet in length. The contents of any smaller receptacle or conveyance shall be assessed as breakbulk cargo.

Section 7

The term "Contract Year" shall mean the fiscal year ending September 30.

Section 8

The terms "Domestic Cargo" and "Domestic Trade" shall apply to cargoes and containers moving in the coastal or intercoastal trades of the United States but shall not include cargoes or containers moving to or from Puerto Rico, Hawaii, or Alaska, or any other point outside the continental limits of the United States.

Section 9

The term "Excepted Cargoes" shall include uncontainerized Domestic Cargo, uncontainerized bagged cocoa, lumber in shipload quantities, bulk cargo (carried without mark or count, including scrap and sugar), newsprint, and uncontainerized cargoes, such as steel products, raw unfabricated metals, linerboard, waste paper, cardboard, plywood, printing paper, and oil drilling rigs, which move in specified minimum lots to be fixed by the NYSA-ILA Contract Board and which are subject to such other conditions as shall be established by the NYSA-ILA Contract Board.

Section 10

The term "Excepted Cargo Assessment" shall mean a man-hour assessment applicable to all man-hours worked in or relating to the handling of Excepted Cargoes.

Section 11

The term "House Container" shall mean a container handled at a waterfront facility in the Port intact without stuffing or stripping.

Section 12

The term "House Container Outside 260 Miles" shall mean either (1) a loaded export House Container that originates from a shipper at a point on the North American mainland that is more than 260 highway miles from the Center of the Port and is received at the gate of the marine terminal in the Port after transport by rail or truck from its origin point to the Port or (2) a loaded import House Container that enters the Port at a berth after transport by vessel and is destined to be delivered to a consignee by rail or truck at a point on the North American mainland that is more than 260 highway miles from the Center of the Port.

Section 13

The term "House Container Within 260 Miles" shall mean either (1) a loaded export House Container that originates from a shipper at a point on the North American mainland that is 260 highway miles or less from the Center of the Port and is received at the gate of the marine terminal in the Port after transport by rail or truck from its origin point to the Port or (2) a loaded import House Container that enters the Port at a berth after transport by vessel and is destined to be delivered to a consignee by rail or truck at a point on the North American mainland that is 260 highway miles or less from the Center of the Port.

Section 14

The term "Inland Container" shall mean a container originating in the Port and transported other than by water to another port for export or a container discharged in another port other than a United States West Coast port and transported to a waterfront facility in the Port other than by water for delivery to a consignee.

Section 15

The term "Military Cargo" shall mean cargo owned by or transported for the account of the Armed Forces of the United States.

Section 16

The term "Military Container" shall mean a container loaded with Military Cargo.

Section 17

The term "Passenger Assessment" shall mean a man-hour assessment applicable to man-hours worked in passenger operations, where the carrier's revenue is derived almost exclusively from the sale of passenger accommodations.

Section 18

The term "Pier Container" shall mean a container which is stuffed or stripped at a waterfront facility in the Port by longshore employees covered by NYSA-ILA collective bargaining agreements.

Section 19

The term "Port" shall mean the Port of New York and New Jersey.

Section 20

The term "Puerto Rico Trade" shall apply to all cargoes and containers originating in or destined to Puerto Rico and shall exclude cargoes and containers which are merely transshipped, relayed, or restowed in a Puerto Rican port.

Section 21

The term "Restowed Container" shall mean an in-transit loaded or empty container not consigned to the Port which in the same handling operation in the Port is unloaded from a vessel and then reloaded onto the same vessel for carriage to a final United States or foreign port of discharge.

Section 22

The term "Tonnage Assessment" shall mean the assessment on a tonnage basis applicable to Tonnage Assessable Cargoes.

Section 23

The term "Tonnage Assessable Cargoes" shall mean all uncontainerized breakbulk cargo transported by vessel in the Port, including livestock, yachts, and perishable fruit.

Section 24

The term "Transshipped or Relayed Container" shall mean an in-transit loaded container not consigned to the Port which is transferred from one vessel to another vessel in the Port for carriage to a final United States or foreign port of discharge.

Section 25

The term "Vessel" shall mean a ship, boat, barge, or other craft, whether or not self-propelled, used for the transport of cargo by water.

ARTICLE III

ASSESSMENT FORMULA

Section 1 - Costs

The amount to be assessed for each contract year shall be calculated in advance by (i) estimating the total fringe benefit and related costs expected to arise out of the NYSA-ILA collective bargaining agreements as well as the administrative expenses of NYSA for that year adjusted by any surplus or deficit existing at the expiration of the immediately preceding contract year and (ii) deducting therefrom the estimated revenues to be derived from the special assessments prescribed in article III, section 2 of this Agreement and other sources of income, including the forty (40%) percent of container royalties in excess of the Container Royalty Cap that is required by the Master Contract to be refunded to the Port of New York and New Jersey to use for local fringe benefit purposes. The resulting net liability shall be funded by the container unit assessments prescribed in article III, section 3 of this Agreement.

