

# NAVIGATING THE WAVES OF CHANGE



2023 ANNUAL REPORT



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# 2023 PRESIDENT'S REPORT: NAVIGATING THE WAVES OF CHANGE



**“Every success story is a tale of constant adaption, revision and change.”**

~ Richard Branson

**W**elcome to our second annual report as the Shipping Association of New York and New Jersey, a “Doing Business As” (DBA) of the New York Shipping Association. The pendulum of cargo volume in the Port of New York and New Jersey finally recalibrated itself in 2023 after nearly three years of unprecedented growth during the Covid-19 pandemic. I think we were all looking forward to a breather from the challenges of an overstressed supply chain, but it would have been nice if the breather didn’t come as quickly and abruptly as it did. Gone are the frequent weekend gate operations and excessive dwell times for import containers at the marine terminals, which pushed utilization percentages up to maximum levels. Also, gone are the mountains of empty containers, which needed to be stored off-dock, tying up valuable chassis inventories and creating chassis shortages. From a Shipping Association perspective, the most difficult challenge we faced in 2023 was finding work for the employees that were recruited

and trained to handle the cargo peak experienced during the pandemic. This challenge remains, but we are adjusting our policies to allow these workers to find other temporary employment during non-peak periods. On the positive side, from a labor perspective, we are well positioned for growth when it will inevitably return.

Although volume took a breather, 2023 was a watershed year for the Association and our never-ending journey to modernize port operations. After years of working to modernize port oversight, it took the United States Supreme Court to side with the State of New Jersey and permit the state to withdraw from the Waterfront Commission Compact. Oversight for New Jersey waterfront has been placed under the professional, capable, and well-resourced New Jersey State Police (NJSP). The Association worked closely with the NJSP to ensure a smooth and productive transition of the Waterfront Commission responsibilities. The seamless transition finally took place July 17, 2023. The early returns of this change are already being seen in improved speed of background checks and system implementations replacing antiquated processes. New York and their minor share of work in the Port will continue to be overseen by a scaled down Waterfront Commission of New York. The Shipping Association was also successful in prying away the financial reserves accumulated by the Waterfront Commission and redistributing them to industry.

2023 also saw the renegotiation and tentative agreement of the NYSA/ILA local New York and New Jersey collective bargaining agreement. Although United States Maritime Alliance (USMX) / ILA contract talks stalled, the agreement is in place for when the USMX agreement is concluded. Key conditions of the new agreement include a revised Productivity Improvement Process. Eliminating absenteeism was also a top priority and the new agreement finally has provisions to address this issue. With larger vessels calling the Port which are often restricted to sail at high-water, new vessel start times were also implemented reducing waiting time for these larger vessels. We look forward to the completion of the USMX agreement to begin to full implementation of all aspects of the new agreement.

From an information technology perspective in 2023 we completed the full modernization of our legacy systems moving from an Oracle platform to a more user friendly and flexible Microsoft platform. Integrating our labor hiring system finally meant that all systems are now on the same platform and all updates and activity is in real time, eliminating the need for daily reconciliation.

Since 2014 and continuing in 2023, SANYNJ proudly Co-Chaired the Council on Port Performance (CPP) with the Port Authority of New York and New Jersey. To me, as I have said in prior year reports, this forum continues to be vitally important, and its resulting collaboration and cooperation is what separates NY&NJ from other major ports. The value of the exchange of ideas regarding steps that need to be taken to improve the Port’s performance in the short-term and long-term cannot be overstated.

The CPP understood many years ago that the greatest challenge our industry faces is a shortage of skilled labor throughout the supply chain. With this vision the Council and their Workforce Development Implementation Team have worked with universities to develop curriculum, bring awareness of career opportunities in the supply chain to high school students and host regular job fairs throughout the local communities. The nation learned during the pandemic the urgency required to prepare workers for careers in supply chain. This ongoing effort is vital to the long-term success of the Port. The CPP needs to continue with our efforts to prepare workers for careers in the full spectrum of the supply chain for the good of both local communities and industry.

As we move into 2024, challenges abound. The drought impacting Panama Canal capacity will pose a challenge to volumes for the entire east coast of the United States. Geopolitical conflict in the Middle East is having an impact on Suez Canal transits. Lastly, and most important, will be an early conclusion to East Coast Master Contract negotiations to give the market confidence in the gateway. However, regardless of whatever challenges we face and to what extent they will be, the Port of New York and New Jersey will continue Navigating the Waves of Change.



John J. Nardi  
President







# SAFETY FIRST ~ 2023

Safety remains a top priority in the Port of New York and New Jersey. The collaborative efforts among the SANYNJ, member Marine Terminal Operators (MTOs), the ILA workforce and ILA leadership are key to ensuring a safe and secure work environment for all employees. Everyone's commitment to continuously reinforce the importance of safety among waterfront workers is crucial for maintaining a culture of safety awareness.

The recognition and awards presented in the summer of 2023 highlight the safety achievements of Maher Terminals and Ports America Cruise Terminals. Maher Terminals, with over 1,000,000 labor hours, received the 2022 SANYNJ Safety Award for Lowest Lost Time Incident Frequency Rate. Meanwhile, Ports America Cruise Terminals in Brooklyn and Manhattan, with labor hours between 200,000 and 1,000,000, were acknowledged for their exemplary safety record.

Furthermore, the acknowledgement of Maher Terminals and Ports America Cruise Terminals for the Greatest Reduction in Lost Time Accident Frequency Rate over the previous year is a testament to their proactive safety measures and the continuous efforts of all employees to ensure that everyone goes home safe each day. Congratulations to both terminals for their dedication to safety and their significant contributions to reducing incidents on the waterfront.

This recognition not only serves as an accolade for the terminals but also sets a positive example for the entire industry. Keep up the excellent work in promoting and maintaining a safe working environment!

In April 2023, the SANYNJ-ILA Employee Assistance Program held their annual Worker's Memorial Day Observance Ceremony to demonstrate the commitment to providing and supporting a safe workplace by honoring those who were killed or injured in workplace related accidents. This Ceremony promotes to all waterfront workers that safety is Priority One.





# TRAINING ~ 2023

The multifunctional use of the SANYNJ-ILA-PPGU Training Center’s facilities, including the auditorium, classrooms and conference rooms, as a venue for various activities within the maritime industry, port community, government agencies, underscores its pivotal role in fostering collaboration and knowledge sharing. Hosting daily training sessions, presentations, meetings, and discussions further solidifies its position as a central hub for industry-related activities.

Training continues to be a crucial aspect in maintaining a safer and efficient port operation. Training Programs adhere to the requirements of Government Agencies such as OSHA and USCG as well as meeting the standards set by the Marine Terminal Operators (MTOs). This training contributes significantly to the overall safety and expertise of the Port Workforce.

In the summer of 2023, the National Maritime Safety Association (NMSA) held their annual meeting in Vancouver, BC. As well as staff from SANYNJ, ILA Local 1233 sent representatives to participate in the meeting sessions, including a tour of the BC Maritime Employers Training Centre where there was a noticeable emphasis on the importance of training and safety on the waterfront.



## Equipment Training Skill Certifications – Contract Year 2023

	New Certifications	Recertifications
Hustler Driver	139	520
Straddle Carrier	86	188
Crane Operator	28	66
Top Loader	75	128
Stacker (DS, RS, HC)	101	255
Noell Carrier	33	71
Yard Carrier	62	7
Empty Handler	108	169
Forklift	151	764
RTG/Transtainer	37	64
Shuttle Sprinter	6	44
Rail Mounted Gantry	20	32
<b>TOTAL</b>	<b>846</b>	<b>2308</b>

\*Equipment training is accomplished by an independent training company using certified ILA Trainers, as well as at employer terminals throughout the Port of New York and New Jersey.

## Classroom Training – Contract Year 2023

Initial/Refresher Hazardous Materials Training	1,119
PIT Safety/Equip Fundamentals/Gang Training	108
New Employee Orientation	142
Respect & Dignity Training	554

\*With the exception of New Employee Orientation, all training is provided by an independent training vendor and member companies.





# HIGHLIGHTS

for contract year ended September 30, 2023



## EMPLOYMENT:

- Approximately 4,400 active SANYNJ registered longshore, checker and maintenance workers employed in the Port during the contract year 2023
- 13.7 Million Hours Worked: 12.3% decrease from 2022
- Wages Paid: \$85.8 million decrease from 2022
- Fringe Benefit Costs: \$79.1 million decrease from 2022



## CARGO:

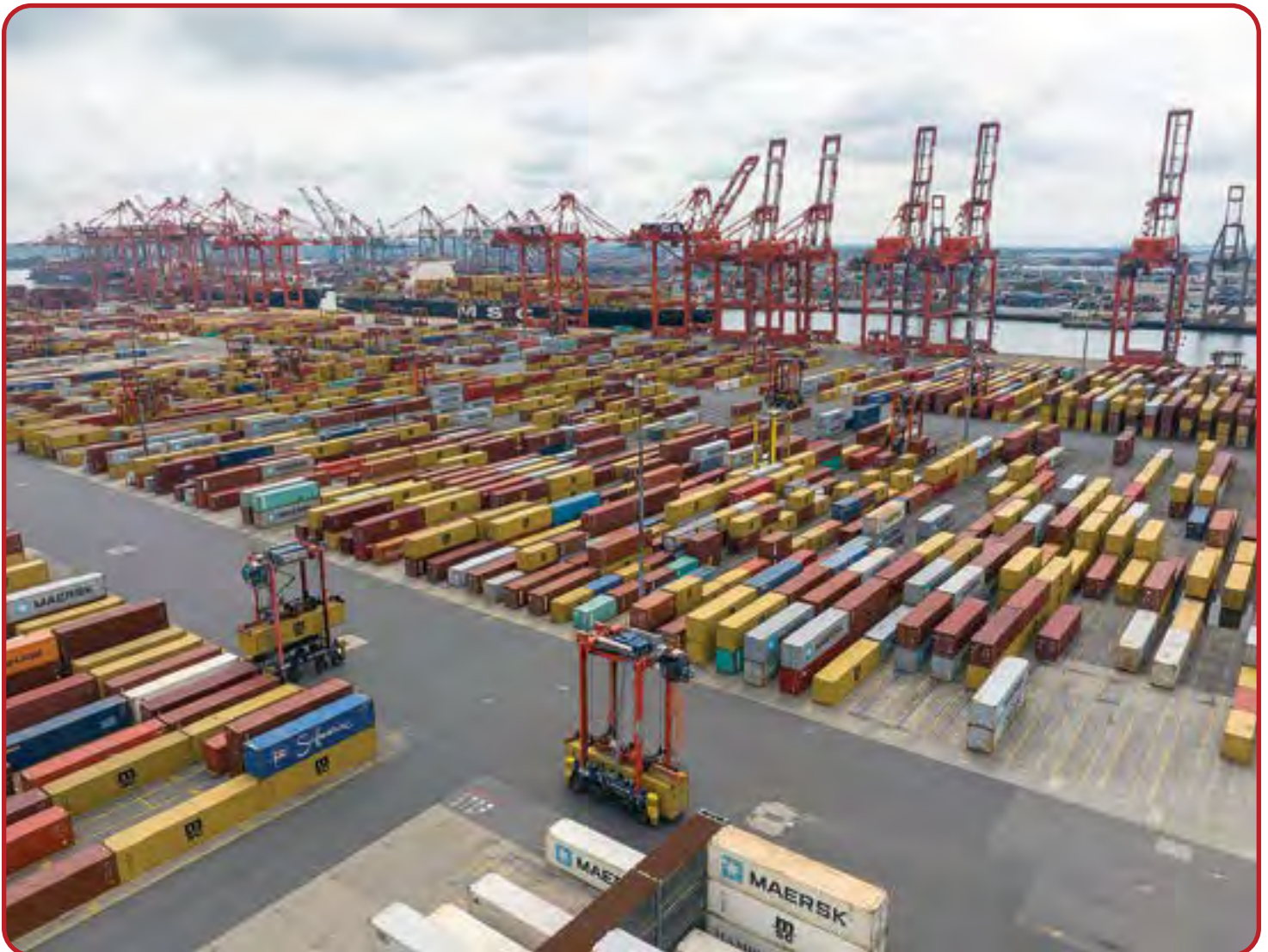
Containers that fit directly on a chassis

- 4.5 Million: 17.3% decrease from 2022



## VEHICLES:

- 388,000 Roll-on / Roll-off cargo, which is driven off the ship
- 6.0% decrease from 2022



## WORK HOURS & RATES – CONTRACT YEAR 9/30/2023

CRAFTS	Rate	ST Hours	OT Hours	Total Work Hours	Average Age	# Ind.
	20.00	325,753.5	539,662.5	865,416.0	35.2	601
	24.50	230,039.5	410,797.0	640,836.5	39.3	273
<b>Longshore</b>	31.25	165,843.5	227,549.0	393,392.5	40.4	167
	38.00	2,306,353.5	4,110,926.5	6,417,280.0	51.5	1,949
	<b>Total</b>	<b>3,027,990.0</b>	<b>5,288,935.0</b>	<b>8,316,925.0</b>	<b>46.5</b>	<b>2,990</b>
	20.00	143,492.0	161,216.0	304,708.0	34.2	98
	24.50	132,242.5	208,323.0	340,565.5	36.4	84
<b>Checkers</b>	31.25	38,128.0	64,756.0	102,884.0	40.3	24
	38.00	904,165.0	1,741,955.0	2,646,120.0	51.8	593
	<b>Total</b>	<b>1,218,027.5</b>	<b>2,176,250.0</b>	<b>3,394,277.5</b>	<b>46.5</b>	<b>799</b>
	20.00	71,058.0	137,533.0	208,591.0	36.6	63
	24.50	22,120.0	54,957.0	77,077.0	38.6	18
<b>Maintenance</b>	31.25	38,678.5	89,185.0	127,863.5	39.1	35
	38.00	545,370.0	1,023,328.5	1,568,698.5	50.6	418
	<b>Total</b>	<b>677,226.5</b>	<b>1,305,003.5</b>	<b>1,982,230.0</b>	<b>47.8</b>	<b>534</b>
<b>ALL CRAFTS</b>		<b>4,923,244.0</b>	<b>8,770,188.5</b>	<b>13,693,432.5</b>	<b>46.7</b>	<b>4,323</b>

## EQUIPMENT OPERATOR WORK HOURS

Contract Year 2023

Skill	Base Rate	Work Hours	% of Total
	20.00	8,157.0	0.9%
<b>Crane Operator</b>	24.50	32,351.5	3.5%
<b>Transtainer Operator</b>	31.25	16,063.5	1.7%
<b>RTG Operator</b>	38.00	870,175.5	93.9%
	<b>Total</b>	<b>926,747.5</b>	
	20.00	315,807.0	14.6%
	24.50	252,197.0	11.7%
<b>Straddle Carrier</b>	31.25	113,614.0	5.3%
<b>Noell Carrier Operator</b>	38.00	1,479,518.5	68.4%
	<b>Total</b>	<b>2,161,136.5</b>	
	20.00	159,813.5	10.7%
	24.50	91,961.0	6.1%
<b>Hustler Operator</b>	31.25	74,059.5	5.0%
	38.00	1,171,874.0	78.2%
	<b>Total</b>	<b>1,497,708.0</b>	
	20.00	26,851.0	3.1%
	24.50	67,528.5	7.6%
<b>Other Container</b>	31.25	72,297.0	8.2%
<b>Handling Equipment</b>	38.00	716,634.5	81.1%
	<b>Total</b>	<b>883,311.0</b>	

## ASSESSMENT RATE TABLE

Description	Rate
House Containers within 260 miles	\$89.00 Per Container
House Containers within 260 miles-Bermuda Trade	25.00 Per Container
House Containers over 260 miles	21.00 Per Container
House Containers cargo laden - Railed	10.00 Per Container
Loaded Barge Containers	10.00 Per Container
Mafis with 43 tons or less cargo weight	150.00 Per Mafi
Transshipped	25.00 Per Container
Inland Transfers	55.00 Per Container
Loaded Waste Containers-Barge to Rail	17.20 Per Container
Empty Containers	40.00 Per Container
Empty Mafis	40.00 Per Mafi
Empty Waste Containers-Rail to Barge	17.20 Per Container
Empty Containers-Bermuda Trade	25.00 Per Container
Uncontainerized or unboxed Autos-Trucks-Buses < 15k lbs.	8.15 Per Unit
Uncontainerized or unboxed Autos-Trucks-Buses > 15k lbs.	6.00 Per Ton
Breakbulk	6.00 Per Ton
Mafis with greater than 43 tons cargo weight	6.00 Per Ton
Non-Containerized Perishable fruit	6.00 Per Ton
Yachts in excess of 15'	6.00 Per Linear ft.
Bananas	0.09 Per Box
Excepted Cargo	14.00 Per Hour
Passenger Assessment	14.00 Per Hour
PPGU Assessment	18.00 Per Hour

\*For reference purposes only. For official rates, please refer to NYSA-ILA Assessment Agreement.

