

GATEWAY *to* GROWTH



**New York Shipping
Association, Inc.**



2019 ANNUAL REPORT

Mission Statement

The mission of New York Shipping Association is to represent the interests of its members in maximizing the efficiency, cost-competitiveness, safety and quality of marine cargo operations in the Port of New York and New Jersey.

NYSA will accomplish this mission:

Through negotiation of fair collective bargaining agreements with the International Longshoremen's Association and the Port Police and Guards Union;

Through effective implementation of those collective bargaining agreements; and judicious management of the various funds created thereunder;

Through strong advocacy of our members interests in the public, government and business communities;

Through close collaboration with other maritime and maritime-related organizations who share common interests;

Through partnering with public agencies tasked with the improvement of the region's transportation system; and

Through frequent communications with members to insure that their interests are well served.



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PRESIDENT'S MESSAGE



“Without continual growth and progress, such words as improvement, achievement, and success have no meaning.” - Benjamin Franklin

Under the threat of trade uncertainty due to the unknown impact of on and off tariff wars, for NYSA and our members, 2019 was a year focused on implementing our newly negotiated collective bargain agreement between the NYSA and the International Longshoremen's Association (ILA). Productivity was front and center in those negotiations. The Port of New York and New Jersey lags behind competing ports in productivity and I believe that productivity improvement is required for long-term growth to benefit our members and the

stakeholders of the Port. To resolve this issue, a process was bargained and agreed to where each gang at each individual terminal will have to increase performance on a year on year basis or be subject to corrective actions. In 2019, NYSA was active in establishing the benchmarks for measuring performance and worked with the marine terminal operators to ensure the provisions of the Productivity Improvement Process were fully adhered to. This includes resolving ongoing absenteeism which has a significant impact on performance. NYSA staff have been working with the respective ILA Locals to resolve the continuing issue of absenteeism. Progress is being made, but the matter is nowhere near resolved. We will continue to address these matters and specifically absenteeism until performance reaches the agreed upon levels in our Collective Bargaining Agreement. Along these lines, in July of last year I was pleased to be invited by the ILA to speak at their Atlantic Coast District 36th Quadrennial Convention and also at their International 55th Quadrennial Convention. In addition to reviewing the performance of NY & NJ compared to competing ports, I used the opportunity to address chronic absenteeism. It seems to me that the hot button issue of automation in our industry and absenteeism are entwined. My question and message is: how can workers be against implementing automation, when a percentage of them do not show up and protect the work? This problematic question escapes logic and will be one of the areas of focus going forward.

Another key to achieving productivity goals is having a right-sized workforce. The Port has seen year over year growth of 5% or more per annum for the past 6 years and a 2% average labor attrition rate. These facts, along with offering a retirement window in 2019 where we had thirty longshoremen and a handful of checkers retire, prompted the NYSA and ILA to petition the Waterfront Commission of New York Harbor in February of 2019 to open the register to add 538 new longshore workers and 120 new checkers. The Waterfront Commission approved this request. We then began the arduous task of sorting through new procedures introduced by the Waterfront Commission to recruit and hire these workers. By year's end we had only hired 268 of the 638 requested workers. We will continue to work through the process until all required workers are hired and we will support all efforts to streamline and modernize the process of hiring including legislation.

In 2019, NYSA introduced Saturday Hiring to order labor for work performed on Sunday and Monday. Previously all work performed on Saturday, Sunday and Monday had to be ordered on Friday. Making this bargained change will move the time when labor is ordered, closer to the time when the activity occurs. The result will be more accurate orders and reducing the need for paying labor when events occur that prevent a vessel from arriving as anticipated.

Another area of continued progress is the improvement of the NYSA-ILA Pension Trust Fund funding levels. Once seen as an impossible task and a factor which negatively impacts the cost competitiveness of NY & NJ, this fund is on target to be fully funded in just a few short years. However, we need to be vigilant and have our voices heard in Washington, D.C. to ensure that legislators do not introduce short-sighted uninformed legislation that will offset the hard work and difficult decisions taken by our members to ensure this pension is fully funded – on schedule. Along those same lines, we need to ensure that short-sighted State Legislation such as that impacting independent contractors does not shut down the supply chains by crippling the supply of independent truckers serving the port region.

As I stated at the beginning of this report, in 2019 forecasting volume developments for the Port was always uncertain due to the on again, off again trade wars and tariff increases. Looking back, the result was a 5.6% increase with the Port handling nearly 4.3 million containers. Volume shifts between terminals resulted in service disruption at one facility earlier in the year, but generally service levels in the Port did not suffer while handling these record container volumes. The investments by our members and the Port Authority of New York and New Jersey have placed the Port in an excellent position to handle the year over year record volume increases.

In 2019, NYSA also continued to Co-Chair the Council on Port Performance (CPP) with the Port Authority of New York and New Jersey. To me, this forum is vitally important for the exchange of ideas regarding steps that need to be taken to improve the Port's performance short-term and long-term. The ongoing efforts of the CPP are also an important reason why the Port has been able to handle record volume with minimal disruption. Of particular importance are the efforts of the Council's Workforce Development Implementation Team led by Hilary McCarron of the Port Authority and supported actively by NYSA's Susan Winfree. This team has reached out to local communities and educators to help meet the challenge of



developing a qualified labor pool for all aspects of the supply chain. As I've stated before, staffing the supply chain with skilled, educated workers is probably the greatest challenge our industry faces. The importance of this team's work cannot be overstated.

In closing, the Port needs to continue to grow to maximize the investments of our stakeholders in the face of population shifts, legislative challenges and the historical bureaucratic structure of the region. The Port needs to continue to modernize to meet these challenges, as

well as sustainability requirements moving forward. The Bayonne Bridge roadway is raised, the channels are dredged, the Panama Canal has been expanded, the marine terminals and the Port Authority have invested billions in infrastructure and the ocean carriers have built larger, more efficient, and environmentally friendly vessels. It's up to the stakeholders to maximize these investments and this will remain our focus moving forward.

John J. Nardi
President





SAFETY & TRAINING CONSCIOUSNESS - KEYS TO SUCCESS!

SAFETY

Safety and Training Initiatives are the foundation on which NYSA and its members build and maintain a productive, reliable and safety-conscious workforce. NYSA and its member terminal's commitment to safety remained unwavering in 2019. Our joint aim is to ensure that all those working on the waterfront understand the importance of working safely and without self-driven distractions. Maintaining a safe workplace is the responsibility of each individual working on any of the cargo, cruise or automobile terminals and that message is consistently instilled during safety meetings throughout the harbor.



Port safety initiatives are reinforced by two organized safety teams. The NYSA-ILA Joint Safety Committee is comprised of representatives from both management and labor and the NYSA Safety Committee includes safety personnel representing direct employers in the Port. Both teams are committed to promoting safety consciousness in all sectors of waterfront activity. "Safety First" remains the overall commitment by management and labor alike.

In 2019, NYSA, an active member of NMSA (National Maritime Safety Association), continued to play a role in advising policymakers on initiatives to enhance safety for workers on the waterfront. With representatives on both the NMSA Board of Directors and Technical Committee, NYSA collaborated with OSHA (U.S. Department of Labor's Occupational Safety and Health Administration), MACOSH (Maritime Advisory Committee for Occupational Safety and Health), and other national organizations to enhance safety protocols for workers in the maritime industry. The organizations regularly review industry standards and practices in order to increase safety awareness on the waterfront, share best practices, and promote accident prevention measures.

The NYSA Safety Awards for 2018 were presented to the employers and their employees at each terminal's respective Safety Luncheons during 2019. These venues allow for a larger group of safety-committed individuals and stakeholders to be present and recognized for their safety consciousness.

The awards are based on the Lowest Lost-Time Incident Frequency Rate and the Greatest Reduction of Lost-Time Incident Frequency Rates over the previous year. Lost-Time Incidents are also reported directly to OSHA by each of the terminals.

Those terminals presented with the NYSA Safety Awards and recognized for their efforts were Port Newark Container Terminal, Global Container Terminal/Bayonne, and Red Hook Container Terminal/Brooklyn. Red Hook Container Terminal/Newark was also recognized for achieving "Zero" Lost-Time Incidents in 2018. That is quite the achievement in this industry!



TRAINING

The NYS-ILA-PPGU Training Center continues to be the cornerstone for expanding the skills of our existing workforce while welcoming and orientating those individuals just entering the industry. Safety, Productivity and Professionalism are the driving forces behind the training center's mission, which is to coordinate and provide essential and effective training for the labor workforce throughout the NY/NJ harbor.