Section 2 - Special Assessments

The NYSA-ILA Contract Board shall establish the rates for the following special assessments: Automobile Assessment, Banana Assessment, Excepted Cargo Assessment, Passenger Assessment, and Tonnage Assessment. The initial rates for these special assessments are as follows:

Automobile Assessment -	\$ 3.50 per each automobile, bus, and truck
Banana Assessment -	\$ 0.06 per box or carton
Excepted Cargo Assessment -	\$ 4.00 per man-hour
Passenger Assessment -	\$ 4.00 per man-hour
Tonnage Assessment -- (Breakbulk Cargo)	\$ 3.00 per Assessment Ton

Section 3 - Container Unit Assessments

Containerized cargoes shall be assessed on a per container basis each time the container is loaded on or unloaded from a vessel in the Port. The Container Unit Assessments shall be established by the NYSA-ILA Contract Board. The initial Container Unit Assessments are as follows:

House Containers Within 260 Miles -	
Bermuda Trade	\$ 26.00 per container
Puerto Rico Trade	\$ 41.00 per container
All Other Trades	\$135.00 per container
House Containers Outside 260 Miles -	\$ 21.00 per container
Pier Containers -	\$ 27.00 per container
Empty Containers -	\$ 20.00 per container
Transshipped or Relayed Containers	\$ 25.00 per container
Transshipped or Relayed Containers via barge -	\$ 25.00 per container
Military Containers -	\$ 38.00 per container
Containers Loaded With Wastepaper, Cardboard, Used Clothing or Rags -	\$ 60.00 per container
Inland Containers -	\$ 55.00 per container

Restowed Containers, containers of bananas, and empty containers transhipped or relayed by barge are not subject to any Container Unit Assessment.

Section 4 - Adjustments

The NYSA-ILA Contract Board may adjust prospectively the Container Unit Assessments and Special Assessments from time-to-time on the basis of experience with respect to costs, hours, tonnages, and other relevant facts. Any adjustment shall be effective for future periods on such date as the Contract Board shall establish.

Section 5 - Savings Clause

All tonnage definitions, measurement conversion factors, excepted cargo categories, and special assessments in effect under NYSA-ILA Tonnage Assessment Agreement No. LM-86, NYSA-ILA Assessment Agreement No. 201-000091, NYSA-ILA Assessment Agreement No. 201-011077, NYSA-ILA Assessment Agreement No. 201-200063, and NYSA-ILA Assessment Agreement No. 201140 shall continue in effect under this Agreement except as expressly modified herein.

ARTICLE IV

COLLECTIONS

Section 1

Each carrier (both private and governmental) shall be solely responsible for the payment of any assessments provided for in this Agreement. Any direct employer who performs work for any carrier that has not subscribed to the NYSA-ILA collective bargaining agreements, including this Assessment Agreement, shall be responsible for those assessments that should have been paid by such carrier. The ILA need not supply labor to work the vessels or cargo of any carrier which has failed to comply with the provisions of this Assessment Agreement.

Section 2

The assessments provided for in this Agreement shall be paid to NYSA for transmittal to the NYSA-ILA Fringe Benefits Escrow Fund, after deduction therefrom of those portions designed to fund pension obligations and NYSA administrative expenses. The pension portion shall be paid by NYSA directly to the NYSA-ILA Pension Trust Fund and NYSA-ILA Money Purchase Pension Fund and Plan. The portion designed to fund NYSA's administrative expenses shall be retained by NYSA, and the union members of the Contract Board shall have no voice in the amount or use of that part of the assessments raised for the administrative support of NYSA.

ARTICLE V

ADMINISTRATION

Section 1

The administration and implementation of this Assessment Agreement shall reside in the NYSA-ILA Contract Board. The Contract Board shall have all powers necessary to implement this Agreement including, but not limited to, the following:

- (a) To require the filing by carriers and direct employers of such reports on man-hours, container movements, and tonnages as it may deem necessary;
- (b) To provide the time and conditions under which assessment payments are to be made, as well as to require such surety bonds from carriers, carrier agents, and direct employers as may be necessary to assure payment of the assessments provided for in this Agreement;
- (c) To carry out the provisions of this Agreement, including but not limited to, the fixing and modification of the assessment rates and charges provided for in article III of this Agreement;

- (d) To provide for the audit of any assessment reports, to collect deficiencies indicated by such audits, and to set up procedures to assure proper reporting and payment;
- (e) To issue interpretations and rulings with respect to any of the provisions of this Agreement; and,
- (f) To provide hearings meeting all the reasonable requirements of due process to any and all persons desiring to be heard on any assessment issue, including applications for Transition Accommodations provided for in article IV of this Agreement.