# UNITED STATES COAST GUARD SECTOR NEW YORK 2023 HIGHLIGHTS



## **Sexual Assault and Sexual Harassment (SASH) Regulations and Reporting**

The enactment of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 introduced new mandates geared toward the enhancement of vessel safety by requiring proactive measures against sexual assault and sexual harassment on vessels. These requirements include signage that depicts reporting requirements as well as company policies, master key control measures, surveillance, and documentation of procedures in vessel safety management systems. Domestic deep draft vessels have to comply with most of these requirements, but even foreign vessels are required to comply with the safety management portions of the new law. Additional information is available by searching USCG SASH in any internet browser.

## **Grande Costa D'Avorio Fire**

Following the tragic fire onboard the GRANDE COSTA D'AVORIO in the Port of Newark on July 5, 2023, a Unified Command was stood up to oversee the response, ultimately leading to the extinguishing of the fire on July 12. Numerous agencies, including the Coast Guard, initiated investigations into the cause of the fire and subsequent events. On November 20, 2023, Coast Guard Headquarters issued a safety alert outlining initial lessons learned from the ongoing investigation, strongly urging local fire departments and port stakeholders to formulate contingency plans, encompassing training, education, and drills for emergency responses across different ship types. Public hearings on the incident are occurring in early 2024 and will be followed by the release of the Coast Guard's Report of Investigation and other agencies' investigation reports.

## **Cyber Threats to the Marine Transportation System (MTS)**

Coast Guard Sector New York and the New York and New Jersey Area Maritime Security Committee continue to focus on cybersecurity threats and incident response in the maritime environment. In October 2023 Sector New York hosted a cybersecurity tabletop exercise simulating the loss of camera systems throughout the area of responsibility. The exercise gave the opportunity for all regulated entities, and unregulated entities, to participate so port stakeholders could learn not only from government agencies and industry experts, but also each other on the response to this simulated cyber-attack. Participants included bulk oil terminals, container terminals, passenger facilities, vessel operators, and port authorities, among others. A hotwash was held in November to discuss lessons learned, and these are informing our creation of a Cybersecurity Risk Plan that will be completed in 2024.

## **Increasing Port Congestion**

Throughout 2023 Sector New York observed a growing and diversified use of waterways throughout the Port of New York and New Jersey, the Hudson River, and the Port of Albany. These uses included not only a vast amount of passenger, container, tank ship, cruise, tug and barge, and car carrier transits, but also an increasing amount of recreational users, marine events, drone shows over the water, and other novel uses. Additionally, as renewable energy projects in the northeast begin construction and others work through the permitting process, vessel traffic related to those projects is expected to increase. The Coast Guard will continue to monitor this growing port congestion to ensure a safe, secure, and resilient marine transportation system for all waterways users.





# HIRING: A CHANGE OF FOCUS

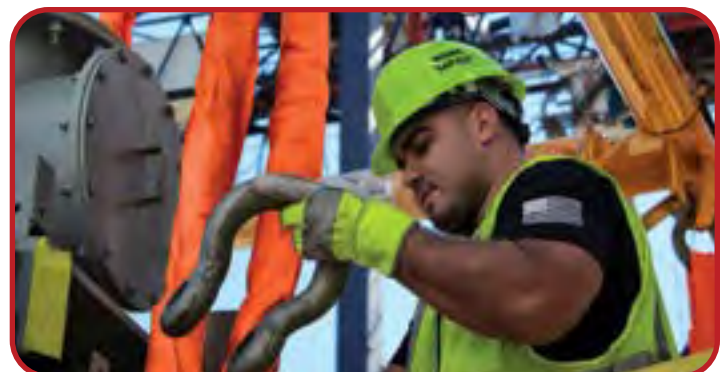
A wave of change shifted focus from the 2022 efforts to hire and train new employees required due to surging cargo volume and employee retirements. Retention of those newly employed and trained became the focus for 2023.

At the end of 2022, approximately fifty-eight candidates sponsored by SANYNJ members for positions throughout the Port remained under some form of review at the Waterfront Commission of New York Harbor (WCNYH). Efforts to affect a seamless transition from the oversight of the Port in New Jersey from WCNYH to the New Jersey State Police (NJSP) required high levels of communication, coordination, and cooperation. The candidates sponsored by New Jersey employers that remained under review at the WCNYH were transferred to the new licensing process with the NJSP. Thirty-eight of these candidates sponsored in 2022 were ultimately issued a Port Access Card (PAC) by the NJSP in 2023.

The NYSA-ILA contractual Hiring Plan continues to guide our hiring efforts, by recruiting and hiring candidates from a range of sources including union referrals, Department of Labor candidates from areas surrounding the Port, U.S. military veterans, and member company referrals. New hiring efforts in 2023 were limited to highly skilled maintenance professionals, and a limited cadre of longshore workers to meet the needs of employers in Brooklyn, NY. In 2023, Marine Terminal Operators (MTOs) hired sixteen new employees in maintenance and repair positions throughout the Port. In Brooklyn, twenty-two longshore workers were hired by year-end, with eight pending review at the New York Waterfront Commission (NYWC).

The hiring process for Longshore and Checker positions includes a Tripartite Interview Process which includes representatives from SANYNJ, the ILA, and Employers. After a successful interview and meeting the requirements of physical exams and drug testing, candidates submit an application to either the NJSP or the NYWC, depending on their sponsoring employer's location. Upon approval and registration by one of those entities and obtaining a TWIC (Transportation Worker Identification Credential), Longshore Workers enter the workforce initially ready for work as Car Drivers and Baggage Handlers. They then proceed to Basic Equipment Training and to Practical Gang Training during a vessel operation. Finally, those sponsored for work at facilities with specialized equipment, such as Straddle Carriers and RTGs, are trained to operate that equipment in a safe and efficient manner.

With cargo volumes leveling out, work opportunities for the newest employees, hired in 2022 and 2023, have been greatly reduced. Attempting to keep these individuals interested in maintaining their employment in the industry after the investments made in training, the NYSA-ILA Contract Board agreed to offer these employees a Leave of Absence from the industry, a benefit for which they would normally not be qualified. This gives the newer employees a chance to “freeze their spot” in the industry and return to employment or seek employment outside of the industry until such time as the industry realizes the need for their efforts. Examples of this need could be the result of vacations of senior employees, increase in cargo volumes, and/or the return of cruise season.





# PORT POLICE AND GUARDS UNION, LOCAL 1456



Security for the ports of New York and New Jersey Since 1937

The Port Police and Guards Union, Local 1456 (“PPGU”) is one of the most important segments of the labor force that are always prepared and ready to defend the Port of New York & New Jersey. The escalation of cargo volumes have required increased hours of operation at the terminals and infrastructure improvements in the Port have generated new challenges for this area of the workforce. PPGU is comprised of approximately 300 active members who are responsible for guarding key access points and patrolling all perimeters of the marine container terminals, auto terminals and passenger ship/public berths. This surveillance is performed 24 hours a day, 7 days a week and 365 days a year.



As the helm of PPGU’s Executive Board, Mohamed Arbab, President of PPGU, and Richard Rossiello, Business Agent of PPGU, were instrumental in negotiating the new three-year Collective Bargaining Agreement that was reached between SANYNJ member employers and the PPGU that will run through December 31, 2025. President Arbab and Business Agent Rossiello also serve on the Joint Labor Management Committees for purposes of resolving grievances and contract labor disputes, and took a lead role in the transition of the licensing responsibilities from the Waterfront Commission to the New Jersey State Police last year. We appreciate their partnership in resolving and addressing the security needs of the industry on behalf of their members.



# INFORMATION TECHNOLOGY

## Labor Hiring System Refresh Project

In 2023 there was a complete rewrite to current software standards to integrate with SANYNJ's New Enterprise Management System. With greater flexibility and streamlined productivity, this new system eliminates the need for syncing 2 systems (EMS and LHS) daily. One of the most important features of this merger is that the system now provides real-time statistics for the functionality of both systems. This was a tremendous success thanks to all the companies and their employees for their help and support. This new system went into production in April of this year.

## Reopening of the Labor Hiring Center

The Labor Hiring Center had been closed since March of 2020 and all the hiring was done completely remote. This year we welcomed back the dispatchers and hiring agents. Prior to bringing them back into the hiring center, a complete refresh of the center's infrastructure was necessary. New Monitors and upgraded virtual computers were installed to comply with current security standards.

## Changeover from the Waterfront Commission to the New Jersey State Police

In 2023 SANYNJ welcomed the New Jersey State Police (NJSP) to the Labor Hiring Center. SANYNJ provided labor hiring system training, support, and other assistance to ensure a smooth transition into the hiring center and continuously work with the NJSP to create and modify reports separating data from NY and NJ hiring.

## Launch of SANYNJ Website

Along with the introduction of our company's name change, SANYNJ launched a new corporate website [www.sanynj.org](http://www.sanynj.org). This new site utilizes our new domain name and is a completely refreshed and modernized look and feel.



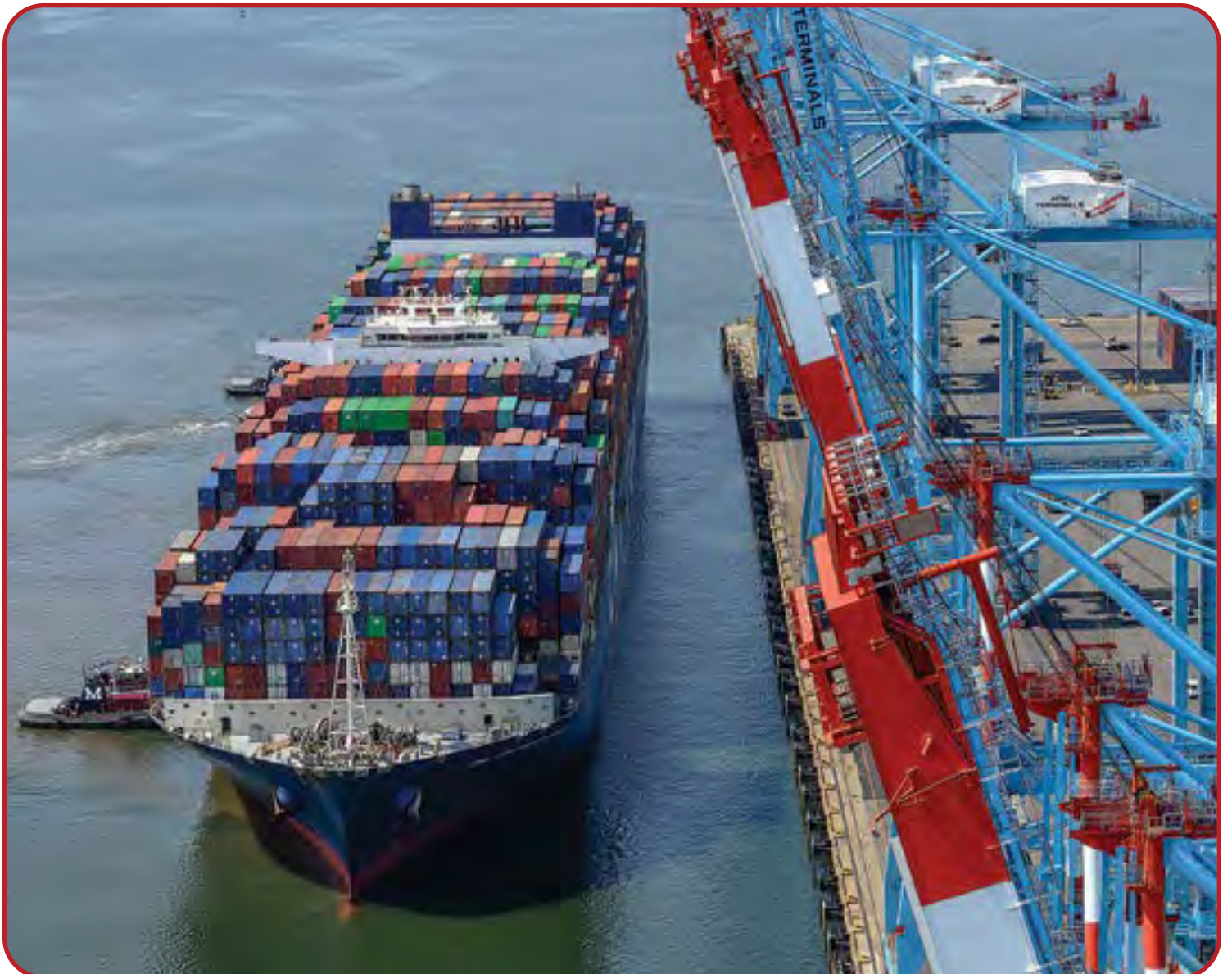
## Hardware Refresh of the SANYNJ-ILA-PPGU Training Center Auditorium

Due to the evolution of technology and the age of the equipment in the training center auditorium, it became necessary to replace the projector, screen and sound equipment. The new equipment will provide many years of compatibility for visitors using any sort of laptop or technical peripheral that they may bring to present with them. The new screen and projector allow for presentation clarity from all parts of the auditorium. The screens in both classrooms were previously replaced.

## Training Center Simulators Updated

The Straddle Carrier and Crane simulators at the training center were completely updated with 24 new servers (12 per simulator). These upgraded simulators produce even more lifelike virtual port environments and the most realistic motion systems, providing trainees with a highly accurate experience.





# INDUSTRY HIGHLIGHTS & SPECIAL EVENTS

## City of Newark Commission on Homelessness

Since its reestablishment by Mayor Ras Baraka and the Municipal Council of Newark in September 2018, the City of Newark Commission on Homelessness has assisted countless residents experiencing homelessness by helping them transition to a life of independent living and self-sufficiency.

The City of Newark Commission on Homelessness is chaired by Mr. Jim Pelliccio, President and CEO of Port Newark Container Terminal, L.L.C., and its members consist of an array of community partners in both the public and private sector including Mr. John Nardi of SANYNJ. These individuals share the common goal of developing projects, programs and strategies to address homelessness in the city. Some of the objectives of the Commission, who meet quarterly, are to make recommendations on city policies, plans and funding and advocate for state and federal policies that affect the homeless in Newark.



## Teddy Gleason Scholarship Program

On June 20, 2023, the International Longshoremen's Association, AFL-CIO and Shipping Association of New York and New Jersey awarded eight new scholarships to future college students through the Teddy Gleason Scholarship Program. The award recipients who are dependents of ILA members that work for SANYNJ member companies will each receive an annual grant of \$6000 a year for each of their four years in college. The scholarship selection process is based on academic performance and aptitude testing amongst other criteria and applies to those individuals who plan to continue their education at undergraduate, apprentice or other training programs at any accredited colleges, universities and institutions of higher learning. International Scholarship and Tuition Services, Inc., which is an online application service based in Nashville, TN, is responsible for the selection of the scholarship recipients.

Some of the schools that this year's recipients will be attending include Rutgers, The State University of New Jersey, Villanova University, University of Delaware, Ithaca College, Boston College, Sacred Heart University, and North Carolina Central University.

The Scholarship Fund is open to dependents of active and retired ILA members in the Port of New York and New Jersey. The scholarship program was founded in 1981 following collective bargaining between the ILA and NYSA employers and provides \$192,000 a year in assistance to 32 students



*In appreciation for being chosen as one of the 2023 recipients, Miss Kaitlin A. Barron, whose father is a member of ILA Local 1, composed a heartfelt letter expressing her gratitude to the SANYNJ, the ILA and to the Teddy Gleason Scholarship Program.*



## The 2023 Report on the Economic Value of the New York-New Jersey Port Industry

In partnership with the North Jersey Transportation Planning Authority (NJTPA) and in collaboration with its port partners, SANYNJ released a new economic impact study on June 22, 2023. The study was prepared by Ms. Anne Strauss-Wieder, Director, NJTPA.