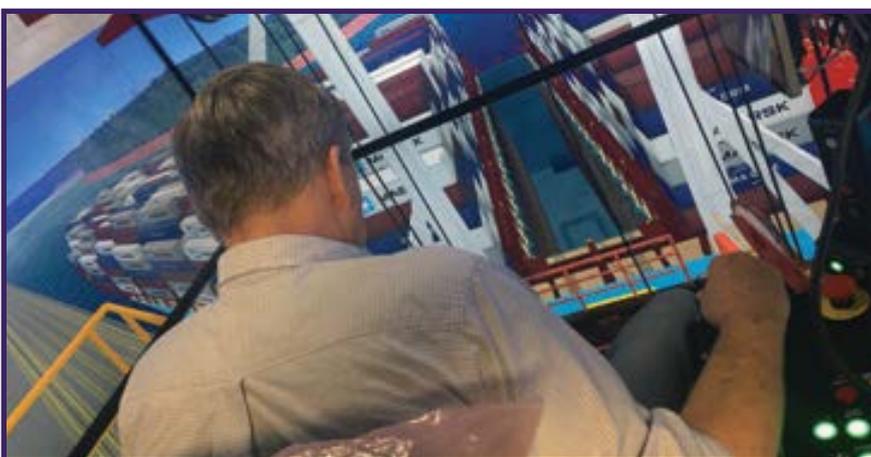
The NYS Training Team works closely with the marine terminal operators to understand their individual strategic operating plans. In doing so, NYS is in a better position to prepare for future labor demands and associated training requirements.

The state-of-the-art facility is the home of two Full-Mission Simulators, which include training systems for Ship-to-Shore Cranes, Mobile Harbor Cranes, Straddle Carriers and RTG's. Trainees are introduced to specialized equipment in an instructor-led controlled environment where they are taught the specific equipment fundamentals, as well as, safe operating techniques. Trainees who successfully complete the program return to their List Terminals for practical training on specialized equipment in a live environment.

Classroom Training in 2019 included Initial and Refresher Hazardous Materials Training, Respect & Dignity in the Workforce, New Employee Orientation, PIT (Power Industrial Truck) Safety Training for Forklift and Hustler, and Gang (Hold) Training for those new to the industry.

The center is also utilized by the PPGU for their training efforts. Each year, PPGU Training includes Security Officer Training for new members, as well as, an Annual Refresher Course for all members. In 2019, there were 273 members credited with attending the Annual Refresher Course.

The NYS-ILA-PPGU Training Center continues to connect our port partners and regularly welcomes the terminal operators, industry organizations and governmental agencies to conduct meetings, seminars and specialized training sessions for both labor and management teams.



Equipment Training Skill Certifications - Contract Year 2019

	New Certifications	Recertifications
Hustler Driver	153	392
Straddle Carrier	47	161
Crane Operator	18	89
Top Loader	48	97
Stacker (DS, RS, HC)	112	220
Noell Carrier/N4	56	180
Yard Carrier	35	10
Empty Handler	46	157
Forklift	191	432
RTG/Transtainer	61	71
Shuttle Sprinter	0	17
Rail Mounted Gantry	12	1
TOTAL	779	1827

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

Classroom Training Contract Year 2019

Hazardous Materials Training	342
Respect & Dignity Training	944
New Employee Orientation	142
PIT Safety/Equip. Fundamentals/Gang Training	152
PPGU Security Officer Training	26
PPGU Waterfront Commission Annual	273





HIGHLIGHTS for contract year ended September 30, 2019



EMPLOYMENT:

- 3,700 Registered Union Members
- 12.8 Million Hours Worked (9% increase from 2018)
- Wages Paid: \$69 million increase from 2018
- Fringe Benefit Costs: \$1.3 million decrease from 2018



CARGO:

Containers that fit directly on a chassis

- 4.3 Million, a 5.6% increase over 2018



VEHICLES: 585,000

Roll-on / Roll-off cargo, which is driven off the ship with its own wheels

- 6% decrease from 2018



WORK HOURS & RATES Contract Year 2019

CRAFTS	Rate	ST Hours	OT Hours	Total Work Hours	Average Age	# Ind.
	20.00	159,376.0	198,469.5	357,845.5	36.0	219
	23.75	145,664.0	286,173.5	431,837.5	41.5	142
Longshore	29.40	472,857.0	926,257.0	1,399,114.0	41.5	434
	35.00	1,971,328.8	3,681,916.8	5,653,245.6	51.2	1,626
	Total	2,749,225.8	5,092,816.8	7,842,042.6	47.5	2,421
	20.00	14,046.0	25,091.5	39,137.5	36.6	25
Checkers	23.75	59,602.0	101,085.0	160,687.0	37.4	38
	29.40	150,972.5	275,240.0	426,212.5	40.1	94
	35.00	834,900.5	1,595,216.5	2,430,117.0	51.8	529
	Total	1,059,521.0	1,996,633.0	3,056,154.0	43.4	686
	20.00	17,330.0	25,661.5	42,991.5	34.6	36
Maintenance	23.75	34,857.0	71,963.0	106,820.0	37.8	30
	29.40	101,035.5	228,116.0	329,151.5	41.6	94
	35.00	514,737.6	874,304.5	1,389,042.1	52.1	393
	Total	667,960.1	1,200,045.0	1,868,005.1	48.4	553
ALL CRAFTS		4,476,706.9	8,289,494.8	12,766,201.7	46.9	3,660

EQUIPMENT OPERATOR WORK HOURS

Contract Year 2019

Skill	Base Rate	Work Hours	% of Total
	20.00	5,661.0	0.7%
Crane Operator	23.75	29,369.5	3.4%
Transtainer Operator	29.40	107,637.5	12.7%
RTG Operator	35.00	705,558.6	83.2%
	Total	848,226.6	
	20.00	26,399.5	1.4%
Straddle Carrier	23.75	102,607.0	5.4%
Noell Carrier Operator	29.40	578,747.5	30.5%
	35.00	1,188,827.0	62.7%
	Total	1,896,581.0	
	20.00	94,482.0	6.2%
Hustler Operator	23.75	140,801.5	9.2%
	29.40	309,261.0	20.1%
	35.00	990,789.0	64.5%
	Total	1,535,333.5	
	20.00	13,767.0	1.7%
Other Container Handling Equipment	23.75	19,212.0	2.4%
	29.40	112,328.0	14.1%
	35.00	651,626.5	81.8%
	Total	796,933.5	

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
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	8.15 Per Unit
Breakbulk	6.00 Per Ton
Mafis with greater than 43 tons cargo weight	6.00 Per Ton
Bananas	0.09 Per Box
Excepted Cargo	14.00 Per Hour
Passenger Assessment	14.00 Per Hour
PPGU Assessment	17.00 Per Hour





GROWING THE WORKFORCE TO SUPPORT INCREASING VOLUME

The NYSA-ILA Contract Board requested an opening of the Longshore Register petitioning the Waterfront Commission in February of 2019 to meet the increased need for labor as a result of volume growth and attrition in the workforce. This request, accepted by the Waterfront Commission, specified the need to hire 538 new longshore workers and 120 new checkers. The request included specific numbers of new employees required to be added to each section of the Port and each employer. The NYSA-ILA contractual Hiring Plan was set in motion to recruit and hire candidates from a range of sources including union referrals, Department of Labor candidates, U.S. military veterans, and management referrals. By the end of 2019, thousands of candidates had expressed an interest, over 900 were interviewed and 268 hired throughout the Port, as follows:

LONGSHORE		CHECKERS
17	Brooklyn	0
15	Manhattan	0
137	Elizabeth/Newark	58
17	Bayonne	6
12	Staten Island	6

Candidates who were ultimately hired, successfully navigated their way through a multi-step qualification progression which included: a multi-employer interview process, application to the Waterfront Commission to be added to the register, approval by the Waterfront Commission and registration, TWIC (Transportation Worker Identification Credential) issuance, and meeting the requirements of physical exams and drug testing. Longshore workers enter the workforce initially ready for work as Car Drivers and Baggage Handlers, but by the end of the year many had also been trained to operate specialized equipment and in vessel gang procedures.

There was also a demand in 2019 for highly skilled maintenance professionals in various areas of the Port. Total demand identified was 66 across various employers. The contractual Hiring Plan for the hiring of mechanics was put into action in 2019 and by year-end, 32 maintenance professionals had been hired, with another 14 sponsored for employment by companies who remain under review at the Waterfront Commission.



PORT POLICE AND GUARDS UNION (PPGU)

The Port Police and Guards Union are 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. The union is comprised of 318 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 executed 24 hours a day, 7 days a week and 365 days a year.

In January 2018, a new five-year contract was entered into that will expire on December 31, 2022.