Section 2

The Contract Board is empowered to modify the assessments, rates, and charges provided for in this Agreement, to alleviate peculiar and isolated hardships for specific carriers, trades, or commodities by exempting them in whole or in part from any of the assessments provided for in this Agreement, to modify the definition of an Assessment Ton with respect to any specific cargo, to devise conversion factors determining the cubic measurement of any specific cargo, to develop factors or formulae for determining man-hours, tonnages, or other data necessary to facilitate the imposition and collection of the assessments prescribed in this Agreement, and to establish special assessments for specific cargoes. The Contract Board shall have the right to take these actions upon its own motion or pursuant to a request filed by any carrier, direct employer, or other interested party. Any such request should be properly supported by statistical or other proof. In hearing and determining such requests, the Contract Board shall take into consideration all pertinent factors, including but not limited to:

- (a) prevention of any potential diversion of cargo from the Port;

- (b) maintenance of equitable and non-discriminatory rules with respect to all cargo;
- (c) assurance that any assessment charges bear a reasonable relationship to responsibility for fringe benefit costs;
- (d) continued ability to meet obligations under the NYSA-ILA collective bargaining agreements; and;
- (e) encouragement of the utilization of longshore labor in the Port.

Section 3

Decisions of the Contract Board under this Agreement shall be final and binding and shall have the same force and effect as an arbitration award. Any matter resulting in a deadlock vote on the Contract Board shall be referred to immediate arbitration in accordance with the grievance and arbitration provisions of the NYSA-ILA collective bargaining agreements.

ARTICLE VI

EFFECTIVE DATE

Section 1

This Agreement shall become effective on October 1, 2004, and shall continue in effect for the term of the current NYSA-ILA collective bargaining agreements and all succeeding agreements. Either party, however, shall have the right to renegotiate this Agreement, whenever the NYSA-ILA collective bargaining agreements expire and are subject to renegotiation.

Section 2

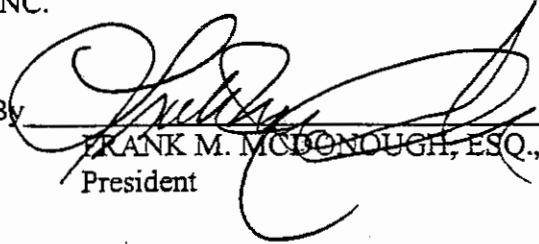
If for any reason this Agreement may not be implemented as written because of any governmental action, the ILA shall have the right upon 60 days' written notice to cancel this Agreement and to renegotiate a new agreement on the method of funding fringe benefits. If

agreement is not reached within such 60 day period, the ILA shall have the right not to work, and NYSA employers shall have the right not to order in ILA employees for work. The provisions of this section shall not be arbitrable.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their principal officers on the day and year first above written.

NEW YORK SHIPPING ASSOCIATION,
INC.

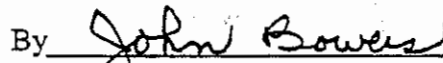
By



FRANK M. MCDONOUGH, ESQ.,
President

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO

By



JOHN BOWERS,
President

RECEIVED
NYSA-ILA
CONTRACT BOARD

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(212) 208-0220

ILA.
17 BATTERY PLACE • SUITE 930
NEW YORK, NEW YORK 10004 • 1261

September 29, 2004

VIA FEDERAL EXPRESS

Mr. Bryant L. Van Brakle, Secretary
Federal Maritime Commission
800 North Capital Street, N.W.
Washington, D.C. 20573

Re: NYSA-ILA Assessment Agreement

Dear Mr. Van Brakle:

We submit herewith for filing, pursuant to section 5 of the Shipping Act of 1984, 46 U.S.C.A. app. § 1704 (West Supp. 2002), an original and fifteen (15) copies of the new NYSA-ILA Assessment Agreement that was negotiated and concluded by New York Shipping Association, Inc. and the International Longshoremen's Association, AFL-CIO for the Port of New York and New Jersey effective October 1, 2004. This Agreement replaces and supersedes the current NYSA-ILA Assessment Agreement, FMC No. 201140 and amendatory agreement No. 201140-001.

The principal changes made by the new Agreement are increased assessment rates for various categories of cargo.

We are enclosing a check for \$145, the required filing fee, payable to the Federal Maritime Commission. Please acknowledge receipt of the enclosed Agreement and check by date-stamping the copy of this letter enclosed for that purpose and returning it to the undersigned in the enclosed self-addressed, stamped envelope.

Respectfully yours,

LAMBOS & JUNGE

GLEASON & MATHEWS, P.C.

By Richard P. Lerner

Richard P. Lerner

29 Broadway - 9th Floor
New York, New York 10006
(212) 943-2470

By Andre Mazzola

Andre Mazzola

26 Broadway - 17th Floor
New York, New York 10004
(212) 425-3240

Co-Counsel to the NYSA-ILA Contract Board

 Enclosure

Mr. Bryant L. Van Brakle, Secretary
Federal Maritime Commission

- 2 -

September 29, 2004

cc: John Bowers
Frank M. McDonough, Esq.
Anthony Dalonges
Dominick Gaudio
Barbara North