The study revealed that the Port Industry of NY & NJ accounted for nearly \$15.7 billion in tax revenue, supported over 563,700 jobs, and was responsible for \$47.2 billion in personal and \$135.3 billion in business income in the region in 2022. The Port has experienced rapid shifts in global supply chains since the 2020 Economic Impact Assessment was undertaken. The Pandemic, combined with additional international trade considerations led to significantly higher volumes of cargo moving through the New York-New Jersey Port. The Port of New York and New Jersey was both the largest operation on the East Coast and for several months, the largest container port in the United States. In addition, more cruise passengers used the Port, and the region's industrial space continued to increase with millions of square feet added and occupied, according to the study conducted by the North Jersey Transportation Planning Authority (NJTPA). The study looked at the Port's impact on a 31-county region in New York, New Jersey and Pennsylvania. It also provided data on the economic value generated for the entire states of New York and New Jersey.

According to the study, the Port Industry currently employs 266,200 workers and supports another 297,500 indirect jobs — an increase when compared to the 506,000 jobs supported in 2019. Container volume has also increased by almost 2 million additional containers, since 2019.

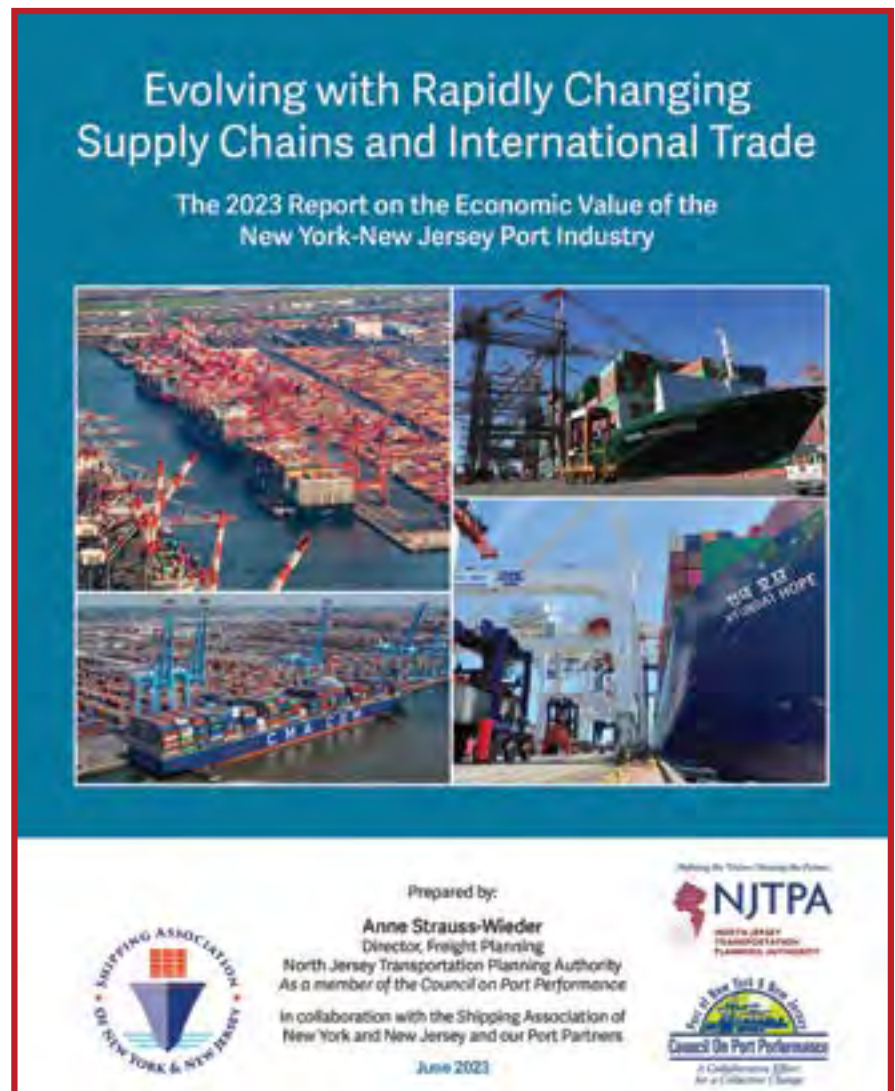
While the number of cruise vessels declined, the number of passengers increased. This reflected the increased calls of larger cruise vessels with larger passenger accommodations at the Port's three cruise terminals. At the same time, industrial real estate grew substantially between 2019 and 2022 as companies, responding to heightened demand levels and increased use of ecommerce, sought to keep more inventory on hand.

As a result of this growth, the region's maritime facilities handled:

- Nearly 9.5 million twenty-foot equivalent containers (TEUs)
- Close to 424,000 vehicles.
- Nearly 222,000 tons of breakbulk cargo.
- 270 larger capacity cruise vessels.

It is important to note the economic impact assessment of 2022 activities in the New York-New Jersey Port Industry provides a snapshot of the contributions made by the New York/New Jersey Port Industry, as measured in jobs, personal and business income and tax revenues. This economic value is ongoing – the continuing activities of the Port Industry generates and sustains jobs and revenues. As those activities grow and evolve, the economic value generated reflects the new conditions.

The entire Economic Impact Study could be found on our website at [www.sanynj.org](http://www.sanynj.org).



## Newark Firefighters Donation

On the evening of July 5, 2023 a fire erupted onboard the Grande Costa d'Avorio cargo ship in Port Newark resulting in the deaths of two Newark firefighters, Mr. Augusto Acabou and Mr. Wayne Brooks, Jr. Mr. Acabou and Mr. Brooks worked out of Engine 16 of the Newark Fire Department with Mr. Acabou being a nine-year veteran, while Mr. Brooks had 16 years on the job.

Donations were made by several organizations in the Maritime Industry to being given to the families of the firefighters. In addition to SANYNJ, donations were made by APM Terminals Elizabeth, LLC, GCT USA, Hyundai Glovis, the Lambos Firm, Maher Terminals, LLC, Marine Repair Services, Metropolitan Marine Maintenance Contractor's Association (MMMCA), MSC Mediterranean Shipping Company (USA) Inc., NYK Group Americas Inc., Ports America, Red Hook Container Terminal, Seaboard Marine, Ltd., United States Maritime Alliance (USMX), the Waterfront Alliance, and Yang Ming (America) Inc. A total of \$440,000 was donated.

On November 16, 2023, SANYNJ met with members of the Acabou and Brooks families and each were presented with a check for \$220,000.



## The 2023 Connie Awards

On December 11, 2023, the Containerization & Intermodal Institute (CII) Awards were held at the Newark Liberty International Airport Marriott Hotel in Newark, NJ.

The CII promotes and supports education for the trade and transportation industry. The Institute's scholarship program was introduced in 1992 and since then nearly one million dollars have been awarded to deserving students looking to pursue careers in the industry.

SANYNJ participates in the program every year and this year Mrs. Susan Winfree presented the scholarship to Abigail Oshra Edelman, a student at the United States Merchant Marine Academy at Kings Point.

# PORT AUTHORITY OF NEW YORK & NEW JERSEY (PANYNJ)



While 2023 yearend figures were not available at the time of this writing, by all accounts, container, rail, auto and bulk cargo volumes are all expected to be down as compared to 2022. It is difficult to compare 2023 activity to the unprecedented pandemic driven, year over year increases the Port of New York and New Jersey experienced in 2021 and 2022, particularly for import containers which was bolstered by stimulus funding and shifts in consumer spending from services to goods. Imports started to decline in the summer of 2022 and remained down throughout 2023 as importers worked through the excessive inventory that they had accumulated during the volume surges. Nonetheless, we expect that total container volume in 2023 will be approximately 4% above 2019. The Port of New York and New Jersey finishes 2023 as the #2 port in the country for total loaded containers (imports and exports) behind the Port of Los Angeles and ahead of the Port of Long Beach. This volume is consistent with the forecast contained in the Port Master Plan 2050. Importantly, through our outreach efforts, the shipper, beneficial cargo owner and NVOCC communities report that cargo volume that was shifted to the Port of New York and New Jersey is here to stay as they diversify their sourcing and/or logistics and distribution supply chain.

Tragedy struck the Port on Wednesday, July 5, 2023 when two brave Newark Fire Department members, Augusto “Augie” Acabou, and Wayne “Bear” Brooks Jr., died after they became disoriented and trapped while responding to a fire aboard the MV Grande Costa D’Avorio. Our hearts go out to the families of Captain Acabou and Captain Brooks. They and all their family, friends and colleagues remain in our thoughts and prayers. In the aftermath of this horrific tragedy, the Port Authority temporarily suspended the loading of all non-containerized previously owned vehicles onto either Roll-On Roll-Off (RoRo) or combined Container and RoRo (ConRo) vessels at all Port Authority marine terminal facilities. We understand the impact this decision has had on the ocean carriers, stevedores, labor, shippers, cargo owners, brokers and more and we appreciate the cooperation and support of the port community. This cargo activity will remain suspended until we can all be assured that the appropriate measures can be put in place to prevent a similar tragedy from ever occurring again in our Port.

## **Capital Investments**

The Port Authority continues to make investments in the Port to maintain its world-class status and to enhance New York/New Jersey’s competitive position to maintain pace with the rapid development, deployment, and utilization of larger vessels.

## **Harbor Deepening Channel Improvements (HDCI)**

The Port Authority, working with the US Army Corps of Engineers (USACE), continued to advance the HDCI project, which recommends deepening the federal navigation channels to 55 feet to Port Newark, the Elizabeth-Port Authority Marine Terminal, and the Port Jersey-Port Authority Marine Terminal. In December 2023, the agency’s Board of Commissioners authorized a cost-sharing agreement with the USACE for the development of Preconstruction Engineering Designs (PED) for future deepening and selective widening to allow the newest deep-draft containerships safe and efficient access to the Port of New York/New Jersey.

## **Howland Hook Re-evaluation Study**

Also in December, the PA Board authorized another cost-sharing study with the USACE to reevaluate potential future deepening and/or widening improvements to the Arthur Kill Channel which provides access to the Howland Hook Marine Terminal (HHMT) in Staten Island. The purpose of the study is to determine if positive developments related to increased activity, demand, and anticipated infrastructure investments generate the positive national economic benefits to justify federal investment.

## **Port Street Corridor Improvement Project**

Major work at Port Newark to rebuild one of the facility’s main entrances and improve trucking operations at the east coast’s busiest container port commenced in July 2023. The Port Street Corridor Improvement (PSCI) Project, a \$220 million roadway project, supported by a \$44 million federal INFRA Grant, will modernize one of the two primary access roads into the Port Newark and Elizabeth-Port Authority Marine Terminal complex, connecting the facilities to the New Jersey Turnpike, I-78 and Truck Route 1&9. The redesign will feature a more efficient roadway configuration with a wider turning radius, allowing for safer trucking operations to and from the complex. The improvements will additionally offer truck drivers significant time savings while they navigate the complex, enhancing efficiency and reliability across the supply chain as well as significantly reducing carbon emissions each year. As part of the project, the Port Street Ramp will be rehabilitated, Outer Port Street rebuilt to modern design standards, Marlin Street improved, Kellogg Street relocated and enlarged, the intersection of Port Street



and Doremus improved, and the Port Street Lead Track (operated by Conrail) realigned and elevated to alleviate flooding. Most crucially, the Corbin Street Ramp, which allows Port-bound traffic to exit directly from inbound Port Street to southbound Corbin Street, will be demolished and replaced. Port Authority staff have been working hard to engage the entire Port Community on the project to plan for the imminent Corbin Street Ramp closure, which is expected to begin Summer 2024 and last about a year. Extensive outreach and updates include briefings to the Council on Port Performance, Port Users Group and the Association of BiState Motor Carriers.



### **Wharf Investment**

In November 2023 the Port Authority’s Board of Commissioners approved a \$180 million Wharf Rehabilitation Program (WRP). This program expands upon prior wharf rehabilitation work performed by the Port Authority over the years, enabling greater contracting efficiency and larger work packages in order to ensure that the Port’s wharf structures throughout the harbor remain in a state of good repair for years to come. The need for rehabilitation has accelerated in recent years, thanks in large part to the dramatic improvements in water quality that allows the proliferation of wood-eating invertebrates which eat away at the timber piles supporting most of the Port Authority’s wharves. The WRP program is currently in the procurement phase, with the first round of construction anticipated to start in the second half of 2024.

The Port Authority was also awarded a \$32 million Port Infrastructure Development Program grant from the U.S. Department of Transportation to rebuild Berths 10 and 12 at Port Newark, which are currently out of service. This project will kick off a 30-year reinvestment program to replace all berths at the Port to a higher structural capacity, allow for a new consolidated bulk district, and create a pathway to maximizing land use in Port Newark South. The Port Authority estimates the project will generate \$348 million of economic impact for the region.

### **Rail Investment**

The Port Authority also secured grant funding from state and federal sources to advance infrastructure projects central to the long-term success of the Port. In partnership with New Jersey Department of Transportation, and Millenium Marine Rail, a joint venture of Maher Terminals and APM Terminals, the Port Authority advanced the Southbound Connector project into the planning and design phase. This critical rail project would build a southward rail connection from the ExpressRail Elizabeth facility to the Garden State Secondary rail line. The project will increase the facility’s capacity by 600,000 lifts per year and increase reliability by 26.5%. With a full suite of additional improvements by Conrail on the Garden State Secondary, reliability will increase by 37% or more.

## Sustainability

As Climate Week NYC kicked off in September 2023, The Port Authority of New York and New Jersey released its Net-Zero Roadmap, a comprehensive plan comprised of more than 40 actions intended to achieve both its near-term emission reduction goals and its 2050 goal of net-zero carbon emissions. The plan paves the way for the agency's ambitious strategy to work with its wide universe of tenants and contractors to achieve the 2050 goal. The roadmap to net-zero emissions formalizes the historic commitment the Port Authority made in 2021, the first U.S. transportation agency to issue such a pledge. In addition, it brings the Port Authority in line with the ambitious climate goals set by the Biden-Harris administration and the states of New York and New Jersey.

The agency also announced that it is on track to meet its interim goals of a 35 percent reduction in direct emissions by 2025, and a 50 percent reduction in direct emissions by 2030, undertaking ambitious initiatives from increasingly larger solar power projects to charging ports for customers. At the Port of New York and New Jersey, 70 of the 72 ship-to-shore cranes and all rail-mounted-gantry cranes currently in use at the marine terminals are fully electric.

In line with the Port Authority's goals of achieving net-zero greenhouse gas (GHG) emissions by 2050 across all facilities, including from tenant and stakeholder emission sources, the agency's Port Sustainability & Resilience Unit continued its programs to reduce GHG and criteria air pollutant (CAP) emission.

### Clean Vessel Incentive Program

In September, the agency's Board of Commissioners authorized the continued funding of the Port Authority's Clean Vessel Incentive (CVI) Program for a five-year period at a total cost to the Port Authority of approximately \$8 million. Under the CVI Program, the Port Authority provides financial incentives to enrolled operators of Ocean-Going Vessels (OGVs) that achieve a high CVI Score, which is based on the World Ports Sustainability Program's Environmental Ship Index score and participation in Vessel Speed Reduction, a component that requires vessels to slow-steam at 10 knots or less from 20 nautical miles outside of the Territorial Sea Line. Additional incentives are offered to vessels equipped with a Tier III engine and vessels operating on alternative fuel such as LNG.

### Truck Replacement Program

The Port Authority's Truck Replacement Program (TRP) continues to offer incentives to qualified drayage truck owners to replace and upgrade older diesel-fueled trucks that frequently serve our Marine Terminals with newer, cleaner, more fuel-efficient vehicles. Since its inception in 2009, multiple phases of the Program have been implemented and a total of 962 trucks have been replaced, thereby helping reduce diesel truck emissions at our terminals and reaffirming our commitment to transform operations at our facilities with environmental programs that safeguard our natural resources. In addition to offering financial incentives to truck owners, the Port Authority has taken additional measures to reduce the number of older diesel-fueled trucks that serve our Marine Terminals. Since July 2023, only trucks equipped with engines that meet or exceed the 2014 model year on-road USEPA heavy-duty diesel-fueled emission standards have been permitted to register as a new user accessing the Marine Terminals. This measure ensures that the universe of older trucks cannot expand. Further, all Class 8 drayage trucks (trucks with a gross vehicle weight greater than 33,000 pounds) with pre-1999 model year engines are no longer permitted to service the Port Authority's Marine Terminals.