INFORMATION TECHNOLOGY

YEAR IN REVIEW 2019

Continuing the successes of the previous year, 2019 was no exception. All systems must continually be assessed for security, systems compliance, functionality and reliability.

Labor Hiring Center

The year began with the successful implementation of a cloud-based phone system for the Labor Hiring Center. This system includes the call recording system and all call logs.

A new Automated Dispatch System was launched providing flexibility for our workforce enabling them to receive work orders, update availability and many other Labor Hiring System functions without having to speak with a dispatcher or wait in a queue for a dispatcher to become available.

Next, we updated the NYSA Labor Hiring System to accommodate the new 6-day hiring work week.

Lastly, there was the migration of the NYSA Labor Hiring System from a physical server to a cloud-based environment. This migration ensures high availability, redundancy and high security with zero downtime.

NYSA and ILA Funds Systems

Continuing the focus on security for the daily operations, enhanced email encryption was implemented following HIPPA rules and regulations. This was necessary to enhance the security of the personal information of the workforce.

The Training Center in Elizabeth had a complete upgrade of its infrastructure, systems and classrooms this past year, providing more flexibility and functionality to the center's staff and visitors.

2019 marked the kickoff of the NYSA Enterprise Management System project. This project will span across the next 2 years before it is completed. The system will replace the current system which is approximately 30 years old. We are approaching this project in phases. As of today, we have successfully launched two parts of the new system into production. The remainder of 2020 will primarily focus on the development and implementation of this project.





INDUSTRY HIGHLIGHTS & SPECIAL EVENTS

Teddy Gleason Scholarship Program

On June 25, 2019, the International Longshoremen’s Association, AFL-CIO and New York Shipping Association awarded eight new scholarships to future college students through the Teddy Gleason Scholarship Program at a luncheon at the Hyatt Regency Jersey City.

The award recipients, who are dependents of ILA members that work for NYSA member companies, will each receive an annual grant of \$6,000 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. The College Scholarship Service, which is an independent company based in Princeton, NJ, is responsible for the selection of the scholarship recipients. Some of the schools that this year’s recipients will be attending include American University, Hunter College, Rutgers University, University of Southern California, Seton Hall University, Catholic University of America, the Fashion Institute of Technology and Passaic County Community College.

The NYSA-ILA 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.



NYSA & ILA Water Distribution Effort in Newark, NJ

In August, the residents of Newark were affected by the discovery of lead contamination in the city’s tap water. The distribution of bottled water soon became top priority allowing residents access to safe drinking water.

On August 29th & 30th, NYSA and ILA Local 1233 donated and distributed bottled water to those who were impacted by the contamination. The water was given out at two separate locations in Newark. The first day at ILA Local 1233 Union Hall Headquarters and the second day at Good Neighbor Church. This commendable initiative was spearheaded by ILA Local 1233 President Bernard Dudley, Secretary Treasurer Buddy Smith and ILA Local 1804-1 Business Agent/Sergeant at Arms John Daggett. Port Newark Container Terminal, Maher Terminals, APM Terminals Elizabeth and FAPs, Inc. also assisted in the water donation effort.



Wounded Warrior Project Event

On October 4, 2019, NYSA attended a check presentation event at Maher Terminals recognizing the Wounded Warrior Project (WWP). This is a nonprofit organization that helps veterans and service members who have incurred a physical or mental injury, illness or wound while serving in the military on or after September 11, 2001. In attendance at this event were hundreds of ILA members, port employers and management representatives.

ILA members from the Port of NY & NJ initiated the effort to raise \$30,000.00 for WWP through a charity softball game that was held in June involving many ILA locals in the Port. The organizers of the event were Matthew Dombrowski from ILA Local 1235 and John Armwood, Travis McCray and Antonio Rodriguez all from ILA Local 1233. Some port sponsors of the game included Maher Terminals, APM Terminals, Port Newark Container Terminal, GCT New York and NYSA.



Maritime Industry "Good Scout" Award Luncheon

The Annual "Good Scout" Award Luncheon was held on November 7, 2019 at the Hilton Garden Inn in Staten Island, New York. Those honored this year for their commendable contributions to the port community were NYSA's Susan Winfree, Vice President, Workforce Development & Corporate Diversity Officer and Michael Izzo, President of ILA Local 920. Also recognized was Mr. Ronald Capri. Mr. Capri was a senior member of the International Longshoremen's Association Executive Council, Vice President for ILA Local 1804-1, and Secretary-Treasurer with the ILA's New York-New Jersey District Council who was honored posthumously for his years of service and dedication to the maritime industry.



The proceeds from the awards luncheon benefit the Greater New York Councils and the Patriots' Path Council, Boy Scouts of America that are organizations based in New York and New Jersey that are dedicated to preparing young people to make ethical choices and to develop healthy habits while instilling in them the framework needed to build strong values and commendable character traits.



PORT AUTHORITY OF NEW YORK & NEW JERSEY

A Record Year (*As of this printing)

The Port of New York and New Jersey handled a record number of containers in 2019. As of this printing, data for the first 11 months shows evidence that the Port of New York and New Jersey is sailing toward an annual record of handling more than 7 million TEUs. Through November 2019, the Port of NY & NJ handled a record thru November total 6,886,388 TEUs (20-foot equivalent units). Rail volume, January through November 2019, is 2.8% greater than in the same period of 2018.

Ensuring Tomorrow's Success

- On June 17, 2019 the Port Authority of New York and New Jersey announced the Grand Opening of ExpressRail Port Jersey, operated by GCT Bayonne. It represents the final piece of the Port of NY & NJ's intermodal rail network. Completion of this project helps bolster the Port's strong position in attracting international cargo destined for the northeast region and beyond. The new facility, coupled with the completion of the raising of the Bayonne Bridge to accommodate ultra large container vessels and over \$4 billion in other modernization initiatives over the past two decades, has led to unprecedented cargo growth. These investments and the improved capacity, flexibility, and efficiency of the ExpressRail network have incentivized shippers to turn to the Port of NY & NJ to quickly supply, not only the northeast, but also the Midwest and Canada. The ExpressRail Port Jersey intermodal rail facility consists of eight tracks for active loading and unloading of cargo from GCT Bayonne that connect to two lead tracks to and from the main freight rail network. It also consists of support and train storage track and two high-efficiency, all electric, regenerative powered, widespan, dual cantilevered rail mounted gantry cranes featuring LED lighting to load and unload containers in the intermodal yard.



- On July 9th, the Port Authority unveiled its “Port Master Plan 2050,” a comprehensive document that lays out a flexible roadmap for the next generation of land-use and infrastructure development projects at the Port of NY & NJ, allowing it to remain among the nation’s leading maritime gateways, while continuing to generate hundreds of thousands of jobs and billions in economic activity. This was a collaborative effort that included input from tenants, regulatory & funding agencies, elected officials, communities and other port stakeholders. The primary objectives of the master plan are to provide opportunities for growth through stakeholder engagement; improve the Port’s commercial value by investigating opportunities to maximize lease revenue; to continue to serve as an economic engine for the region; and to promote safe, resilient and environmentally sustainable operations in partnership with its tenants.

The port master plan focuses on five guiding principles:

- Ensuring Sustainability and Resiliency in all operations and future developments.
- Promoting Regional Economic Generation
- Establishing State of the Art facilities
- Providing a Platform for Partnership for all local stakeholders
- Shaping Future Growth of the region

The new 30-year plan follows an extensive 2½ year review of more than 3,000 acres of port property and included more than 45 presentations to regional stakeholders and community groups, including more than 50 planning workshops, and interaction with nearly 500 stakeholders. The document takes a holistic look at the Port, including cargo container facilities, automobile terminals, dry and liquid bulk cargo operations, cruise terminals and ferry landings. It will build on earlier planning work in the 1990s that ultimately led to the deepening of port channels to 50 feet, the raising of the Bayonne Bridge, container terminal expansions, realignment of and capacity enhancements to port roadways and the completion of the Port’s \$600 million ExpressRail network.

Major General Jeffrey L. Milhorn, Commanding General and Division Engineer of the Corps North Atlantic Division and Colonel Thomas D. Asbery, Commander and District Engineer of the Corps NY District visited the Port of NY and NJ in July 2019 to kick off the New Start Navigation Study. The Study was appropriated in the USACE FY19 Work Plan and will address the specific navigational improvements (depth, width, bend easing, and turning basins, etc.) that are needed to ensure speed to market and safety for the Neo-Panamax vessels calling the Port of NY & NJ as well as efficiency and competitiveness of global commerce.

- Following best industry standards, the Wharf Replacement Program conducted a Peer Review session where peers from other port agencies and industry experts will be presented insight of our effort to discuss its challenges and to ensure that we are following best practices for our solution.