### Commercial Development and Industry Relations

In August, the Port Authority's Commissioners voted to amend existing leases with Global Container Terminals Inc. (GCT) for the container terminals at the agency's Staten Island and Bayonne marine facilities in light of the acquisition of the two terminals by the French shipping company CMA CGM. The amended leases which run thru 2047 allow one of the world's largest shipping companies to assume operations of the container terminals at the Port



Jersey-Port Authority Marine Terminal now known as Port Liberty Bayonne, and at the Howland Hook Marine Terminal on Staten Island, now known as Port Liberty New York. The updated leases include increases in rent based on container throughput, CMA CGM assuming full responsibility for wharf and berth repair and replacement, and substantial facility investments to increase container capacity. CMA CGM will also align with key Port Authority initiatives relating to sustainability and diversity and will collaborate with the Port Authority around priorities such as safety and security, innovation, customer experience, key performance standards, and enhanced reporting on terminal activities. This lease agreement marks the beginning of a new chapter for our container terminals and a complete transformation from our historical leasing model. We are confident that this will help these facilities reach their full potential and bringing even more jobs and economic growth to the region.

## Trucker Experience

■ The Port Authority continues to place high priority on Customer Experience (CX) initiatives across all transportation facilities. The Port has focused this effort on improving the journey and experience of the drayage trucking community visiting the Port complex daily. Providing truckers and trucking companies with informational resources, along with relevant and timely operational updates remain the highest priority of the Port. In 2023, the Port Authority:

- o completed priority customer experience projects, including critical public restroom repairs and the installation of new signage infrastructure.
- o worked closely with the marine terminal operators to install QR code signage as a means to capture anonymous trucker feedback. The QR codes displayed on these signs direct truckers to a survey that asks them to share their overall satisfaction at the Port and specifically asks for their feedback on timely communication of traffic conditions, clarity of information about safety protocols and wayfinding, condition of public restrooms, and helpfulness of Port staff, as well as both clarity and availability of information currently shared via the Port's informational channels. Feedback is captured in real-time which has allowed Port Authority staff to analyze anonymous responses based on facility location and work to resolve new or ongoing concerns throughout the trucker experience.
- o developed a series of Trucker Appreciation events to advance CX efforts and strengthen our relationship with this diverse segment of the Port's workforce. Events allowed staff to meet drivers and share updated CX resources with them directly.



## Stakeholder & Customer Outreach

- Following the addition of new data metrics (Daily Average Turn Times, Weekly Import Container Dwell Time, Number of Trouble Tickets, and Rail Dwell) in September 2022, the impact of the weekly Port Supply Chain Dashboard continues to increase. Thanks to the support of the marine terminal operators and the Shipping Association of New York and New Jersey, the distribution of this cargo visibility tool increased by over 100% in 2023 as the Port reached new and existing stakeholders.
- Enhancing the Port's relationship with stakeholders and customers along the supply chain remains an important goal in 2024. The Port of NY & NJ continues to build our Warehousing Directory to better understand available space and capacity of regional warehouses/distribution centers. Additionally in 2023, the Port launched a new Trucking Directory which includes the contact and capabilities of over 70 trucking providers serving the Port. This resource serves shippers/customers in need of available trucking services and movement of specific commodity types in the region.
- The Port Authority adjusted our approach to engaging with Beneficial Cargo Owners (BCOs) and trade associations by replacing traditional Port Briefings with tours of the Port complex and specific marine terminals (based on customer utilization, request, etc.). This has resulted in overwhelmingly positive feedback from both BCOs and marine terminal operators. In 2023 we hosted 40 facility tours and briefings. As we develop our outreach plan for 2024, we will look to maximize the number of on-port customer visits by continuing to target our Top 100 Shippers and identifying opportunities to invite groups of smaller volume BCOs for commodity specific briefings and tours.

## Workforce Development

In 2023, the Council on Port Performance's Workforce Development Implementation Team (WDIT) navigated emerging needs in the region's labor market to support Port businesses with their workforce goals. The WDIT prioritized quality programming, information sharing on training programs, and refining future program needs. Highlights include an Industry Workforce Development Exchange in March that brought together workforce partners in conversation with port businesses, Maritime Construction Demonstration tours to workforce partners to highlight niche needs for work at our Port, and a Transportation, Logistics, and Distribution Job Fair hosted by Union County American Jobs Center for port businesses in October. Employers were afforded on-the-job training funds of up to \$10,000 for each new hire from that event. In 2024, the WDIT will continue to support the drayage trucking community through programming focused on retention and elevate career pathways across the supply chain to support terminal operators and local logistics firms.

## Foreign Trade Zone #49

The Port Authority of NY & NJ serves as the Grantee of the Port of NY & NJ's Foreign Trade Zone (FTZ) No. 49, handling administration and management of the zone and serving as a critical link between zone operators and the Foreign Trade Zone Board. In 2023, the Port Authority successfully designated five (5) new operators within FTZ No. 49, which now consists of 36 sites and subzones employing approximately 6,000 workers in the Port District.

## Trade Development

In 2023, the Port Authority hosted 11 delegations of port authorities and economic development agencies from around the world. We executed Memorandums of Understanding (MOU) with the Port of Ashdod, Israel and Hai Phong, Vietnam to create a structured framework for collaboration to facilitate mutual growth and development. Collaboration with Vietnam is critically important, as it is one of our fastest growing trade partners. The Port Authority is also in discussion with Busan Port Authority and the Port of Gdansk Authority to finalize MOUs with their respective ports to promote the gateway and grow international trade. These agreements will strengthen ties with these emerging trade partners through the sharing of best practices related to port operations, innovation marketing and sustainability.

## A Secure Port

The Port Authority undertook additional measures to ensure cargo arrives safely and is transported securely.

- Upon dissolution of the bi-state Waterfront Commission, the entire body of work was split between the two states. Our Port Security Unit worked closely with the Waterfront Commission as they wound down operations, and facilitated orientation, tours and training for the successor unit within the New Jersey State Police (NJSP) to ensure they were prepared for the transition. The Port Authority Port Security team is coordinating activities closely with the NJSP Port Security Unit and is assisting with annual refresher training for waterfront guards.
- Continued to expand regional participation in the Port of New York and New Jersey's Security Information Exchange which focuses on cybersecurity information sharing and capacity building within the Port.
- Hosted an assessment of Port Authority information technology and operational technology systems by the USCG Cyber Protection Team.
- Conducted additional first responder awareness programs (both facility and shipboard) for those agencies that may respond to an incident within the port complex.
- Partnered with the NJ Office of Homeland Security and Preparedness to host monthly meetings among US ports and Federal agencies, to discuss the fire hazards of electric vehicles and lithium-ion batteries with a particular focus on the shipboard and port environments.





# GOVERNMENTAL AFFAIRS HIGHLIGHTS 2023

## STATE OF NEW JERSEY

### **New York v. New Jersey**

Calendar year 2023 began the same way as the previous seventeen years, with the shipping industry and the State of New Jersey seeking to modernize the procedure for adding additional labor to the workforce in the Port of New York & New Jersey. Unsuccessful attempts to amend section 5-p. of the Waterfront Commission Compact in New York State prompted the State of New Jersey to seek unilateral withdrawal from the compact. The matter, now known as Original Case 156, *New York v. New Jersey*, was about to be argued before and settled by the Supreme Court of the United States (SCOTUS).

With all nine Justices present, oral argument of the case began shortly after 10:00 AM on Wednesday, March 1, 2023, lasting an hour and a half. On Tuesday April 18, 2023, the SCOTUS issued a unanimous decision written by Justice Brett Kavanaugh, that New Jersey may unilaterally withdraw from the compact notwithstanding New York's opposition. On Monday, July 17, 2023, the regulatory and law enforcement authority officially transitioned to the Port Security Section of the New Jersey State Police (NJSP).

The Shipping Association of New York & New Jersey sincerely thanks the Administrations of New Jersey Governors Jon S. Corzine, Chris Christie, and Phil Murphy, Senate Presidents Richard Codey, Bernard Kenny, Stephen Sweeney, and Nicholas Scutari, General Assembly Speakers Albio Sires, Joseph J. Roberts, Sheila Y. Oliver, Vincent Prieto, and Craig Coughlin. Last, but certainly not least, many thanks to the members of the New Jersey Legislature who provided the debate, support, and votes necessary to realize this accomplishment. The Port of New York & New Jersey's economic growth and job creation contribution to New Jersey, the Northeast Region, and the United States of America is now more sustainable and available to families seeking generational change in their quality of life for their families.

### **Ship Fire**

On July 5, 2023, tragedy struck the Port community. A ship in the process of loading vehicles for export in Port Newark caught fire. The fire resulted in the loss of two Newark firefighters' lives, Fire Captains Augusto Acabou, 45, and Wayne Brooks, Jr., 49, and the injury of five others. The incident is currently under investigation by the United States Coast Guard in conjunction with the National Transportation Safety Board with participation by the Italian Directorate for Railway and Marine Investigations. Public hearings regarding this incident are expected to take place early in 2024.



SANYNJ has been collaborating with Senator-elect Britnee N. Timberlake who has enlisted members of New Jersey's United States Congressional delegations to help at the federal government level, and Assemblyman William B. Sampson, IV who introduced legislation at the state level to establish certain marine firefighting training course requirements for landside firefighters for the future. The lessons learned from this tragedy must and will be used to prevent an occurrence like this from ever happening again.

### **Lieutenant Governor Sheila Y. Oliver**

On August 1, 2023, the SANYNJ lost an ardent supporter and a great leader in the effort to grow and sustain the economic value of the Port of New York & New Jersey in the person of The Honorable Lieutenant Governor Sheila Y. Oliver, of the State of New Jersey.

During her time as a member of the New Jersey General Assembly, Lt. Governor Oliver supported two of our key legislative efforts to modernize the Waterfront Commission. She supported legislation to amend section 5-p. to open the longshoreman's register to streamline the process of adequately staffing our workforce, and legislation that would give the Governors of New York and New Jersey various oversight authority and veto power over the commission's meeting minutes. When these measures weren't adopted in New York State, she supported legislation directing the Governor of New Jersey to withdraw the state from the Waterfront Commission Compact and transfer the commission's regulatory and law enforcement responsibilities to the New Jersey State Police.

As Speaker of the General Assembly, she passed a resolution in New Jersey which was also adopted and passed in the New York State Legislature, to urge the Port Authority of New York & New Jersey to formulate an engineering and funding solution to raise the Bayonne Bridge's air draft to accommodate larger ships.

Her last act on behalf of the industry was to apply her signature, acting as the Governor of New Jersey, to the four letters notifying the United States Congress, the leaders of the New Jersey Legislature, the Governor of New York, and the Waterfront Commission, of New Jersey's intent to exit the Waterfront Commission Compact.

Thank you, Lieutenant Governor Oliver, for the role you played and place you will forever hold in the legacy of the most important gateway of international maritime commerce in this nation's history. Your impact during your time with critical sustainability issues for the Port of New York & New Jersey will affect the lives of the millions of people we serve for generations to come.

### **New Jersey Legislative Election Results 2023**

Election Day 2023 in New Jersey saw all 120 seats in the New Jersey Senate and General Assembly up for grabs. Many election prognosticators expected a red wave of modest gains for the Republican Party. Instead, the wave turned out to be blue, as the Democratic Party increased their majorities in both houses. There was a net gain of one seat in the Senate (for a 25-15 advantage), and a gain of six seats in the General Assembly (for a 52 to 28 advantage). Thirty-five of the new members, ten in the Senate, and 25 in the General Assembly are first time electees to their respective houses. SANYNJ has a head start on getting acquainted with many of these new members who are first-time electees to the legislature. By virtue of our membership and participation in the New Jobs PAC, the State's largest and most influential political action committee, we had the opportunity to meet, interview, and support many of the candidates during their campaigns. SANYNJ looks forward to working with the new members to sustain the economic growth and job creation contribution the Port provides to our state and nation.

### **Corporate Business Tax Surcharge Sunset**

Despite calls to extend a 2.5 percent surcharge in New Jersey's 11.5 percent Corporate Business Tax (CBT), Governor Phil Murphy kept his promise to the State's business community to allow the surcharge to sunset at the close of 2023. SANYNJ was part of a business coalition that lobbied for the CBT sunset in 2023. At 9%, New Jersey's CBT will drop from the highest in the nation to fourth highest. The work of the coalition will continue to seek further reductions in the CBT in the future. Many thanks to Governor Murphy and the New Jersey Legislature for helping businesses small and large to prosper and grow in New Jersey!

## **STATE OF NEW YORK**

Following the decision in the New York v. New Jersey case by the Supreme Court of the United States, New York State chose to establish the New York Commission to regulate activities within the Port of New York District in the State of New York. The New York Commission is authorized to cooperate with a similar entity established in the State of New Jersey necessary to regulate licensing and registration, as well as conduct law enforcement activities. All rules and regulations established by the Waterfront Commission of New York Harbor shall continue in effect until amended, supplemented or rescinded by the New York Commission pursuant to the state administrative procedures act.



# 2023 LEGISLATIVE REVIEW

## National Association of Waterfront Employers (NAWE)

Robert Murray

President



The purpose of this report is to provide a review of the NAWE Legislative and Legal Team’s (“NAWE Team”) activities during the year 2023. The year 2023 marked the start of the First Session of the 118th Congress, which turned out to be quite tumultuous—especially in the House. In this report, we will provide a summary of the NAWE Team’s efforts in the First Session of the 118th Congress toward the accomplishment of a number of the association’s key goals and priorities for the year.

### Political Report 2023: First Session of the 118th Congress

As a result of the congressional midterm election on November 8, 2022, control of the House of Representatives flipped from the Democrats to the Republicans, and in the Senate, Democrats retained their narrow majority when Congress convened in January of 2023.

In the House of Representatives, Republicans gained the majority—with a 222-213 seat margin over Democrats—leading to significant changes in leadership for both parties in the House. After a chaotic start to the 118th Congress, House Republicans eventually chose Rep. Kevin McCarthy as Speaker after two weeks of fierce intra-party battles and 15 floor votes. House Democrats also made significant changes among the leaders of their caucus in the 118th Congress. Long-time House Democratic party leaders Nancy Pelosi (D-CA-12) and Steny Hoyer (D-MD-5) decided to step down from their respective roles as Speaker and Majority Leader. House Democrats elected Rep. Hakeem Jeffries (D-NY-08) as Minority Leader, the chamber’s top Democrat. In the Senate, Democratic Majority Leader Chuck Schumer (D-NY) returned as Senate Majority Leader as well as Senate Republican Leader Mitch McConnell (R-KY).

Kevin McCarthy’s brief run as House Speaker came to an abrupt end after he and other congressional leaders worked with President Biden to avoid a government shutdown. Despite avoiding a shutdown, hardline conservatives led by Rep. Matt Gaetz (R-FL-01), garnered the support of eight House Republicans to remove McCarthy as Speaker. While GOP conservatives had expressed frustration with the former Speaker’s bipartisan dealmaking, Democrats refused to rescue McCarthy over a slew of grievances, including his support for an impeachment inquiry into President Joe Biden. The ouster of McCarthy marks the first time a House Speaker has been removed from the post in U.S. history.

Following McCarthy’s removal, the House elected Mike Johnson (R-LA-04) as the new House Speaker 21 days later. Johnson successfully passed two short term CR packages that extended government funding through January and February of 2024.

### NAWE Engagement & Outreach in 2023

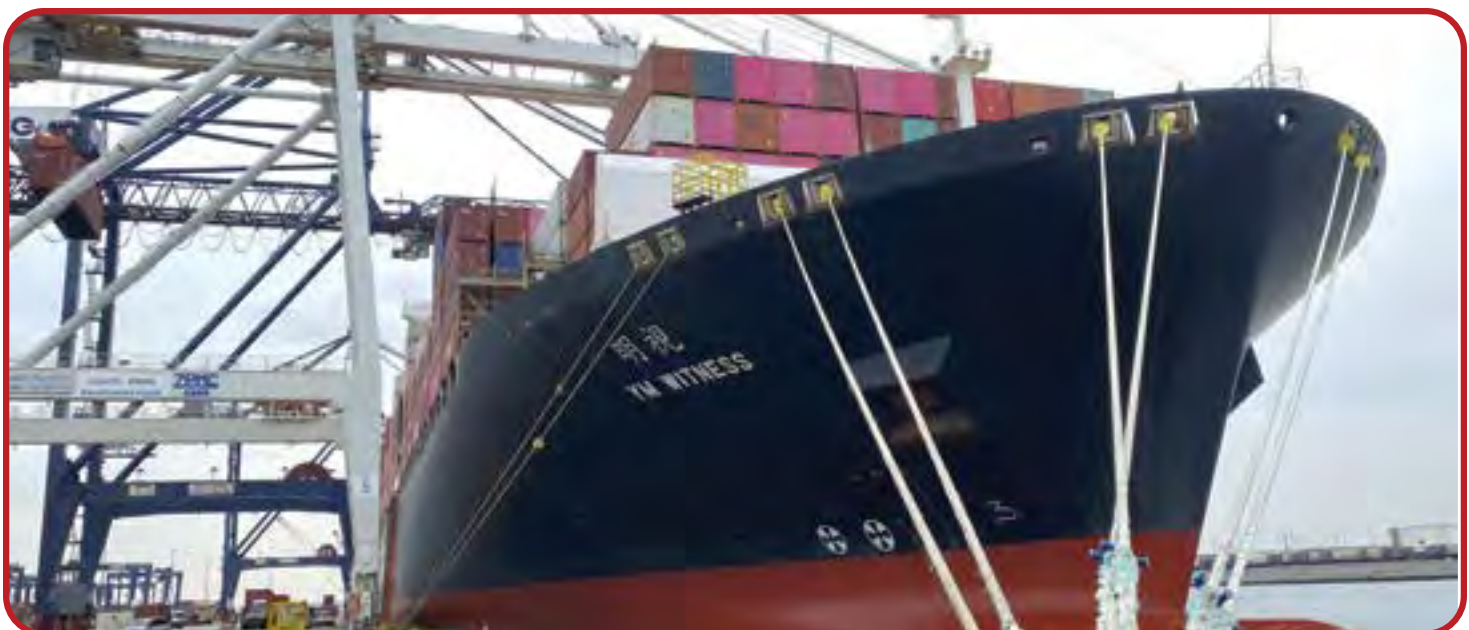
Over the course of 2023, NAWE continued to conduct extensive outreach meetings—engaging with key decisionmakers in the Legislative and Executive Branches on the association’s priorities. NAWE’s engagement and outreach efforts primarily were accomplished through the association’s Capitol Hill meetings; participation in NAWE On The Hill (NOTH) events; testifying before or submitting statements to congressional committees; meetings with federal agencies including officials and staff of the U.S. Maritime Administration (MARAD), and Commissioners and staff of the Federal Maritime Commission (FMC).

#### I. Legislative Branch Efforts

- a. NAWE’s Legislative Committee – NAWE’s Legislative Committee monitored, tracked, and reported on significant developments on hundreds of pieces of legislation introduced in the 1st Session of the 118th Congress of interest to the MTO and stevedore industry including: the FY 2024 budget and appropriations bills; key authorization bills—the National Defense Authorization Act (NDAA), Coast Guard Authorization Act (CGAA), Maritime Administration (MARAD) Authorization, Water Resources Development Act (WRDA), etc. The Legislative Committee, supported by Blank Rome Government Relations, serves as NAWE’s primary point of coordination for its Legislative Branch outreach.
- b. Capitol Hill Meetings - The NAWE team: consisting of NAWE President, Rob Murray; the Legislative Team (comprised of our consultants from Becker Poliakoff and Bank Rome) and Legal Team (outside counsel Jeff Vogel from Cozen O’Connor), and often, with representatives of NAWE member companies met with key members of the House and Senate and their personal office as well as committee staff to discuss NAWE’s 2023 priorities. During the meetings, NAWE representatives discussed the important role MTOs play in the supply chain as well as the impact burdensome and costly regulations would have on the safe and efficient flow of cargo on imports and exports.



- c. NAWE On The Hill (NOTH) – On May 23 and 24, 2023, representatives from dozens of NAWE member companies participated in this educational outreach effort on Capitol Hill. Supported by members of the association’s legal and lobbying team, NAWE members from terminal operating companies and public operating ports from all coasts, as well as representatives from NAWE’s associate members, were organized into six groups and conducted more than 50 meetings with members of Congress and their selected personal office and key committee staff. NAWE’s members participated in targeted meetings discussing a wide range of issues from Shipping Act concerns to federal programs to help MTOs purchase low/zero-emission cargo handling equipment, to insurance issues. In addition to the Capitol Hill meetings, NAWE held a reception that was widely attended by key staff from both the House and Senate, as well as FMC Chairman Dan Maffei, who addressed the gathering, and Commissioner Carl Bentzel.
- d. Congressional Hearing Testimony & Statements – A critical element of NAWE’s Capitol Hill engagement strategy was to facilitate opportunities for NAWE members to provide expert testimony to congressional committees at hearings and to submit policy statements and questions for the record on behalf of the association during congressional hearings. Below are a few examples of actions taken by the NAWE team in 2023:
  - i. On February 1, the House Committee on Transportation & Infrastructure held its first hearing of the 118th Congress on “The State of Transportation Infrastructure and Supply Chain Challenges.” NAWE member and Port Houston Executive Director, Roger Guenther, testified at the House T&I hearing. NAWE also prepared a statement on supply chain challenges that Congressman Mike Ezell (MS-04) submitted to the Committee during the hearing. Rep. Ezell offered a motion to make NAWE’s statement part of the official hearing record, and it was adopted by unanimous consent of the committee.
  - ii. On March 23, NAWE President Murray submitted a statement to the House Coast Guard and Maritime Transportation (CGMT) Subcommittee as part of a hearing it held to receive the FY 2024 budget requests for the U.S. Maritime Administration (MARAD) and the Federal Maritime Commission (FMC) and to discuss the status of the implementation of Ocean Shipping Reform Act (OSRA-2022) legislation approved in the 117th Congress. Testifying before the Subcommittee were MARAD Administrator RADM Ann Phillips, USN (Ret.), and FMC Commission Chairman Dan Maffei. Murray’s statement was officially entered into the hearing record. The NAWE Team also drafted and shared proposed questions on many issues of concern to the MTO industry with CGMT Subcommittee member offices. Members of the Subcommittee used the NAWE questions to query FMC Chairman Maffei and Administrator Phillips on the adequacy of their respective budget requests as well as on OSRA-2022 implementation.
  - iii. On March 28, Ports America President and CEO Matthew Leech provided testimony to members of the House’s CGMT Subcommittee during a hearing on the status of the supply chain. Mr. Leech’s participation in the House CGMT Subcommittee hearing helped bring a MTO perspective to the supply chain issue that had not yet been heard by a House Committee. As a result of Mr. Leech’s appearance, there were a series of positive press articles in various publications about the hearing.
  - iv. On June 7, with great input from NAWE’s Insurance Committee, the NAWE team prepared and submitted



questions for the record (QFRs) to the professional staff of the House Education & Workforce Committee Hearing regarding the association's concerns with hearing loss claims abuse and with staffing issues in the Department of Labor's Office of Workers' Compensation Programs (OWCP) that are impacting timely adjudication of pending Longshore and Harbor Workers' Compensation Act (LHWCP) claims.

- v. On September 21, U.S. Secretary of Transportation Pete Buttigieg testified before the full House T&I Committee. NAWE provided Rep. Mike Ezell (R-MS-04) with a hearing question on the NAWE-endorsed legislation to extend the Capital Construction Fund, which Ezell asked Buttigieg during the hearing. The Secretary responded to the lawmaker that the department and MARAD stand ready to work with Congress to fully implement the legislation if it is signed into law.

## II. Executive Branch Efforts

- a. FMC Meetings – During 2023, NAWE President Murray, various NAWE company officials, and NAWE's outside legal counsel Jeff Vogel met numerous times with FMC Commissioners and staff regarding a host of topics of interest to the association. Meeting with regulators, like legislators, is an important aspect of NAWE's strategic mission to provide technical guidance and offer expert operational analysis through effective advocacy. For example, Rob Murray, NAWE Legal Counsel Jeff Vogel, and the Director of Federal Government Affairs for the Port of Virginia, Andrew Sinclair, met with FMC Commissioner Maffei and other representatives of the commission individually to discuss OSRA-2022 implementation and issues related to the Commission's ruling on TCW v. Evergreen. Through the year, NAWE has worked diligently to strengthen our relationships with commissioners and their staff. The increased engagements have provided positive results.
- b. NAWE Sponsored Events - At NAWE's invitation, FMC Commissioners and staff have attended association-sponsored events such as: NOTH and NAWE's Annual Meeting to interact directly with our association members. Deputy Maritime Administration Tamekia Flack also spoke at the NAWE Annual Meeting.
- c. NAWE Committee's & Working Groups – During 2023, NAWE's Committees and Working Group contributed greatly to Executive Branch outreach and engagement efforts—all meeting regularly throughout the year to discuss issues of importance pertaining to each committee's jurisdiction. At the meetings, members engaged in an open dialogue and worked together to provide solutions to complex legislative and regulatory issues. Below are some specific highlights of their activities in 2023:
  - i. Environment, Energy, and Equipment Committee (E3C) - NAWE established a new committee, Environment, Energy & Equipment (“E3C”) to work directly with legislators and agency officials to educate decision makers about challenges our industry faces in transitioning from current cargo handling equipment (CHE) to zero and near-zero CHE. The NAWE team and the E3C have been at the forefront of NAWE's engagement and outreach efforts with EPA as the Clean Ports Program is developed and implemented. E3C helped craft NAWE's response to EPA's Request for Information on the Clean Ports Program and its members have met with EPA's staff, and in October 2023, participated in the agency's webinar on the program.
  - ii. Insurance Committee - On November 13, NAWE submitted comments to the OWCP Office in the Department of Labor regarding its proposed rule entitled, “Longshore and Harbor Workers' Compensation Act: Civil Money Penalties Procedures.” While supportive of updates in the administration of LHWCA that promote accountability, fairness, and clarity, NAWE believes that certain sections of the Proposed Rulemaking are unnecessary, punitive, or need further clarification. The NAWE Insurance Committee brought this issue to the attention of NAWE members and helped shaped the association's official comments that were filed in response to the proposed OWCP rulemaking. The committee remains engaged on issues related to the Longshore Act and identifying future action items to address in the new year.
  - iii. Legislative Committee – In addition to supporting the NAWE team on legislative matters and Capitol Hill engagement and outreach, the Legislative Committee monitored and reported on developments on all federal infrastructure grant programs of interest to NAWE such as the Port Infrastructure Development Program (PIDP), U.S. Marine Highways Program, RAISE, Mega, MPDG, DERA, PROTECT, CRISI, and Port Security.
  - iv. Security Committee – In Spring of 2023, a Wall Street Journal article on potential threats posed by Chinese manufactured cranes generated considerable concern on Capitol Hill. To bring some proper perspective to the issue, NAWE, with great input from members of the Security Committee, prepared and issued a press release to provide some facts on the issue. The NAWE press release affirms that NAWE prioritizes the security of its members and understands the role they play in the safety and reliability of the supply chain and national security. While acknowledging the concern about Chinese cranes, the release notes that “officials do not point to any instances of

cranes being used for these purposes and are currently conducting investigations.” The release states that NAWE members have a “system of layered physical and cybersecurity in accordance with the Marine Transportation Security Act (MSTA), the Department of Homeland Security, the Department of Justice and the Cybersecurity and Infrastructure Security Agency.”



- v. OSRA Working Group – NAWE’s OSRA Working Group served as the association’s point of coordination on efforts related to OSRA-2022 implementation and rulemaking. Supported by NAWE’s counsel Jeff Vogel, regular updates were provided to NAWE members on FMC issues during NAWE Legislative Committee meetings on topics such as:

1. OSRA- 2022 Implementation;
2. Legal developments related to the FMC’s decision in Docket No. 1966 (I) TCW v. Evergreen;
3. FMC’s Maritime Transportation Data Initiative (MTDI);
4. FMC Commissioner Rebecca Dye’s Proposals to Address Supply Chain Bottlenecks

- d. Congressional Oversight of Executive Branch – During 2023, as a result of NAWE’s effective Capitol Hill outreach, a number of members of Congress directly engaged senior Biden Administration officials on issues of importance to NAWE. Below are a few such examples:

- i. August 24, U.S. Representatives Jake Auchincloss (D-MA-04) and Brian Babin (R-TX-36) sent a bipartisan letter to FMC Chairman Daniel Maffei urging the Commission to follow the intent of Congress by removing marine terminal operators (MTOs) from the substantive demurrage billing requirement under the proposed rulemaking for the Ocean Shipping Reform Act of 2022 (OSRA-2022), which was enacted into law during the 117th Congress. In the letter, the Representatives urged that the Commission’s rulemaking should be based on the final version of the OSRA-2022 bill that became law. Specifically, Reps. Auchincloss and Babin cite that burdensome demurrage billing requirements and other provisions that would have potentially negative impacts on MTOs and the supply chain included in the original House or Senate bills, but removed from the final version of the OSRA-2022 that became law, should not be part of FMC’s proposed rulemaking for implementation of OSRA-2022. The Auchincloss/Babin letter was added to the Public Docket for the OSRA-2022 rulemaking.
- ii. On December 1, Congressmen Jake Auchincloss (D-MA-04) and Mike Ezell (R-MS-04) sent a bipartisan letter to FMC Chairman Daniel Maffei urging the Commission to use its existing authority to establish a National Port Advisory Committee comprised of public port authorities, marine terminal operators (MTOs) and maritime labor. NAWE prepared a draft letter for Congressmen Auchincloss and Ezell, who adapted it and submitted it to the FMC. NAWE supports standing up this committee, and the idea for the committee was born out of NAWE’s comments during Commissioner Dye’s “Fact Finding 29” initiative. A National Port Advisory Committee would give ports, MTOs and labor the same ability to advise the Commission on current and emerging issues as shippers are provided through the National Shippers Advisory Committee.

### **Status Major Legislation in 2023**

- I. NAWE’s Capital Construction Fund (CCF) Legislative Proposal, H.R. 4993

In the 117th Congress, NAWE included among its legislative priorities a bill that would help MTOs transition from fossil fuel powered cargo handling equipment (CHE) to zero emission (ZE) and near zero emission (NZE) CHE as states and the federal government require and implement stricter emission standards. Given that passage of a large tax package in the divided 118th Congress seems highly unlikely, the NAWE team (led by outside counsel Jeff Vogel) proposed a novel approach that would neither require the consent of Congress’ two tax writing committees nor require a federal appropriation or a grant from an oversubscribed federal grant program. Rather NAWE proposed an extension of the Capital Construction Fund (CCF) statute which is administered by MARAD to allow MTO’s to deposit a portion of their taxable income derived from operations into the CCF, and then allow MTOs to utilize, on a tax deferred basis, funds from the CCF to purchase, construct, reconstruct, or retire debt on MTO CHE and related infrastructure.

Over the course of 2023, the NAWE team conducted initial outreach meetings with key committee and MARAD staff

on the bill concept collecting valuable feedback and helping to shape the draft bill in a way to address their concerns and thereby avoid their opposition. The NAWE team subsequently prepared a white paper and draft bill and conducted meetings on Capitol Hill with key committee and personal office staff to socialize the proposal and to build support for it. During the meetings, the NAWE team detected additional areas of concern that we're working to address. The NAWE team formulated a strategy on how to move the bill forward as a maritime provision on the FY 2025 NDAA. Key milestones in 2023 on the CCF bill were:

- NAWE secured a lead Republican sponsor, Rep. Mike Ezell (R-MS-04) and a lead Democratic sponsor Rep. Troy Carter Sr. (D-LA-02). In July 2023, the bipartisan CCF bill, H.R. 4993, was introduced.
- NAWE gathered bill cosponsors through meetings with House members—focusing initially on members of the House T&I Committee.
- NAWE conducted outreach to other organizations—gaining the support of the Institute of the International Container Lessors (IICL)—who agreed to sign on to NAWE's industry support letter which was sent to all members of Congress requesting that they cosponsor H.R. 4993. NAWE conducted productive meetings with the leadership of the Inland Rivers, Ports, and Terminals (IRPT) association about H.R. 4993. As a result, an IRPT board member penned a favorable op-ed about the CCF legislation in *Waterways Journal* in 2023.