Ensuring Exceptional Customer Service

- Recognizing that current operating hours of NJMT's Truck Service Center (TSC) were not aligned well enough with the hours of work of the trucking community, TSC hours were modified enabling the center to open 1 hour earlier in the mornings (6:30AM versus 7:30AM) while also ensuring the center is completely staffed during lunch hours and remaining open through 5pm.
- The Port Authority continues to implement a variety of physical improvements throughout the Port of NY & NJ. Recently completed initiatives include completion of several landscaping improvements. In Port Jersey, work has begun on improvements to warehouse buildings. In addition to the landscaping improvements, critical port roadways including Corbin Street and Outer Port Street were re-striped to improve visibility and safety for drivers.
- On Saturday, November 30, 2019, the Port of NY & NJ welcomed Captain Tsipouras Dimitrios and his crew members onboard Evergreen's "THESEUS" calling at Maher Terminal. This is the second largest vessel to transit the Panama Canal. The Neo-Panamax container ship THESEUS, delivered in 2016, has a TEU capacity of 14,424, a 20-row beam of 51 meters (168 feet), and is 369 meters (1,211 feet) in length. The THESEUS is deployed on Evergreen's Far East to U.S. East Coast service as part of the OCEAN Alliance network, which connects Asia and U.S. East Coast ports by means of the Panama Canal. THESEUS follows the TRITON as the largest ships of this dimension to travel through the Panama Canal since the canal was expanded in 2016. In June of 2018, after more than two years of successfully operating the expanded canal, the Panama Canal Authority (ACP) gave approval to increase the maximum beam allowable to transit the locks, raising the capacity from 49 meters to 51.25 meters.
- The Port Authority's Business Development and Industry Relations team has been actively attracting new business to the Port of NY & NJ. Over the year, they conducted more than a dozen Port briefing events around the country. They attended a variety of industry events including RILA, TPM and the Apparel Importers and Transportation Conference in New York City. The team has hosted a series of commodity briefings. One example was the packaged goods and specialty foods industry. This commodity group continues to grow significantly and is prominent in the transatlantic trade with several top trading partners in Europe. This market segment was targeted to leverage the Port of NY & NJ's proximity to many frozen, refrigerated and ambient warehouses as well as build stronger relationships with those operators. By increasing the level of engagement with these business sectors, the agency aims to work collaboratively to attract prospective shippers to this gateway. These events attract shippers, brokers, distributors and warehouse operators.

A Partnership to Build On

- On December 4, 2019, the Port of NY & NJ was host to the second annual Intermodal Rail Operations Summit to continue collaborative discussions on how to improve rail service in the port and grow discretionary cargo. Key attendees included representatives from Norfolk Southern, CSX, CN, Conrail, APM Terminals, Port Newark Container Terminal, Global Container Terminals, and Maher Terminals, as well as several shipping lines. The focus of the forum was to build on the ongoing Port Department leadership role in increasing communications among all rail stakeholders serving the Port. CN was a new addition to the mix given their new service offering to E. Canada.
- The Port Authority of NY & NJ, in collaboration with Sustainable Terminal Services (STS), the consortium of the Port of NY & NJ's five terminal operators, submitted an Advanced Transportation and Congestion Management Technologies Deployment Initiatives grant. The Port Authority applied on behalf of STS for enhancements to the "PortTruckPass" portal, including enhancements to the Terminal Information Portal System "TIPS" - a sub module of the PortTruckPass system. This grant initiative would allow for the integration of information from the Class I railroads and intermodal equipment providers (chassis) to be added to the system platform. The estimated total project cost is \$659,350 and the grant request is

for 50% funding. We anticipate receiving status of the grant submission soon. The PortTruckPass system is the first integrated Port Community System in the country that compiles information from multiple container terminals. The system provides truckers and beneficial cargo owners with on-line access to the Drayage Truck Registry. Through the "TIPS" module, users can access information pertaining to container availability, booking status, vessel schedules, empty container return location and a truck management system that facilitates the creation of gate appointments.

The Cargo Pipeline

Collaborating with port businesses and the Port of NY & NJ's host communities, the Council on Port Performance hosted several events in 2019, fostering the breadth of career opportunities within the maritime transportation, logistics and distribution industry. These events included: an internship fair, Rewarding Careers in Newark's Backyard, HS Career Awareness at the Cape Liberty Cruise Terminal, TLD Job Fair in partnership with the Staten Island Borough President's office at Port Richmond HS (this event was targeted for HS graduates immediately entering the workforce), TLD Job Fair in Elizabeth, NJ, Vocational and Supply Chain Management Teachers "Train-the-Trainer" Workshop at the Port of NY & NJ. The

TLD industry contributes approximately \$60 billion to the state's GDP, making it the sixth highest dollar amount per state nationwide. With the Port of NY & NJ's proximity, Middlesex, Bergen, Essex, Hudson, Union and Morris counties account for more than 60 percent of New Jersey's TLD jobs.

- On Friday, November 8, 2019, the Council on Port Performance sponsored a dedicated transportation, logistics and distribution (TLD) job fair at Union County College's Kellogg Building in Elizabeth, NJ. The event drew over 30 employers who have plans to hire a variety of skilled labor and management. More than 200 job seekers attended this event.
- On November 14, 2019, the Port of NY & NJ welcomed 25 vocational trade and supply chain management high school instructors. The purpose of the workshop was to provide maritime awareness education to teachers within the Port District and to show them that transportation, logistics and distribution jobs offer a competitive salary and more importantly, a viable career pathway. The Port Authority of NY & NJ, PNCT, ILA, Eastern Metals Recycling (EMR) and New York Shipping Association teamed up for this full-day event. The day included a Port 101 briefing; career information and overview of Central Automotive; as well as a tour of the maintenance shop at Port Newark and overview of its career pathways.
- The Council on Port Performance's Workforce Development Team, in partnership with the Staten Island Borough President, hosted a job fair for recent high school graduates. The event was held at Port Richmond High School, for which an invitation to all recent high school graduates from Staten Island were invited. The event was held to coincide with the last day of summer school for students, who were unable to graduate in June.







GOVERNMENTAL AFFAIRS HIGHLIGHTS 2019

As 2019 began, high on the list of legislative priorities for the year was crafting new legislation to aid the seemingly never-ending mission of modernizing the Waterfront Commission of New York Harbor for its 21st century role in the Port of New York & New Jersey. A role which does not interfere with matters collectively bargained with the International Longshoreman's Association, AFL-CIO to hire additional workers. These workers are necessary to ensure safe, efficient, and productive movement of cargo to and from what has now become the nation's "second busiest" gateway of international maritime container commerce. Actions by the Waterfront Commission have resulted in the slowing down of or even the choking off of the hiring process crucial to economic growth in the port industry.

State of New Jersey

Continuing into 2019, was the case in the United States District Court for the District of New Jersey Civil Action concerning the Waterfront Commission of New York Harbor versus Philip Murphy, in his official capacity as Governor of New Jersey. The position of the Philip Murphy Administration expressed in the State of New Jersey's argument filed in 2018 by New Jersey Attorney General Gurbir stated, "When they entered into the Compact, New York and New Jersey also retained their sovereign right to revoke powers delegated to the Waterfront Commission, and Plaintiff has no recourse against New Jersey for dissolution of the Compact."

The decision was rendered on May 29, 2019. In her ruling, U.S. District Court Judge Susan Wigenton, sitting in Newark, ruled that Governor Christie and state lawmakers exceeded their power in passing the measure for New Jersey to withdraw from the Waterfront Commission compact. Hence, a glaring difference of opinion exists, so what was next?

On June 25th the State of New Jersey announced its decision to appeal Judge Wigenton's decision by filing a Notice of Appeal to the U.S. Third Circuit Court of Appeals. NYSA determined after careful consideration that as a party who could also potentially be harmed economically by the outcome of this matter, that it would be in our best interest for NYSA to file an Amicus Curiae Brief. On September 26th NYSA filed a "Motion for Leave to File Brief as Amicus Curiae in support of Reversal and the Appellants" to the appeals court. This filing was opposed by the Waterfront Commission. However, on October 8th the U.S. Court of Appeals for the Third Circuit, ruled that the motion to File Brief as Amicus Curiae is granted.

As the year ended, all of the various parties to this case had filed their briefs and must now wait until this matter comes up for oral arguments before the Third Circuit Court of Appeals currently scheduled for March of 2020.