## II. Congressional Action on FY 2024 Budget and Appropriations Legislation in 2023

- a. Congress Receives FY 2024 Biden Administration Budget Request – In March, President Biden transmitted his FY 2024 Budget Request to Congress officially starting the congressional budget process. The NAWE Legislative team reviewed the Administration's budget request and provided NAWE members with the detailed spending levels sought in FY 2024 for Department of Transportation's (DOT) various infrastructure grant programs.
- b. Fiscal Year 2024 Budget/Appropriations Report – With the different political parties each having slim majorities in each respective chamber of Congress, little progress was made in 2023 to advance the FY 2024 appropriations bills. By the end of the year, the House had passed seven of the 12 individual appropriations bills, including Energy and Water—which provides funding for U.S. Army Corps of Engineers' dredging and navigation projects—while the Senate passed only three bills as part of a minibus package, which included the Transportation-HUD (T-HUD) appropriations that provide funds for the operations of and programs administered by DOT. It was initially thought that the deal reached between Congress and President Biden in June 2023 on legislation to end the weeks-long debt limit standoff would make reaching an agreement on the FY 2024 appropriations bills easier. However, a group of hardline GOP conservative members refused to adhere to the FY 2024 spending topline agreement established in the Federal Responsibility Act (FRA or more commonly known as the "Debt Limit Bill"). As a result of the dysfunction in the House and the narrow Democratic majority in the Senate, Congress was only able to twice narrowly avoid shutdowns of the federal government after the end of FY 2023 on September 30th by passing temporary funding measures known as continuing resolutions (CRs). The first CR funded the federal government for a period of 45 days. It was hoped that Congress would have sufficient time to come to an agreement on the FY 2024 appropriation bills. The initial CR was extended again in mid-November when new House Speaker Mike Johnson secured approval of a "laddered" CR under which the federal government is currently operating. The laddered CR includes two tiers of deadlines for funding federal programs. The first tier expires on January 19, 2024, and includes the T-HUD and Energy and Water appropriations bills, as well as Agriculture and Military Construction-VA. The remaining eight appropriations bills are set to expire on February 2, 2024. The NAWE team will continue to closely monitor and report further on any significant developments on FY 2024 appropriations and supplemental funding measures in the 2nd Session of the 118th Congress.



## III. Congressional Action on Key Authorization Bills in 2023

- a. Coast Guard Authorization Act (CGAA) – On April 26, the House T&I Committee voted to approve H.R. 2741, the Coast Guard Authorization Act of 2023. The bipartisan bill was jointly introduced on April 20, by House T&I Committee Chairman Sam Graves (R-MO-06) and Ranking Member Rick Larsen (D-WA-02). The bill would

reauthorize the activities and programs of the U.S. Coast Guard. According to the T&I Committee’s press release, the bill authorizes appropriations for the Service for the next two fiscal years at FY23 levels, plus inflation. Since then, action on the CG Authorization has been at a standstill. In late June, the House Transportation & Infrastructure (T&I) Committee Chair Sam Graves (R-MO-06) filed the committee report for the House version of the Coast Guard Authorization Act of 2023, H.R. 2741, which his committee passed in April. Chairman Graves offered the T&I version of the CG Authorization as a floor amendment to the FY 2024 NDAA, but it was not made in order by the House Rules Committee as was the case for a number of other amendments that were deemed to be “non-defense” related. The Senate has not yet begun formal work on its version of the Coast Guard Authorization, but according to NAWE’s Commerce, Science, and Transportation (CST) Committee sources, informal discussions on a CG Authorization have been underway for some time.

- b. The National Defense Authorization Act (NDAA) for Fiscal Year 2024, H.R. 2670 – The NAWE team closely monitored and reported on significant developments related to the National Defense Authorization Act for FY 2024 (NDAA) during 2023. After months of negotiations, Congress reached an agreement on a final version of the FY 2024 NDAA, H.R. 2670. The Senate approved the FY 2024 NDAA conference bill by an overwhelming vote of 87-13 on December 13. The House of Representatives took up the measure the following day and passed it by a vote of 310-118. After passage in the House, the FY 2024 NDAA was transmitted to the White House, and President Biden promptly signed it into law. The NDAA is of significant interest to many NAWE members because the legislation has been enacted for 63 consecutive years and contains a maritime policy title that provides the annual authorization for the U.S. Maritime Administration (MARAD) and the various programs the agency administers as well as other maritime-related provisions. Below are details of provisions included in the FY 2024 NDAA Conference bill of interest to NAWE members:
  - i. FY 2024 Authorized Funding Levels for MARAD Administered Grant Program
    - 1. Port Infrastructure Development Program (PIDP) – \$500 million
    - 2. U.S. Marine Highways – \$15 million
    - 3. Marine Environmental Technical Assistance (META) – \$15 million
  - ii. Legislative Provisions
    - 1. Sec. 3511 – Expands PIDP to make eligible for grants port and port-related infrastructure projects that supports seafood and seafood-related businesses.
    - 2. Sec. 3512 – Clarifies the criteria for determining the eligibility of small inland river and coastal ports for assistance under PIDP.
    - 3. Sec. 3513 – Expands projects eligible for PIDP grants to include infrastructure to provide shore power to passenger and freight moving vessels.
    - 4. Sec. 3521 – Requires MARAD to prepare reports to Congress on:
      - a. Report on port preferences for U.S.-Flag vessels.
      - b. Report on increasing the effectiveness of the Marine Highways program
    - 5. Sec. 3523 – Study on foreign ownership and control of 15 largest U.S. container ports
- c. Water Resources Development Act (WRDA) - On December 5 and 12, the Water Resources and Environment Subcommittee of the House Transportation & Infrastructure Committee (T&I) held two hearings on the 2024 Water Resources Development Act (WRDA). In the first hearing, Michael Connor, Assistant Secretary of the US Army for Civil Works, provided testimony to the Subcommittee. The second hearing provided an opportunity for various stakeholder industries to provide testimony on WRDA. The House T&I Committee also announced that it will hold its “Member Day”—when House members come before the committee to share their requests for projects and study proposals that they’d like to see included and authorized in the 2024 WRDA bill—on January 17, 2024. The House WRDA process was delayed when all action in the House came to a standstill when the House was without a Speaker. In the Senate, the WRDA process is farther along with the Senate Committee on Environment & Public Works (EPW) essentially wrapping up its final hearing on November 29th. It is expected that the Senate and House will report their respective bills from committee for floor votes early in 2024, and soon afterward begin a conference committee to negotiate a final version of WRDA 2024. The NAWE Team will continue to monitor and report on further developments as they occur in the 2nd Session of the 118th Congress.

#### IV. Other Legislation and Congressional Actions of Interest to NAWE:

NAWE's Legislative Committee is the primary forum where members of the association are provided regular updates on legislation of interest to our industry. The Legislative Committee monitored and reported on significant developments on the following legislation during the 1st Session of the 118th Congress:

- Ocean Shipping Reform Implementation Act, H.R. 1836 - On March 28, Congressman Dusty Johnson (R-SD) introduced H.R. 1836, the Ocean Shipping Reform Implementation Act. Joining Rep. Johnson as an original cosponsor of the bill was Rep. John Garamendi (D-CA). It is important to note that Reps. Garamendi and Johnson were the lead sponsors of the House version of the OSRA-22 bill (H.R. 4996) in the 117th Congress. In February 2023, the NAWE Legislative and Legal team received a copy of the initial draft bill that was ominously titled, "OSRA-22 Technical Corrections." The draft bill was being circulated by Congressman Garamendi's staff. NAWE team, led by counsel Jeff Vogel, prepared a legal analysis of the draft which specified NAWE's areas of concerns and the NAWE team met with Garamendi's staff and shared suggested revisions to improve the draft bill. As a result of NAWE's direct engagement, language that would have imposed OSRA 2022's detention and demurrage requirements on MTOs was removed from the bill. NAWE recommended that a FMC port advisory committee be established and that the membership of the committee be balanced. The original bill sought to have 16 public port authority and only 8 MTO members. NAWE's view prevailed in the substitute bill approved by the T&I Committee with a membership of 5 MTOs, 5 port authority, and 3 union representatives on the advisory committee. Lastly, NAWE had the requirement contained in the original bill that would have required MTOs to provide significant volumes of sensitive data to the Bureau of Transportation Statistics, including yard capacity for containers, yard utilization by containers, berthing schedules and windows, "gate out" and "gate in" information, total containers unloaded daily from and loaded daily onto vessels, and the average turn for commercial vehicles removed from the bill that the T&I Committee passed. While the bill is far from perfect, NAWE's engagement has vastly improved it, and the association intends to seek additional improvements if the measure continues to move through the legislative process.
- Ocean Shipping Antitrust Enforcement Act, H.R. 1696 - In March 2023, Rep. Jim Costa (D-CA-21) introduced H.R. 1696, the Ocean Shipping Antitrust Enforcement Act. Prior to the introduction of the bill, Rob Murray and the NAWE team met with Congressman Costa's staff to discuss NAWE's concern that the draft legislation applied to MTOs. Despite receiving assurances from Costa's staff that MTOs would be carved out from the bill, once introduced, it was clear that H.R. 1696 (as introduced) did not carve out MTOs. The NAWE Legislative team arranged a follow up meeting with Costa's staff during the NOTH event in May. NAWE signed and delivered letters expressing the association's strong concerns about the Ocean Shipping Antitrust Enforcement Act of 2023 (H.R. 1696) to the bill's sponsor Rep. Jim Costa (D-CA-21) and cosponsors Reps. John Garamendi (D-CA-8), Josh Harder (D-CA-9), Jimmy Panetta (D-CA-19), and Dusty Johnson (R-SD-AL). The letter states that H.R. 1696, "...in its current form, would have a devastating impact on the manner in which U.S. ports—particularly in California—operate, leading to unnecessary supply chain congestion and a potential reduction of U.S. exports." The letter explains H.R. 1696's potential negative impact on U.S. marine terminal operators and urges the authors of the bill to "revisit the text" of the bill to exclude MTOs from the antitrust immunity repeal. As a result of the opposition of NAWE and other industry stakeholders, the House T&I Committee decided not to take action on H.R. 1696 in the 1st Session of the 118th Congress.
- The Gulf of Mexico Commerce Protection Act (H.R. 5239) - On August 18, Rep. Clay Higgins (R-LA-03) introduced a bill titled, "The Gulf of Mexico Commerce Protection Act," H.R. 5239. Congressman Higgins' bill would prohibit the issuance of an interim or final rule that establishes a vessel slowdown zone in the Gulf of Mexico until the Secretary of Commerce completes a study demonstrating that proposed mitigation efforts would have no negative impact on supply chains. The bill was referred to the House Transportation & Infrastructure Committee and currently has 7 cosponsors. To date, no further action has occurred on the bill.
- North Atlantic Right Whale Amendment Passed by House - Representative Mike Collins (R-GA-10) introduced an amendment to the Department of Interior, Environment, and Related Agencies Appropriations Act for fiscal year 2024 that would prohibit funds from being used to finalize, implement, administer, or enforce the National Oceanic and Atmospheric Administration's (NOAA) vessel speed limiter rule. Earlier this year, NOAA published a proposed rule that would limit



the speed of all vessels over 35 feet to ten knots within navigable waters along the Atlantic seaboard aiming to protect the North Atlantic Right Whale. The amendment was adopted, and the House passed the bill on November 3.

#### V. NAWE's Work with Other Industry Groups on Issues of Common Interest

- a. NAWE Submits Amicus Brief for TCW v. Evergreen Litigation Appeal – In 2023, NAWE registered its opposition to FMC's decision in the TCW v. Evergreen case by formally submitting a joint amicus brief in support of Evergreen's appeal. The FMC's decision in the case ruled that Evergreen's imposition of equipment detention charges on a holiday weekend was in violation of the incentive principle and, therefore, unreasonable under the Shipping Act. The decision has resulted in significant uncertainty regarding the imposition of weekend and holiday terminal storage fees. NAWE filed the joint amicus brief with the World Shipping Council in the D.C. Circuit Court.
- b. NAWE Joins AAPA in Support of Truck Emission Grant Program - On April 27, FHWA opened FY 2022-2023 grant applications for the Reduction of Truck Emissions at Port Facilities (RTEPF) program, which will make \$160 million available over two years to test, evaluate, and deploy projects that reduce port-related emissions from idling trucks, including through the advancement of port electrification and improvements in efficiency. On May 4, NAWE President Rob Murray joined AAPA President Chris Connor and the leaders of Pacific Northwest Waterways Association, American Great Lakes Ports Association, North Atlantic Ports Association, Washington Trucking Associations, Nuvera Fuel Cells, and Friends of the Earth in writing FHWA Administrator Shailen Bhatt to express support for the RTEPF grant program and to request that the application window be lengthened by two months, with a new application deadline of August 26, 2023.
- c. NAWE Signs CBP Staffing Coalition Letter Requesting 1,000 New Customs and Border Protection (CBP) Officers – On December 5, NAWE signed a letter initiated by the CBP Staffing Coalition requesting funding for 1,000 new Customs and Border Protection (CBP) officers within the fiscal year 2024 emergency supplemental funding request, which is a necessary legislative tool given that Congress could not come to an agreement on a year-long appropriations package. Congress is currently considering adding provisions to the emergency supplemental, which would provide security assistance to Ukraine, Israel and Taiwan, and also bolster security along the southern border. There is currently a shortage of CBP officers. According to the CBP's most recent staffing models, the agency needs to hire at least 4,200 CBP officers and, without funding for at least 1,000 new officers, ports will be left understaffed, and shippers will endure longer wait times. Advocating for this additional funding is important to ensure the CBP can maintain its operational capacity at ports of entry so that supply chain congestion, as well as lost output, wages and jobs caused by border delays, can be avoided.

#### 2023 Wrap-up and 2024 Legislative Outlook

In summary, the First Session of the 118<sup>th</sup> Congress proved to be quite eventful. The divided Congress made reaching consensus on legislation difficult and resulted in final decisions on the FY 2024 appropriations bills being punted into the Second Session of the 118<sup>th</sup> Congress. Despite the contentious political environment, NAWE was successful in advancing its priorities and achieving meaningful progress on several bills and issues of consequence to the marine terminal and stevedore industry.

As we embark on the 2nd Session of the 118th Congress, a narrowly-divided Congress returns to Washington in 2024 with a full agenda and fewer days to accomplish important legislative priorities. Not only must House and Senate lawmakers continue to work on the unfinished business of 2023, including passage of the fiscal year 2024 appropriations bills, the Coast Guard Authorization Act (CGAA), and other measures, but they must also tackle the new business of 2024, including passing the fiscal year 2025 National Defense Authorization Act (NDAA) and funding the government through the new fiscal year.

This will all occur during an election year in a highly politicized environment with a compressed schedule. In 2024, Congress will be in session six fewer weeks through the election in early November than it was in 2023, due to the addition of a month-long district work period for members in October and time off for both the Democratic and Republican National Conventions.

This abbreviated legislative schedule is primed to influence the timing and outcome of a number of NAWE's legislative priorities. The CGAA, which reauthorizes the activities of the U.S. Coast Guard each year and serves as a vehicle for a number of maritime-related provisions that affect our industry, has already experienced delays since passing the House T&I Committee last April, and may experience further delays. Congress may also opt to pass temporary funding extensions (which will prohibit the establishment of new programs or stall the release of funds for long-term projects), pass a quicker, less thorough version of the NDAA (which may affect the maritime package within the legislation), or punt these legislative priorities into a lame duck session after the election. Given the potential for these developments to affect our members and our industry, it is important for NAWE and our members to remain vigilant in reaching out to congressional lawmakers to advocate for our priorities.

The NAWE team is eager and ready to advance the association's goals in 2024. We will continue to keep members apprised of new legislative developments as they occur throughout the new year.

# 2023 REPORT OF COUNSEL

## DISSOLUTION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR (COMMISSION)

On March 1, 2023, the Supreme Court of the United States heard oral arguments from the States of New York and New Jersey and the Solicitor General of the United States. The Court issued its 9-0 opinion on April 18, 2023, holding that New Jersey could unilaterally withdraw from the Waterfront Commission Compact despite New York's opposition. The Commission dissolved effective July 17, 2023, with the New Jersey State Police (NJSP) and the newly created New York Waterfront Commission (NYWC), taking over the Commission's functions in their respective states.

On April 19, 2023, SANYNJ wrote to the Commission informing it that SANYNJ as well as its direct-employer members would not pay assessments to the Commission for the second quarter of 2023 and that SANYNJ on its own behalf and on behalf of its direct-employer members sought reimbursement for the amounts that the Commission had assessed in excess of its statutory mandate. After the failure to effectuate such reimbursement, the matter was headed towards litigation.

After lengthy negotiations coordinated by SANYNJ Counsel, on September 11, 2023, a Settlement Agreement was executed by SANYNJ, on behalf of itself and its direct-employer members, the Waterfront Commission Wind Down Administration Trust, the States of New York and New Jersey, the NYWC, the NJSP, Commissioners Paul Weinstein and Jennifer Davenport, and the Metropolitan Marine Maintenance Contractors' Association (MMMCA). Since only New Jersey companies were entitled to the credits, an equitable formula was used to compensate New York companies that did not receive the credits.

The Settlement Agreement created a cash Settlement Fund of \$7,000,000.00. In addition, \$2,000,000.00 in assessment credits to be issued by the NJSP over a two-year period was established. To be eligible to receive payment and/or assessment credits under the Settlement Agreement, a company had to have paid Commission assessments in the year 2022 and a licensed company had to make its Commission assessment payment for the second quarter of 2023.

Upon submission of individually executed Employer Settlement Agreements, representatives of New Jersey directed the release of that entity's pro rata share of the Settlement Funds to SANYNJ for disbursement to SANYNJ and MMMCA members. Approximately 96% of the Settlement Fund had been distributed to members of SANYNJ and MMMCA at year end.

## NYSA-ILA EMPLOYMENT LAW PROGRAMS

### Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

The NYSA-ILA USERRA Coordinator continues to review requests for military leave, notify the employees of their obligations when seeking reemployment, and acts as a liaison with the different NYSA-ILA fund departments to ensure appropriate benefits are credited upon return from service.

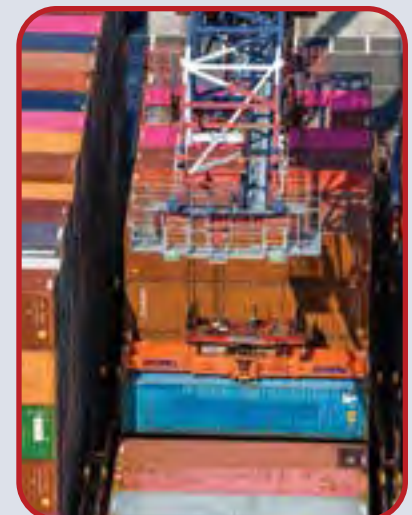
### Anti-Discrimination and Anti-Harassment Policy; Family-and-Medical-LLeave Procedures

The NYSA-ILA Equal Employment Opportunity Officer continues to investigate complaints brought under the port wide Respect & Dignity Anti-Discrimination and Anti-Harassment Policy.

### NYSA-ILA Accommodations Team (A-Team)

The A-Team continues to entertain requests from longshore workers seeking reasonable accommodations under relevant federal and state laws that would permit them to continue to work in the industry, despite certain disabilities.

The A-Team monitors past accommodations that have been provided and has found that most employees are performing well in their jobs. The A-Team also considers referrals from the NYSA-ILA Absenteeism Committee and the NYSA-ILA Seniority Board concerning employees with unexcused absences that raise medical issues.





## **NYSA-ILA Drug and Alcohol Abuse Program**

The NYSA-ILA Drug and Alcohol Abuse Program provides drug and alcohol abuse services to those members of the industry requiring help by placing them in in- and out-patient treatment programs and referring them for the counseling services provided by the Management-ILA Managed Health Care Trust Fund (MILA). Management and labor are working on amendments to this program.

### **State of New Jersey**

In February 2021, the State of New Jersey enacted legislation legalizing the use and possession of recreational cannabis as well as regulating the commercial sale of cannabis in the state. SANYNJ continues to seek certain technical amendments to the law. Nothing in the law prohibits an employer from maintaining a drug-and-alcohol-free workplace or requires employers to permit the use, consumption, being under the influence of, possession, transfer, or sale of cannabis in the workplace. Accordingly, cannabis remains a prohibited substance under the NYSA-ILA Drug and Alcohol Policy.

Employees testing positive for cannabis at levels proscribed in the policy will continue to incur a positive test result and be subject to the violation provisions of the policy. SANYNJ and the ILA have agreed to remove cannabis from the pre-employment drug test screen to ensure compliance with the relevant law.

In September 2022, the New Jersey Cannabis Regulatory Commission (CRC) issued guidance for workplaces as an initial step toward formulating and approving standards for Workplace Impairment Recognition Expert (WIRE) certifications. The CRC guidance on workplace impairment and the accompanying Observed Behavior Report are meant to support the right of employers to create and to maintain safe work environments, and to affirm the right of employees to due process. The Observed Behavior Report is not limited to behavior related to the use of cannabis but applies to all prohibited substances.

The CRC guidance reiterates that adverse employment actions based solely on the presence of cannabis in an employee's body cannot be undertaken, but employers have the right to conduct a drug test upon reasonable suspicion of impairment observed while the employee was engaged in the performance of the employee's work responsibilities or following a work-related accident subject to investigation by the employer.

An employer may use a cognitive impairment test to establish reasonable suspicion of cannabis use or impairment at work. The CRC has published a model Reasonable Suspicion Observed Behavior Report for this purpose. Until New Jersey establishes certification programs for WIREs, employers should designate staff members who are sufficiently trained to determine impairment and qualified to complete the CRC's Observed Behavior Report to assist with making these determinations.



### **State of New York**

In March 2021, the State of New York enacted legislation that legalized the use of recreational cannabis for individuals ages twenty-one and older and established a Cannabis Control Board. The law makes clear that it is not intended to limit the authority of any employer to enact or to enforce policies relating to cannabis in the workplace. Employers can prohibit certain activities, such as banning cannabis use during work hours or while on call and barring possession of cannabis while on employer property or in areas used by employees, such as desks or lockers.

The legislation also prohibits discrimination against an employee because of an individual's lawful activities to include outside work cannabis use in accordance with state law. However, an employer would not be in violation of the law if it takes action related to the use of cannabis by an employee that is required by state or federal law or if the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position. In both New York and New Jersey, employees utilizing medical cannabis would need to be assessed for a potential reasonable accommodation through an interactive process.

## 2023 FEDERAL LEGISLATIVE AND REGULATORY ACTIVITY

### FEDERAL LEGISLATION

In response to the supply chain crisis of 2022, several bills affecting the maritime industry were introduced in the 118th Congress, including:

#### **Ocean Shipping Antitrust Enforcement Act of 2023 (H.R. 1696)**

This legislation would eliminate antitrust exemptions that currently allow ocean common carriers to enter agreements on shipping rates, pooling arrangements, and shipping route allocations. The Port of NY/NJ Sustainable Services Agreement (PONYNJSSA), consisting of the six marine terminal operators (MTOs) operating in the Port of NY/NJ, responded to the effort to eliminate antitrust immunity and questioned the assertion that such action would ease port congestion or resolve existing supply chain challenges in written comments. The House Coast Guard Subcommittee held a hearing in March 2023 with testimony from carrier, stevedore, shipper, and port representatives but no further action had been taken on the bill by year end.

#### **Ocean Shipping Reform Implementation Act of 2023 (H.R. 1836)**

This bill would create a National Port Advisory Committee, consisting of five MTOs, five port authorities, and three longshore and maritime labor representatives, and a National Ocean Carrier Advisory Committee, consisting of nine ocean carriers. The twenty-two maritime industry representatives would be appointed by the Federal Maritime Commission (FMC) to advise the FMC on policies relating to the competitiveness, reliability, and efficiency of the international ocean freight delivery system. The bill was reported by the House Transportation Committee (H. Rept. 118-218) on September 26, 2023, and placed on the House calendar for further consideration.

#### **Ocean Shipping Competition Enforcement Act (H.R. 2710)**

This legislation would allow the FMC to block any agreement among ocean carriers and MTOs that is determined to be unreasonably anticompetitive without having to first obtain a court order. Currently the FMC reviews proposed agreements to ensure any such agreements are not unreasonably anticompetitive. However, the FMC cannot block an anticompetitive agreement without first obtaining a court order. If the court fails to act in time, then the agreement takes effect. The bill was referred to the House Transportation Committee. There had been no further action on the bill at year end.

#### **Port Crane Security and Inspection Act of 2023 (H.R. 3169)**

Under this bill, container gantry cranes manufactured by a foreign adversary (for example, China) would be subject to the inspection of their cyber systems for potential security risks or threats before being placed into service at a United States port. Cranes already in place at U.S. ports that pose a security risk or threat would be taken offline until it could be certified that the cranes no longer pose a risk or threat. Ports would be barred from operating foreign manufactured cranes procured after enactment of the legislation and prohibited from operating foreign software five (5) years after the enactment of the bill. The bill was referred to the House Homeland Security Committee. A hearing was held in May 2023 with testimony from representatives of the U.S. Coast Guard, the Cybersecurity and Infrastructure Security Agency, and the Transportation Security Administration. There had been no further action on the bill at year end.



### DEPARTMENT OF LABOR (DOL)

#### **Longshore and Harbor Workers' Compensation Act (LHWCA): Civil Monetary Penalty Procedures**

In September 2023, the DOL published a rulemaking that would revise the current procedures for imposing and appealing civil monetary penalties established by the LHWCA, the proposed rule focuses on the process used to assess civil penalties on entities that fail to report worker injuries accurately and timely. The changes also provide for individualized failure notices and additional opportunities to contest penalties. The matter was pending before the DOL at year end.

## **New Overtime Rule**

In September 2023, DOL issued a rulemaking to update and to revise the regulations issued under the Fair Labor Standards Act implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. The proposed rule would increase the minimum salary level substantially from \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year) – a \$20,000 increase. The proposed changes would leave the “duties” tests necessary to qualify for one of these exemptions intact. The matter was pending before the DOL at year end.

## **Retirement Security Rule: Investment Advice Fiduciary**

The DOL published a rulemaking that would revise and expand the definition of an Investment Advice Fiduciary to include a person who provides investment advice or makes an investment recommendation to a retirement investor; the advice or recommendation is provided for a fee or other compensation; and the person has discretionary authority or control with respect to purchasing or selling securities or other investment property for the retirement investor; or makes investment recommendations on a regular basis as part of the person’s business; or the person making the recommendation represents or acknowledges that they are acting as a fiduciary when making investment recommendations. The matter was pending before the DOL at year end.

## **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**

### **Artificial Intelligence (AI)**

In April 2023, four federal agencies, including the EEOC, released a joint statement pledging to increase enforcement efforts to protect the public from bias in automated systems and artificial intelligence. The statement identifies a few areas where automated systems can lead to illegal discrimination or violate other laws because the output of automated systems may be skewed by datasets that are unrepresentative or imbalanced, incorporate historical bias, or contain other types of errors.

### **EEOC Technical Document on AI and Title VII; Presidential AI Executive Order**

In May 2023, the EEOC released a new AI technical assistance document that outlines considerations for incorporating automated systems into employment decisions. This cautions employers utilizing such systems to evaluate whether their hiring, promotion, and firing procedures have a disparate impact on a class protected under Title VII of the Civil Rights Act.

President Biden signed Executive Order 14110 (EO) that advances the United States’s policy framework regarding AI. The EO directs various federal agencies to take exploratory steps regarding the use of AI. In the employment area, the EO focuses on the effect of AI on immigration policy, civil rights issues, wage-and-hour compliance, and labor risks and opportunities.

### **Proposed Enforcement Guidance on Harassment in the Workplace**

The EEOC released its revised enforcement guidance on harassment in the workplace, its first update on harassment since 1999. The new guidance reflects changes in the law, including a Supreme Court decision that held Title VII of the Civil Rights Act’s prohibition on sex discrimination includes discrimination based on sexual orientation and gender identity. The guidance also addresses issues arising from the #MeToo movement and virtual and online harassment.

## **FEDERAL MARITIME COMMISSION (FMC)**

### **New FMC Rule Expands Carriers’ Liability**

In April 2023, the FMC amended its Rules of Practice and Procedure governing the compromise, assessment, mitigation, settlement, and collection of civil penalties. These amendments follow the statutory changes in OSRA 22 on penalties and refunds. Before OSRA 22, anyone violating the Shipping Act of 1984, or a regulation or order of the FMC issued pursuant to the Shipping Act, was liable for a civil penalty. OSRA 22 adds an additional remedy, that is, the refund to importers and exporters of a charge that is found to violate the Shipping Act, or any FMC regulation or order issued under that act, including overcharging for detention or demurrage, or issuing invoices with incorrect information.

## **FEDERAL TRADE COMMISSION (FTC)**

### **Non-Compete Clause Rule**

In January 2023, the FTC published a proposed rule that would prohibit an employer’s use of non-competition (non-compete) clauses in employment agreements and other employee contracts as an unfair method of competition, and unlawful under the FTC Act. It would be an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; to maintain with a worker a non-compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non-compete clause. The proposed rule would also require employers to rescind non-compete clauses already in effect and preempt any state law that is more permissive in enforcement of non-compete restrictions.

However, it would allow states' laws that are more restrictive of enforcement of non-compete restrictions. The proposed rule was still pending before the FTC at year end.

## **NATIONAL LABOR RELATIONS BOARD (NLRB)**

### **Non-Compete Agreements May Violate the NLRA**

In May 2023, the NLRB General Counsel issued a memorandum to agency officials setting forth the view that the proffer, maintenance, and enforcement of non-compete provisions in employment contracts and severance agreements violate the National Labor Relations Act (NLRA), except in limited circumstances. The memorandum stated that overbroad non-compete agreements are unlawful because they chill employees from exercising their rights under Section 7 of the NLRA, which protects employees' rights to take collective action to improve their working conditions. They also affect employees' ability to quit or change jobs by cutting off their access to other employment opportunities. The memorandum was directed to the NLRB's Regional Directors, Officers-in-Charge, and Resident Officers but it does not constitute a final ruling. The memorandum instructs regional offices to submit cases involving non-competes to the Division of Advice, which will evaluate whether complaints should be issued. For the memorandum's legal position to become law, an NLRB decision, or an administrative rule in support of the General Counsel's position must be issued.

### **NLRB "Joint Employer" Rule**

In late 2023, the NLRB published its employee-friendly final rule for determining joint employer status, reversing an earlier 2020 employer-friendly regulation. The original December 26, 2023 effective date was postponed to February 26, 2024 to facilitate the resolution of already-filed legal challenges to the final rule. The rule will be applied only to cases filed after its effective date. The final rule revises the standard for determining whether two employers are joint employers within the meaning of the National Labor Relations Act and expands the factors that can establish a joint employment relationship to include indirect and unexercised control over the terms and conditions of a job. Employers would be considered joint employers if they co-determine "essential terms and conditions of employment," such as scheduling, wages, and benefits.

### **Recent NLRB Decisions**

The NLRB, which now reflects the current administration's pro-labor priorities, issued several significant decisions in 2023 regarding:

- NLRB Limits Non-Disparagement and Confidentiality Provisions in Severance Agreements (McLaren Macomb, 372 N.L.R.B. No. 58 (2023))
- NLRB Details Remedies for Egregious Employer Misconduct (Noah's Ark Processors, LLC D/B/A WR Reserve, 372 N.L.R.B. No. 80 (2023))
- NLRB Returns to Employee-Friendly Standard for Evaluating Abusive Employee Workplace Misconduct (Lion Elastomers, 372 N.L.R.B. No. 83 (2023))
- NLRB Returns to 2014 Employee-Friendly Test for Determining Whether an Individual Is an Independent Contractor (The Atlanta Opera, Inc., 372 N.L.R.B. No. 95 (2023))
- NLRB Adopts Employee-Friendly Standard for Assessing Lawfulness of Work Rules (Stericycle, Inc., 372 N.L.R.B. No. 113 (2023))
- NLRB Adopts New Employee-Friendly Procedure for Union Recognition without an Election (Cemex Construction Materials Pacific, LLC, 372 N.L.R.B. No. 130 (2023))

Several of the NLRB's rulings are being reviewed by federal courts of appeal.

## **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)**

### **Enhanced Enforcement Guidance**

In March 2023, OSHA implemented changes to its enforcement guidance that expands its authority to issue instance-by-instance (IBI) citations for certain serious violations of OSHA standards, which will multiply the associated penalties. The new guidance is intended to make OSHA's penalties more costly for employers who fail to comply with certain workplace safety and health mandates. The guidance changes cover enforcement activity within general industry and the agriculture, maritime, and construction industries. The maximum penalty for serious violations, other-than-serious violations, and posting-requirement violations increased in 2023 from \$14,502 per violation to \$15,625 per violation. The maximum penalty for willful or repeated violations increased in 2023 from \$145,027 per violation to \$156,259 per violation.

## 2023 STATE AND LOCAL LEGISLATIVE AND REGULATORY ACTIVITY

### STATE OF NEW JERSEY

#### New Jersey Department of Environmental Protection (NJDEP)

##### Mobile Cargo Handling Equipment (CHE)

New Jersey adopted the Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards rule, as published in the New Jersey Register on February 6, 2023. This rule will help modernize some of the oldest diesel-powered equipment in the State, particularly equipment used near some of the State's most densely populated areas and reduce noxious gases and particulate matter that are significant components of harmful air pollution.