Wind Energy Safety Concerns

New Jersey, New York and many coastal states around the nation are racing to develop and implement Clean Energy programs focusing on the environmental and economic benefits of offshore wind energy systems. Many in the maritime industry have stood up to voice their opinions about the growing concerns for navigational safety associated with offshore wind energy development at one of the world's busiest harbors. Much of the concern has arisen out of reports that navigational clearances proposed in early development plans are calling for a one nautical mile setback from established shipping lanes. However, the growing opinion among the international maritime community is that given the increasing size of vessels and vessel traffic in New York Harbor, clearances between wind turbines and shipping lanes should be a minimum of 2 nautical miles. In an effort to bring the safety issue to the attention of the New Jersey Board of Public Utilities (NJBPU), the lead agency on the development of wind energy in New Jersey, NYSA, Douglas Ludwig, Director of Governmental Affairs for Maersk, and Edward J. Kelly, Executive Director of the Maritime Association of the Port of New York & New Jersey, met with Joseph L. Fiordaliso, President of the NJBPU and key members of his senior staff. After discussion of the realities of navigating ocean-going vessels under the variety conditions that can challenge mariners, our group left feeling confident that



industry concerns about potential navigational and environmental risks would be seriously considered as the important futures of maritime commerce and wind energy development move forward.

S-4204/A-5936 Independent Contractor Status

These bills threatened to undermine the longstanding business relationships by adopting a modified “ABC” test for determining the qualifications to achieve independent contractor status for workers who choose to be across a wide variety of business sectors. For the maritime industry of greatest concern was the potential impact on the fleet of independent owner-operator truck drivers who we depend upon to transport a variety of cargo to and from the Port of NY & NJ and the marketplace.

Directly following the November 5, 2019 election, which saw every seat in the New Jersey General Assembly contested, both houses of the New Jersey Legislature returned for a “Lame Duck” legislative session. On Thursday, November 7th legislation in the form of S-4204, which concerns employment status of individuals with respect to wage and hour and employment status was introduced in the New Jersey Senate. This was followed on November 14th by the introduction of its General Assembly companion bill A-5936. These bills were modeled after the now legendary Assembly Bill 5 (A.B. 5), which had recently passed in California.

In an effort to bring order to this important issue, NYSA joined forces with a number of concerned business coalitions who shared our concerns about the potential devastating impact should this legislation be enacted. In testimony at two Senate and one General Assembly committee hearings in opposition to the proposal, NYSA sounded a warning about the economic ripple effecting the port, state, regional, and national economies. With the assistance of coalition partners, a unified delegation of port area legislators and some of their colleagues, along with a clear perspective of the chaos this matter was creating in California, it appeared at year’s end that the push to risk the similar economic jeopardy upon New Jersey’s economy was slowing. NYSA will continue to watch this issue in the coming year.

New York State

Legislative activity in New York State continued to be stalled. Although the usual list of legislative initiatives to modernize the Waterfront Commission put forth annually by NYSA were introduced, again they did not move. At the center of why in large part is the pending federal case between the Waterfront Commission and the State of New Jersey.

Of significance to 2020’s legislative effort in New York will be the decision of an action brought against the industry in 2012 by the New York State Division of Human Rights. The case which alleged unfair hiring practices in the industry, was used by the Waterfront Commission as a tool to justify their continued existence as conditions in the 50’s and 60’s warranted. They accused the industry with no factual evidence of engaging in unfair hiring practices for more than a decade. In her decision dated November 1, 2019, Judge Lilliana Estrella-Castillo, Chief Administrative Law Judge, NYSDHR, dismissed the case. On page 50 of her decision, Judge Estrella-Castillo expressed concern about how the Waterfront Commission combats violations of Human Rights Law, “The possibility of the Waterfront Commission ignoring a Division order or taking action inconsistent with Human Rights Law is not merely a hypothetical; the Waterfront Commission’s refusal in 2011 to register certain temporary baggage handler recruits solely because of their race, although arguably well-intentioned, was clearly inconsistent with the Human Rights Law.”







NOTES FROM WASHINGTON, D.C.

PAUL H. BEA, JR.



2019 Legislative Issues and Action in Washington, D.C.

The record of the First Session of the 116th Congress – and all official Washington – is proof that the port industry should not keep its distance from the Nation’s Capital. Much occurred that was helpful, and some not-so-helpful, over the course of twelve months in 2019. As if to underscore the importance of dogging the Federal policy-making machine, two major port-related trade groups – the National Association of Waterfront Employers (NAWE) and the American Association of Port Authorities (AAPA) – brought in new leadership before the end of the year, giving the Washington-based organizations new energy and added focus on issues affecting the port sector. Much happened in 2019 – including the lasting repeal of the Cadillac Tax on health plans – and much more can happen in the next few years.

Detention and Demurrage

The Federal Maritime Commission spent a second full year on the matter of terminal and carrier fees. After issuing its Fact Finding Investigation No. 28 Final Report in December 2018, the FMC commissioners continued the investigation to “organize and lead teams composed of industry leaders to further investigate and refine the commercial viability” of the report’s four recommended “approaches” including “simplified, and accessible demurrage and detention billing practices.” This was the FMC’s second use of “innovation teams” – the first being a few years ago to address “port congestion” complaints – that consist of marine terminal, carrier, shipper and other supply chain representatives.

In late August, another report was issued by lead Commissioner Rebecca Dye, who proposed that she and her colleagues prepare a draft “interpretive rule” – short of new regulation – to guide FMC decisions as to the reasonableness of detention and demurrage practices when formal complaints are filed. A second recommendation in the report suggested the need to create a shipper advisory committee to give cargo interests another formal way to provide input to the FMC commissioners. Both recommendations were approved and a few weeks later the “interpretive rule” was issued for formal comment. Not surprisingly, it attracted around 100 filed comments, including strong opposition from some industry groups. A final version of the rule is expected to be issued in 2020. Meanwhile, a senator has introduced legislation to create what would be the FMC’s first formal advisory committee, the members of which would be importers and exporters.

Multiemployer Pension Plans

In recent years, two proposed changes to Federal policy posed major cost implications for the marine terminal sector. By the end of 2019, one of those, the Cadillac Tax, was no longer a factor. The other remains a challenge in 2020. Implementation of the Cadillac Tax provision of the 2010 Affordable Care Act was delayed by successive congresses. In December 2019, it was repealed to the approval of both management and labor. But unlike the unpopular tax, the second issue of at-risk multiemployer pension plans lingers because finding bipartisan agreement on a solution has proven very difficult.

Generally, Democrats and organized labor favor the use of low interest loans to save failing pension plans and the House formalized that position by passing the Rehabilitation for Multiemployer Pensions Act of 2019 (H.R.397) – the so-called Butch Lewis Act. In contrast, Republicans and business organizations want to see more conservative standards, such as a lower cap on discount rates, applied to plans. In late 2019, Senators Chuck Grassley (R-IA) and Lamar Alexander (R-TN) issued the Multiemployer Pension Recapitalization and Reform Plan (Proposal), which comprises a twelve-page White Paper and a seventy-seven-page Technical Explanation. The Proposal is another attempt to amend the laws that apply to multiemployer defined benefit pension plans, many of which are in severe financial distress and in danger of running out of money.

Of concern to multiemployer pension plans that are well-run, well-managed, and well-funded is a provision in the Proposal that would reduce the long-term funding investment return assumption to 6.0%.



For plans that have been successfully using a higher long-term funding assumption, such as 7.0%, this provision would have a significant negative impact on the plan with respect to the present value of accumulated plan benefits, the funded percentage, and the scheduled annual cost. NYSA President John Nardi expressed his concern about this provision in a letter to the senators. The Proposal had not yet been introduced as a legislative bill at year-end.

The question in 2020 will be whether the two parties can find a middle ground on this important policy matter. This has been a top issue for NYSA. It brought Mr. Nardi to Washington multiple times to educate Members of Congress and their staff on the implications for our Port and the industry.

Infrastructure Grants

This has been a very notable year for the port sector in regards to infrastructure grant policy. Federal funding of two major transportation grant programs known as BUILD and INFRA, the latter specifically aimed at freight related projects, is continuing into FY 2020 at billion-dollar levels. In 2019 alone, over \$270 million was awarded port-related infrastructure projects in the country. In past years, the Port of NY & NJ terminal and intermodal projects have won these grants. Even more significantly, the President signed into law legislation that elevates port infrastructure as deserving of its own competitive grants program. It is called the Port and Intermodal Improvement Program (PIIP). As validation of this status, Congress appropriated over \$500 million for the two-year period ending in FY 2020. Add in the CRISI rail grant program, port projects are now eligible to compete against other transportation projects in four different grant programs, whose resources total roughly \$2.5 billion in FY 2020, in order to address needs inside and outside the terminal gate. The port industry should be very pleased with what has been accomplished by pressing the case that “ports are infrastructure, too,” as one might put it. Just over 10 years ago, port terminal projects were not eligible for USDOT grants. The next step in Congress should be to give marine terminal operators eligibility to apply directly for grants.