##### New Jersey Worker Adjustment and Retraining Notification (WARN) Act

Significant amendments to New Jersey's WARN Act took effect on April 10, 2023. The amendments apply to mass layoffs, termination or transfer of operations, and plant closings, and provide the following:

- Employers operating in New Jersey for at least three years with at least 100 employees must give 90-day advance notice of a reduction in force of 50 or more employees to affected full-time and part-time employees.
- Severance pay of one week for each full year of service is automatic for full-time and part-time employees.
- Employees cannot waive their right to severance pay without court or state approval.

##### Unemployment Compensation Law

On July 31, 2023, several amendments that affect employer compliance with the New Jersey Unemployment Compensation Law went into effect. The amendments include new reporting obligations for employers, modifications to the deadlines for appeals, and increased penalties for noncompliance. Effective July 31, 2023, employers were required to send electronically to the State a copy of Form BC-10 and a new benefit form to enable the state to make a benefit determination. Fines were increased from \$25 to \$500, or 25 percent of any benefit amount fraudulently withheld by an employer, whichever is greater.

### NEW YORK STATE (NYS)

#### Protection for Individuals Based on Citizenship and Immigration Status

The NYS Human Rights Law was amended to prohibit employment discrimination against employees and job applicants who are not U.S. citizens based on citizenship and immigration status. Employers are prohibited from discriminating, harassing, or retaliating against any individual because of their citizenship or immigration status. However, employers are not prevented from checking the citizenship or immigration status of current and prospective employees for lawful purposes, such as to comply with the Immigration Reform and Control Act of 1986, which prevents employers from knowingly hiring undocumented immigrants, or individuals who are not authorized to be employed in the United States.

#### Electronic Posting Requirement

NYS employers are required to inform their employees and to make available on their websites or by email electronic copies of all mandatory workplace postings, including all materials that are physically posted in the workplace under federal, state, and local laws.

#### Required Posting Regarding Veteran Benefits and Services

Effective January 1, 2023, NYS employers with more than 50 full-time employees must post a notice regarding benefits and services available to military veterans in a conspicuous place accessible to employees in the workplace.

#### Legally Protected Absences from Work

Effective February 20, 2023, NYS employers are prohibited from disciplining employees for taking absences that are protected under federal, state, or local law, such as paid sick leave, paid family leave, or a COVID-19 related leave.



## **Amendments to NYS Model Sexual Harassment Prevention Policy**

On April 11, 2023, the NYS Department of Labor (NYSDOL) issued an updated model sexual harassment policy that addresses remote work, gender identity, and bystander intervention methods. NYSDOL also released an updated training video and new model training presentation slides that incorporate the amendments to the model policy, which;

- Add a provision clarifying that sexual harassment does not need to be severe or pervasive to be illegal.
- Define sexual harassment as a form of gender-based discrimination and provide an explanation of gender diversity (including definitions of cisgender, transgender, and non-binary persons).
- Clarify that harassing behavior can occur in the remote workplace.
- Add a new section on bystander intervention that explains what fellow employees can do if they witness harassment or discrimination.

## **Accommodations for Nursing Mothers in the Workplace**

Effective June 7, 2023, NYS amended its 2017 legislation that requires all NYS employers to provide daily paid or unpaid break time to express milk in a private location up to three (3) years following the birth of a child. The amendment specifies that the location cannot be a restroom and must have certain amenities. At the same time, the NYSDOL issued a policy setting forth the rights of nursing employees in the workplace, which must be provided to all employees on three occasions: upon hiring, annually, and to an employee upon returning to work after the birth of a child.

## **New York Labor Law Amendments**

New York Governor Kathy Hochul signed four bills amending the New York Labor Law as described below.

### **1. Captive Audience Ban**

Effective September 6, 2023, NYS employers are prohibited from requiring employees to attend employer-sponsored meetings with their employer or its representatives, or listen to a speech or view communications, where the primary purpose is to communicate the employer's opinion concerning political or religious matters or joining or supporting a labor union organizing effort. The law does not apply to an employer's managerial or supervisory employees and does not apply to nonmandatory casual conversations in the workplace.

### **2. Protection of Employee Inventions**

Effective September 15, 2023, any assignment provision in an employment agreement providing that an employee shall assign, or offer to assign, any of their rights in an invention to their employer shall not apply to inventions that the employee developed entirely on his/her own time without using the employer's equipment, supplies, facilities, or trade secret information. The law does not apply to inventions that relate at the time of conception to the employer's business or result from any work performed by the employee for the employer. Any existing provisions that conflict with this new law are unenforceable.

### **3. Notice of Eligibility for Unemployment Benefits**

Existing law requires employers to inform employees upon a permanent or indefinite separation of their right to file an application for unemployment benefits. Under the new law, effective on November 13, 2023, the same notice must be given not only for every permanent or indefinite separation but also for any reduction in hours, temporary separation, or any other interruption of continued employment that results in total or partial unemployment. The notice must be in writing on a form approved by the NYSDOL and include the employer's name and registration number and the address of the employer to which a request for benefits and employment information must be directed.

### **4. Electronic Personal Accounts**

This law, effective on March 12, 2024, prohibits employers from demanding personal social media account information from applicants and employees. The law provides that employers cannot discharge, discipline, or otherwise penalize, or threaten to discharge, discipline, or otherwise penalize, employees who refuse to disclose access information to their personal accounts. Employers also cannot refuse to hire an applicant if the applicant refuses to disclose their personal account information. Employers, however, are permitted to require an employee to disclose any username, password, or other means for accessing non-personal accounts that provide access to the employer's internal computer or information systems.

## **Pay Transparency**

Effective September 17, 2023, NYS employers with four (4) or more employees are required to disclose the minimum and maximum annual salary or hourly range of compensation for each job, promotion, or transfer opportunity that will physically be performed, at least in part, in NYS. Postings for remote workers outside NYS who will report to an office or supervisor

in NYS are also covered. If a job description exists for the position posted, the description must be included in the internal or external advertisement. Violations can result in fines ranging from \$1,000 for a first offense to \$3,000 for a third and subsequent offense. This statute is similar to the New York City Pay Transparency Law that became effective on November 1, 2022, but does not preempt that law.

## **CITY OF NEW YORK (NYC)**

### **Automated Employment Decision Tools (AEDTs)**

NYC’s “Artificial Intelligence” Law (AI Law) took effect on July 5, 2023, and mandates independent audits of AI technologies used by NYC employers to recruit and to hire candidates and to promote employees for discriminatory bias such as race, ethnicity, or sex. The purpose of the law is to assess AEDTs disparate impact on women and minorities. The results of the required bias audits must be published, and job applicants and employees must be notified of the use of AEDTs in the evaluation of their candidacy for employment or promotion. Individuals may opt out of the use of AEDTs during the assessment or evaluation process. Failure to comply with the AI law can result in penalties ranging from \$500 for the first violation to \$1,500 for multiple violations.

### **Final Amendments to Earned Safe and Sick Time Act (ESSTA) Rules**

Amendments to the NYC ESSTA rules took effect on October 15, 2023. The Rules address various issues, including employer size, employee eligibility, notice requirements, documentation standards, payment of sick/safe time, and written ESSTA policy requirements. They clarify the eligibility conditions for employees to secure benefits, the method for calculating employer size, and coverage thresholds, and other enforcement provisions.

### **Prohibitions against Height and Weight Discrimination in Employment**

Effective November 26, 2023, the NYC Human Rights Law was amended to prohibit discrimination based on an applicant’s or employee’s actual or perceived height or weight. There are several exemptions, including where height or weight restrictions are required by a federal, state, or local law or regulation.



## 2023 SANYNJ INSURANCE AND INDEMNITY PROGRAM

### **New York Shipping Assurance Association, Inc. (NYSAA)**

In 2006, New York Shipping Association, Inc., now known as the Shipping Association of New York & New Jersey (SANYNJ), created a comprehensive insurance program to protect SANYNJ, its directors, officers, employees, and representatives as well as SANYNJ members. The coverage for SANYNJ members is provided through a Vermont captive insurance company, New York Shipping Assurance Association, Inc., a wholly-owned subsidiary of SANYNJ based in Colchester, Vermont, and includes legal representation and defense costs incurred to enjoin strikes or work stoppages, to defend arbitrations, to commence court actions, to participate in adjudicatory proceedings, to defend against third-party claims, and to prosecute court actions and arbitrations in connection with the implementation of the NYSA-ILA and NYSA-PPGU Collective Bargaining Agreements.

This coverage is referred to as “Financial Injury Coverage.” Premiums are paid from the assessments paid by SANYNJ members. For the fiscal year ended September 30, 2023, less than 1% of total assessments were used to fund NYSA Policy No. NY 001. No new insurance claims were filed with NYSA during the 2022-2023 Policy Year.

### **New York Shipping Association Self-Insurance Trust**

Liability insurance coverage for SANYNJ, its directors, officers, employees, and representatives is provided through commercial insurance policies with excess coverage provided by the SANYNJ Self-Insurance Trust. The Trust also provides Financial Injury Coverage to SANYNJ for its legal costs that arise from the implementation of the NYSA-ILA and NYSA-PPGU Collective Bargaining Agreements. SANYNJ did not file any claims with the Trust during the 2022-2023 Policy Year.



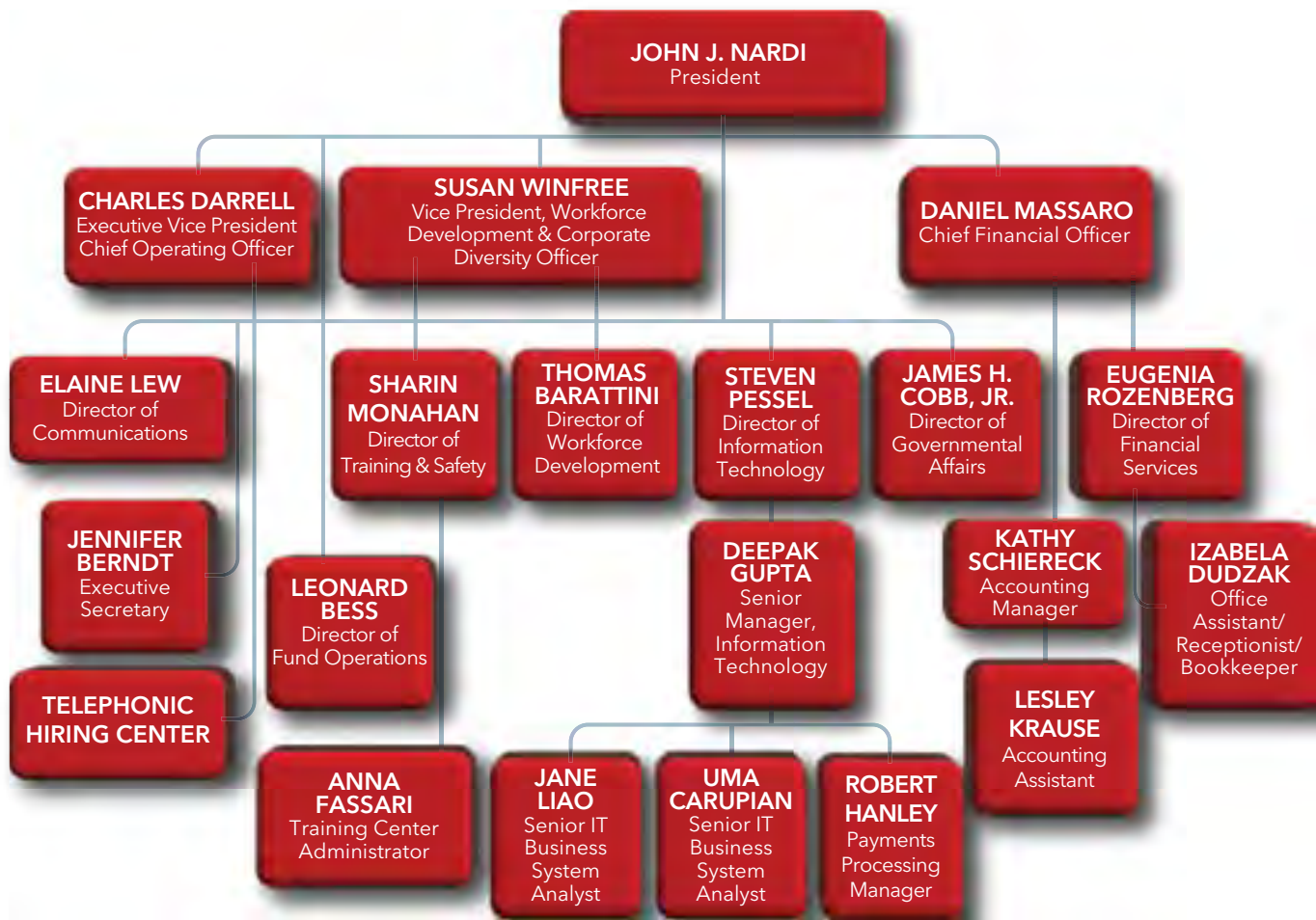








# SANYNJ ORGANIZATIONAL CHART ~ DECEMBER 2023



## 2023 SANYNJ MEMBERSHIP LIST

ACGI Shipping Inc.  
Allied Universal Security Services  
The American Sugar Refining Company  
APM Terminals Elizabeth, LLC  
Atlantic Container Line  
Bermuda Agencies Limited  
Agents for Bermuda Container Line  
Cargotec Crane & Electrical/Kalmar USA  
Ceres Terminals Inc.  
CMA-CGM (America), L.L.C.  
Terminal Link USA  
Columbia Coastal Transport, LLC  
COSCO SHIPPING Lines  
(North America) Inc.  
Doyle Security Services, Inc.  
Ellerman City Liners Limited  
Essex Cement Company  
Evergreen Shipping Agency (America)  
Corporation  
Hapag-Lloyd (America) Inc.

Hoegh Autoliners Inc.  
Hyundai America Shipping Agency, Inc.  
"K" Line America, Inc.  
Kalypso Compagnia di Navigazione S.P.A.  
Maersk  
Maher Terminals, L.L.C.  
Mediterranean Shipping Company  
Mitsui O.S.K. Lines, Ltd.  
c/o MOL (Americas) LLC  
NYK Group Americas Inc.  
Ro/Ro Division  
Ocean Network Express  
(North America) Inc.  
OOCL, (USA), Inc.  
Port Liberty Bayonne LLC  
Port Liberty New York LLC  
Port Newark Container Terminal L.L.C.  
Ports America, Inc.  
Red Hook Container Terminal, LLC  
SIMS Metal Management

Terminal Security Solutions, Inc.  
Turkon America, Inc.  
Wallenius Wilhelmsen  
Wan Hai Lines (USA) Ltd.  
Yang Ming (America) Corp.  
ZIM American Integrated Shipping  
Services Company  
ZPMC NA East Coast, Inc.  
DBA ZPMC USA

### ASSOCIATE MEMBERSHIP LIST

American Maritime Service of  
New York, Inc.  
Bay Container Repairs of New Jersey  
Container Services of New Jersey, Inc.  
FAPS, Inc.  
Nissin International Transport U.S.A., Inc.  
Novelties Distribution LLC  
Portwide Cargo Securing Company

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New York and New Jersey



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Red Hook Container Terminal, LLC



## SANYNJ Committee Assignments

- NMC** Nominations (& Membership) Committee
- CC** Compensation Committee
- NC** Negotiations Committee
- BLC** By-Laws Committee
- AC** Assessment Committee

# SANYNJ STAFF

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Executive Vice President,  
Chief Operating Officer



**Susan Winfree**  
Vice President, Workforce Development  
and Corporate Diversity Officer



**Daniel Massaro**  
Chief Financial Officer

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**James H. Cobb, Jr.**  
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**Sharin Monahan**  
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**Steven Pessel**  
Director of Information  
Technology



**Eugenia Rozenberg**  
Director of Financial Services



**Elaine Lew**  
Director of Communications



**William M. Spelman, Esq.**  
The Lambos Firm



L-R: Izabela Dudzak, Robert Hanley, Lesley Krause, Kathy Schiereck, Jane Liao, Jennifer Berndt, Anna Fassari, Deepak Gupta, Uma Carupian











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CMA-CGM (America), L.L.C.

COSCO Shipping Lines

FAPS, Inc.

Maher Terminals LLC

Ocean Network Express (North America), Inc.

The Port Authority of New York & New Jersey

Port Liberty USA, L.L.C.

Port Newark Container Terminal L.L.C.

Port Police and Guards Union

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