One of the issues that emerged in Washington is marine terminal automation. Unlike Federal policy that generally has welcomed automation in transportation modes, Congress has responded to the urgings of longshore unions by approving legislative language to limit the awarding of port infrastructure grants for the purchase of full automation equipment. The provision signed into the new PIIP law states: “No funds shall be used for a grant award to purchase fully automated cargo handling equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control, if the Secretary determines such equipment would result in a net loss of jobs within a port or port terminal.” This being a new issue on Capitol Hill, NYSA leadership traveled to Washington to explain to congressional offices how automation technology is a worldwide standard in the industry, creates new jobs for port workers, and makes terminals safer and cleaner workplaces.



Harbor Maintenance Trust Fund

Legislation to free up Harbor Maintenance Trust Fund (HMTF) resources won House approval in 2019, giving a major boost to the efforts of public and private sector port advocates to change how HMTF money is managed. With the passage of the Full Utilization of the Harbor Maintenance Trust Fund bill (H.R.2440), sponsored by Transportation & Infrastructure Committee Chairman Peter DeFazio (D-OR), attention now is directed to the Senate side where Appropriations Chairman Richard Shelby (R-AL) has been working toward a similar goal. Both senior legislators who champion home state ports want to enable the full use of a prior year's collection of the Harbor Maintenance Tax. The House-passed bill also would enable the spending of more than \$9 billion that is the accumulating trust fund balance.

Congress is scheduled to take up the biennial water resources bill (WRDA) in 2020. That will give port advocates more opportunity to press the point on spending HMTF resources and call for reforms as to how the money is allocated. The Port of NY & NJ is a "donor port," generally defined as contributing to the HMTF far more than is actually spent there on harbor maintenance. Donor ports have made the case that they should have more access to HMTF funding for "expanded uses" beyond standard Federal channel maintenance. WRDA 2020 legislation will be the vehicle for enacting such a change in policy.

Trade Tariffs

The Trump Administration continued to focus much attention on trade relations and the President threatened expansive use of tariffs on imports. Tariff hikes were put into effect, notably on Chinese products, and the Chinese government retaliated against US exports. Twice, the White House included ship-to-shore cranes on a long list of planned tariff increases, prompting representatives of marine terminal operators and port authorities to testify in public hearings that a 25 percent tariff would penalize port capital improvement projects designed to keep the United States competitive. Moreover, they argued that there are no viable, reasonable alternatives to source the kind of cranes that are needed. Those arguments, and evidence to back them up, must have had their intended effect. The cranes were removed from the proposed tariff list on both occasions. That history gives the terminal industry good reason to remain alert.

Federal Funding

Congress managed to send to the President FY 2020 appropriations bills, albeit three months into the new fiscal year. The approved levels for port-related programs were very satisfactory. The Corps of Engineers was allocated \$7.6 billion for the civil works program. The navigation program again is given the largest share for a total of \$3.8 billion for coastal and inland projects. That includes \$50 million for donor (see above) and energy transfer ports. The Port of NY & NJ is one of the select few ports that qualify under both categories and will have a portion of the money to put to use in terminal area waters. Congress also approved the use of Harbor Maintenance Trust Fund to the tune of \$1.6 billion.

In regards to CBP inspection staffing at non-land border ports-of-entry, Congress told the Administration to fill 800 more positions, including 610 CBP officers, than the White House had budgeted. Congress also took notice of terminal and port agency complaints and directed CBP to "work with seaports" and stakeholders, and "engage thoughtfully with ports when negotiating agreements with port owners and operators." Congress heard "numerous reports of CBP shifting the costs of baseline service to [Reimbursable Services Agreements which can] negatively affect terminal operators." It is "critical that [RSAs not be] used to supplant baseline service levels, but...used to supplement enhancement requests."

That Congress was listening gives the NYSA and others in the port sector more reason to continue to be watchful, active and vocal in the Nation's Capital. In closing, it has been a pleasure working with the NYSA and other organizations and persons in support of my home Port of New York and New Jersey for these many years.



2019 REPORT OF COUNSEL

NYSA-ILA COLLECTIVE BARGAINING AGREEMENT

Recruitment and Hiring of Longshore and Checker Crafts

On February 14, 2019, the Waterfront Commission of New York Harbor (Commission) issued Determination 44, which accepted the collectively bargained NYSA-ILA Recruitment and Hiring Plan that had been adopted in September 2018 and later amended on February 6, 2019 after intense negotiations between both labor and management and the Commission that were mediated by counsel from the Authorities Unit of the New Jersey Governor's office.

The Hiring Plan provided that one-half of new hires in the Port of New York and New Jersey (PONY/NJ) would be taken from the ILA's hiring pool and one-half from that of NYSA. The amendment to the Hiring Plan provides that NYSA's hiring pool would include members of U.S. military service organizations (20% of total hires), referrals from state employment offices (20% of total hires), and other NYSA referral sources, including managerial employees of NYSA and its members (10% of total hires).

Determination 44 also provided for the acceptance of over 600 applications for longshore and checker positions in the PONY/NJ to address a serious labor shortage throughout the Port. During 2019, the Commission continued to thwart full implementation of the NYSA-ILA Hiring Plan by attempting to impose additional terms and conditions on the hiring selection process for union referrals. At year-end no final agreement on the hiring protocols had been reached by the ILA locals and the Commission and only one-third of the more than 600 longshore and checker positions had been filled.

Court Actions

In July 2018, a checker had filed a notice of appeal with the Court of Appeals for the Second Circuit (NY, CT, VT) challenging the December 2017 dismissal of his lawsuit against an NYSA direct-employer member that had alleged breach of contract in connection with seventeen grievances that he had filed concerning overtime opportunities. The federal district court in New York had upheld the denial of all the grievances by the NYSA-ILA Labor Relations Committee in August 2017. In March 2019, the Court of Appeals affirmed the district court's dismissal of the lawsuit.

A longshoreman whose license had been revoked by the Commission in 2008 because his presence on the waterfront constituted a danger to the public peace and safety commenced an action in 2014 to attempt to return to work after years of denials by industry arbitral panels and state and federal courts. In June 2019, after five years of protracted litigation, plaintiff initiated the filing of a Stipulation of Dismissal with Prejudice in New Jersey state court, thereby concluding this matter.

WATERFRONT COMMISSION OF NEW YORK HARBOR (COMMISSION)

In January 2018, the Commission commenced an action in federal district court in New Jersey to prevent the State of New Jersey from implementing legislation that would allow New Jersey to withdraw from the bi-state Waterfront Commission Compact (Compact) between itself and the State of New York. Defendants include the Governor of New Jersey and its President of the Senate and Speaker of the Assembly.

On May 29, 2019, the district court granted the Commission's motion for summary judgment to enjoin the State of New Jersey from unilaterally withdrawing from the Compact. Defendants filed their Notices of Appeal with the Court of Appeals for the Third Circuit in Philadelphia in June. All parties had filed their briefs by year-end, including NYSA, whose amicus brief was filed on September 24, 2019, pursuant to authorization by NYSA's Board of Directors.

NEW YORK STATE DIVISION OF HUMAN RIGHTS (DHR)

In late 2019, after seven years of litigation, the Chief Administrative Law Judge (ALJ) of the New York State Division of Human Rights (DHR) issued a decision favorable to NYSA and several of its direct-employer members in *New York State Division of Human Rights v. International Longshoremen's Association, New York Shipping Association, Inc., et al.*, DHR Case No. 10156672.

The ALJ's fifty-six (56) page decision recommended the dismissal of the complaint in its entirety. The ALJ concluded that the DHR had failed to establish a prima facie case of disparate-impact discrimination with regard to the NYSA-ILA Hiring Plan at issue, that the DHR's claims were barred by the applicable statute of limitations, and that the DHR's claims were not saved by the continuing-violation exception. At year-end the DHR was preparing to file objections to the ALJ's decision.

NATIONAL LABOR RELATIONS BOARD (NLRB)

In April 2019, a longshore worker filed an unfair labor practice (ULP) charge with the NLRB against an NYSA direct-employer member alleging that the employer had violated the National Labor Relations Act by disciplining him in connection with several unexcused absences in retaliation for his filing a grievance against his hiring agent.

NYSA Counsel appeared before the NLRB on behalf of the employer and provided proof that the longshore worker had failed to take timely action to challenge the written warnings the employer had issued to demonstrate that any of the unexcused absences had been recorded in error or that any of the unexcused absences had been excusable. The NLRB Regional Director approved withdrawal of the ULP charge in July 2019. The withdrawal of the charge foreclosed any right of appeal.







NYSA-ILA EMPLOYMENT LAW PROGRAMS

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

The NYSA-ILA USERRA Coordinator reviews requests for military leave, notifies 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. Forms and checklists have been prepared to assist the Coordinator in these efforts.

NYSA Counsel has continued its oversight of the USERRA training program and has created additional forms to facilitate the processing of USERRA leaves of absence, including a comprehensive Military Leave Benefits Inquiry Form, to ascertain that a returning longshore worker receives all the benefits to which that employee is entitled after completion of his or her military service.

The purpose of this form is to direct USERRA benefit inquiries to the appropriate benefit fund, rather than having them filed as labor grievances. These forms have been distributed to the various ILA locals. Counsel has also prepared work sheets to enable relevant employee-benefit personnel to calculate such benefits. Fund personnel are being trained on how to calculate these benefits.

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.

The NYSA-ILA Family Leave Program administrators continue to implement the provisions of the New York State Paid Family Leave Law that took effect in 2018 and to assist longshore workers with claims covered by the law.

A comprehensive training session for direct employers on the federal Family and Medical Leave Act and the relevant New Jersey and New York Family Leave Laws was held in March 2019. Request forms and other administrative documents have been updated to reflect any changes required by law. In addition, the NYSA-ILA Family and Medical Review Committee continues to develop procedures to ensure that employees comply with their notice obligations under relevant law and that employers receive timely notice of leave taken.



NYSA-ILA Accommodations Team (A Team)

The A Team continued to meet throughout the year 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 continues to monitor 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 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).

During 2019, NYSA continued its comprehensive review of the Program for the purpose of clarifying procedures and testing circumstances and addressing issues raised by new “designer” drugs. In addition, procedures were introduced to facilitate an employee’s return to work after non-occupational disability in circumstances where that employee may have workplace restrictions.

2019 FEDERAL JUDICIAL, LEGISLATIVE, AND REGULATORY ACTIVITY

DEPARTMENT OF LABOR (DOL)

Final Overtime Rule

In September 2019, DOL announced its Final Rule implementing the *Fair Labor Standards Act's* exemption from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. As of January 1, 2020, 1.3 million more workers became eligible for overtime pay. The Rule increases the salary threshold to \$684 per week (\$35,568 annually), a nearly 50% increase from the prior level of \$455 (\$23,660 annually).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

In late 2019, the EEOC rescinded its 1997 *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment*. The Policy had set forth the EEOC's position that employment agreements requiring mandatory arbitration of discrimination claims as a condition of employment were contrary to federal employment discrimination statutes. This policy change is consistent with numerous decisions since 1997 by the Supreme Court of the United States ruling that agreements to arbitrate employment disputes are enforceable under the Federal Arbitration Act.

NATIONAL LABOR RELATIONS BOARD (NLRB)

Workplace Changes During the Term of a Collective Bargaining Agreement

In September 2019, the NLRB adopted a new "unilateral change" rule that permits employers to make unilateral changes in their workplaces during the term of their collective bargaining agreements (CBA), without first bargaining with the unions that represent their employees, when the change "falls within the compass or scope of contract language that grants the employer the right to act unilaterally." *MV Transportation, Inc.*, 368 N.L.R.B. No. 66 (Sept. 10, 2019). This new standard is less restrictive than the NLRB's prior rule and makes it easier for employers to amend the terms and conditions of employment during the term of a CBA.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Powered Industrial Trucks (PIT): Request for Information (RFI)

In March, OSHA sought information concerning PITs to determine what actions, if any, OSHA could take to reduce regulatory burdens while maintaining the safety of workers. Maritime industry stakeholders, including those representing the Port of New York and New Jersey, submitted comments to OSHA in June, challenging OSHA's inclusion of the longshore and marine terminal industries in its review of general industry standards for PITs. The comments pointed out that the July 14, 2000 Settlement Agreement entered into by OSHA and the National Maritime Safety Association set the standards for the use of and training and recertification for PITs in the longshore and marine terminal industries and continues to govern PIT operator training programs successfully. It is anticipated that an NPRM will be published in 2020.



PENSION BENEFIT GUARANTY CORPORATION (PBGC)

FY 2019 Annual Report

In late 2019, the PBGC released its 141-page *FY 2019 Annual Report*, which showed a record deficit of \$65.2 billion in its multiemployer insurance program as of September 30, 2019. The increase from \$53.9 billion at the end of FY 2018 was attributed to interest-rate changes that drove up the cost of the agency's future payments to failed multiemployer plans.

The multiemployer program, which insures the pensions of 10.8 million participants, is projected to become insolvent during FY 2025. During FY 2019, the PBGC provided \$160 million in financial assistance to 89 insolvent multiemployer plans, up from payments of \$153 million to 81 plans during FY 2018. The PBGC paid over \$6 billion in benefits to more than 932,000 retirees during FY 2019.

PORT SECURITY/TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)

Enrollment

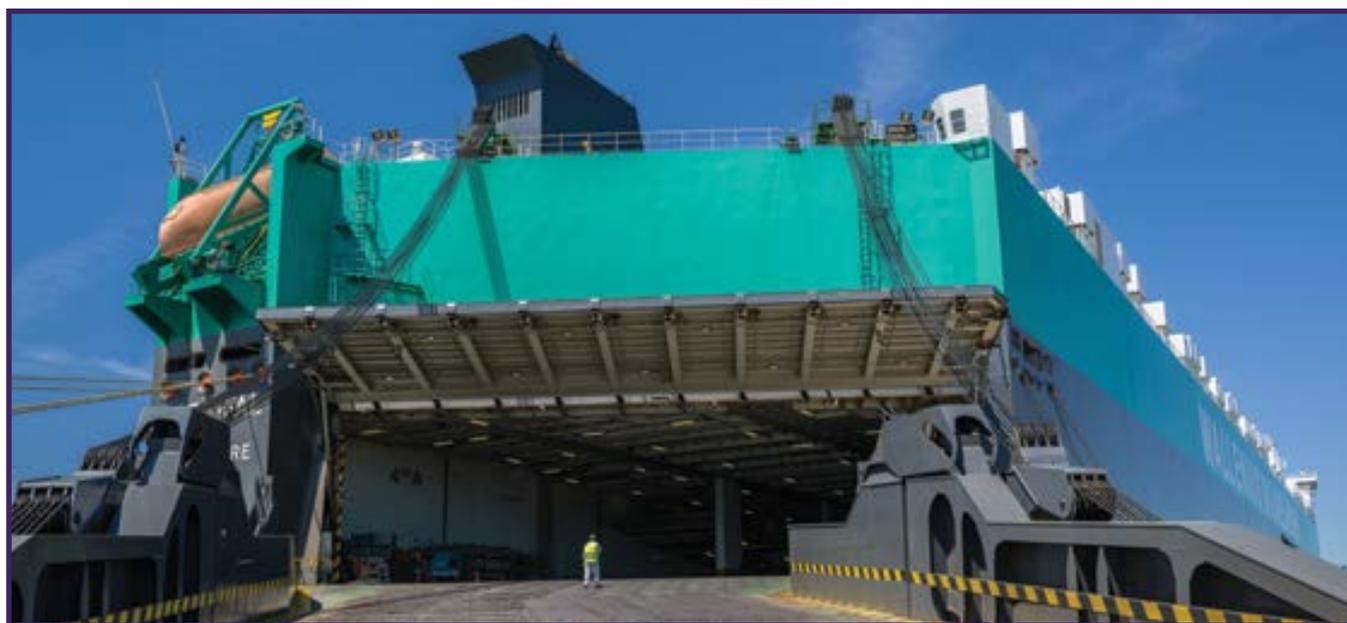
At year-end there were 5.521 million TWIC enrollments since inception in 2007 with 2.295 million active TWIC cards in use. There were approximately 35,000 new enrollments in September. The OneVisit Enrollment Program, which was implemented in June 2014 to streamline the TWIC-enrollment process and to eliminate the need for a second visit to an enrollment center to pick up an issued TWIC, has been a success. At year-end there were 1.930 million OneVisit enrollments, which constituted 84% of all enrollments.

TWIC-Reader Rule

In February, the Department of Homeland Security (DHS) published a 60-day Notice of Information Collection (Docket No. DHS-2018-0052) to assess the risk-mitigation value of TWICs at maritime facilities pursuant to *The TWIC Accountability Act of 2018*. That Act requires the Secretary of DHS to commission an assessment of how effective the TWIC program is at enhancing security and reducing security risks for regulated maritime facilities and vessels. Several NYSA direct-employer members submitted comments to the docket, affirming their commitment to the TWIC Program and its importance to national security.

Seafarers' Access to Maritime Facilities

In April, the United States Coast Guard published a Final Rule, which ensures that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through a facility and requires owners and operators to document their access procedures in their Facility Security Plans and to receive approval by the local Captain of the Port.



2019 STATE AND LOCAL JUDICIAL, LEGISLATIVE, AND REGULATORY ACTIVITY

NEW JERSEY

Annual Notice Requirements

Gender Equity. New Jersey employers are required to distribute to all employees working in the state a written copy of the state *Gender Equity Notice* on or before December 31 of each year. Employers must obtain a signed acknowledgement from each employee in writing or by means of electronic verification.

Conscientious Employee Protection Act (CEPA) (The “Whistleblower” Act). New Jersey employers with ten or more employees must distribute annually to their New Jersey employees the required notice under CEPA either in hard copy or in electronic format. Although employers are not required to obtain a signed acknowledgement, it is a better practice to do so to rebut any future claim that an employee did not receive the notice.

New Jersey Family Leave Insurance Expansion

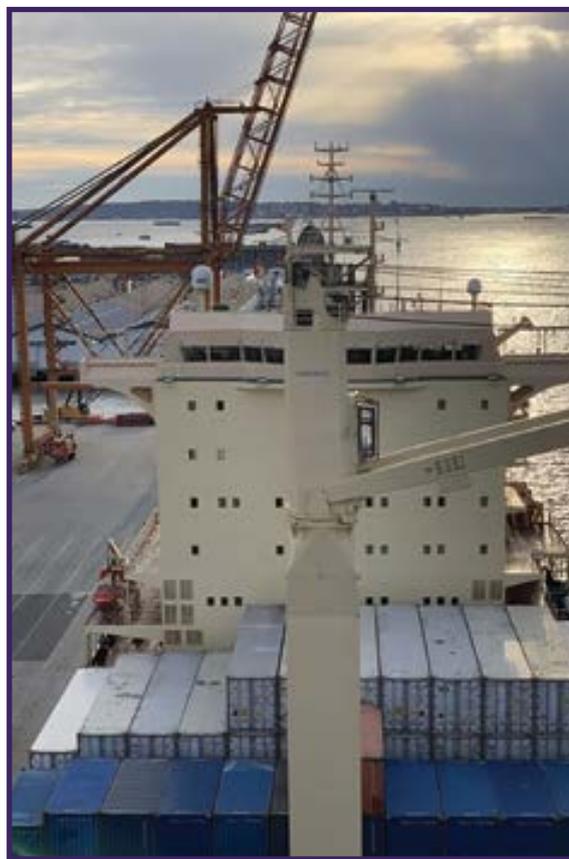
On February 19, 2019, New Jersey Governor Philip Murphy signed legislation to amend the New Jersey Family Leave Act (NJFLA) and to expand benefits under the New Jersey Family Leave Insurance Program (NJFLI). The legislation:

- Expands the definition of “family member” to include extended family members (for example, grandparents) and those whose relationship is like that of a family member;
- Increases “reduced-schedule leave” from six (6) to twelve (12) months;
- Permits intermittent NJFLA leave to bond with a newborn without approval by an employer;
- Allows an employee taking paid family leave to use paid time off without suffering a reduction in the employee’s total NJFLI insurance benefits;
- Extends NJFLA coverage to employers with thirty (30) or more employees (down from 50); and
- Eliminates the seven (7) day waiting period for NJFLI benefits.

NJFLI benefits are paid by the New Jersey Department of Labor (NJDOL). Employees apply directly to the NJDOL for those benefits. NYSA direct-employer members are required to verify the employee’s leave. The NYSA-ILA Family and Medical Leave office can assist employers that may have questions about the procedure. A notice poster regarding this program is available at nj.gov/labor/forms_pdfs/tdi/fli_poster.pdf. This notice should be conspicuously posted in all New Jersey workplaces, provided to employees, and provided to employees upon an employee’s request for benefits.

New Jersey Law Against Discrimination (LAD)

The New Jersey LAD was amended effective March 18, 2019 to bar enforcement of non-disclosure provisions in settlement agreements and employment contracts, and to prohibit the waiver of substantive and procedural rights under the statute. The amendment provides that non-disclosure provisions in employment contracts and settlement agreements are against public policy and are deemed to be unenforceable against a current or former employee, if they have “the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment.”



NEW YORK STATE

New York State Human Rights Law (NYSHRL)

New York State amended the NYSHRL in 2019 to

- Mandate liberal construction of the NYSHRL to align with the provisions of the New York City Human Rights Law;
- Require distribution of an anti-sexual harassment prevention policy and training notice at the time of hire and annual training in English and in the primary language of the employee;
- Restrict non-disclosure provisions in all settlement agreements relating to all claims of discrimination, not just sexual harassment claims;
- Ban mandatory arbitration clauses for all discrimination claims, not just sexual harassment claims, except where inconsistent with federal law;
- Lower the standard for proving discriminatory harassment to allow a lesser showing of inferior terms, conditions, or privileges of employment;
- Eliminate an employer's defense that 1) it exercised reasonable care to prevent/correct harassment and 2) that the employee unreasonably failed to take advantage of the preventive/corrective opportunities provided;
- Allow plaintiffs who prevail on claims of unlawful discrimination to recover both punitive damages and reasonable attorneys' fees; and
- Prohibit all unlawful discrimination against non-employee service providers (independent contractors, subcontractors, vendors, and consultants), not just sexual harassment.

All employers were required to conduct annual anti-sexual harassment training by October 9, 2019. The NYSA-ILA Anti-Harassment and Anti-Discrimination Policy has been amended to be consistent with these new laws. This amendment will be submitted to the NYSA-ILA Contract Board for approval. NYSA is also exploring ways to provide required annual training through online resources.

New York State Paid Family Leave

Paid-family-leave benefits increased on January 1, 2019. As of that date individuals were entitled to take ten (10) weeks of paid leave and to receive 55% of their weekly pay with a benefit cap of 55% of the New York State average weekly wage or approximately \$746 per week.

Employees are paid family leave under an employer's disability insurance policy that is financed by deductions taken from an employee's weekly wage. Health insurance must be maintained for those employees who use paid family leave. Employees are entitled to return to the position they held when the leave commenced or to a comparable position with comparable employment benefits, pay, and other terms and conditions of employment. Benefits paid to employees are taxable non-wage income that must be included in federal gross income.

Paid family leave forms are available at www.wcb.ny.gov. NYSA direct employers in New York State are responsible for obtaining their own New York State Paid Family Leave insurance policies covering their management as well as union-represented labor. The failure to obtain the necessary insurance will result in penalties being imposed upon the employer. Employees apply to the employer's insurer for these benefits. The NYSA-ILA Family and Leave office can assist with verification, if leave has been approved. New York State direct employers of casual workers should obtain waivers from those employees who will not work the requisite number of hours to qualify for paid-family-leave benefits.

CITY OF NEW YORK

Employers with fifteen (15) or more employees were required to conduct annual anti-sexual harassment training by December 31, 2019, in addition to posting and distributing notices advising their employees of their anti-sexual harassment rights and responsibilities.

2019 NYSA INSURANCE AND INDEMNITY PROGRAM

New York Shipping Assurance Association, Inc. (NYSAA)

In 2006, NYSA created a comprehensive insurance program to protect NYSA, its directors, officers, employees, and representatives as well as NYSA members. The coverage for NYSA members is provided through a Vermont captive insurance company, New York Shipping Assurance Association, Inc., a wholly-owned subsidiary of NYSA based in Burlington, Vermont, and includes legal representation and defense costs incurred to enjoin strikes or work stoppages, to defend arbitrations, court actions, adjudicatory proceedings, and 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 NYSA members. For the fiscal year ended September 30, 2019, less than 1% of total assessments were used to fund NYSA Policy No. NY 001.

During the 2018-2019 Policy Year NYSA filed one new insurance claim with NYSA on behalf of a direct-employer member. The claim involved an unfair labor practice (ULP) charge filed with the National Labor Relations Board (NLRB) by a longshore worker against his employer, alleging that the employer had violated the National Labor Relations Act by disciplining him for several unexcused absences in retaliation for his filing a grievance against his hiring agent.

NYSAA Counsel submitted evidence to the NLRB that the longshore worker had failed to take timely action to challenge the written warnings the employer had issued to demonstrate that any of the unexcused absences had been recorded in error or that any of the unexcused absences had been excusable. The NLRB Regional Director approved withdrawal of the ULP charge in July 2019. The withdrawal of the charge foreclosed any right of appeal.

New York Shipping Association Self-Insurance Trust

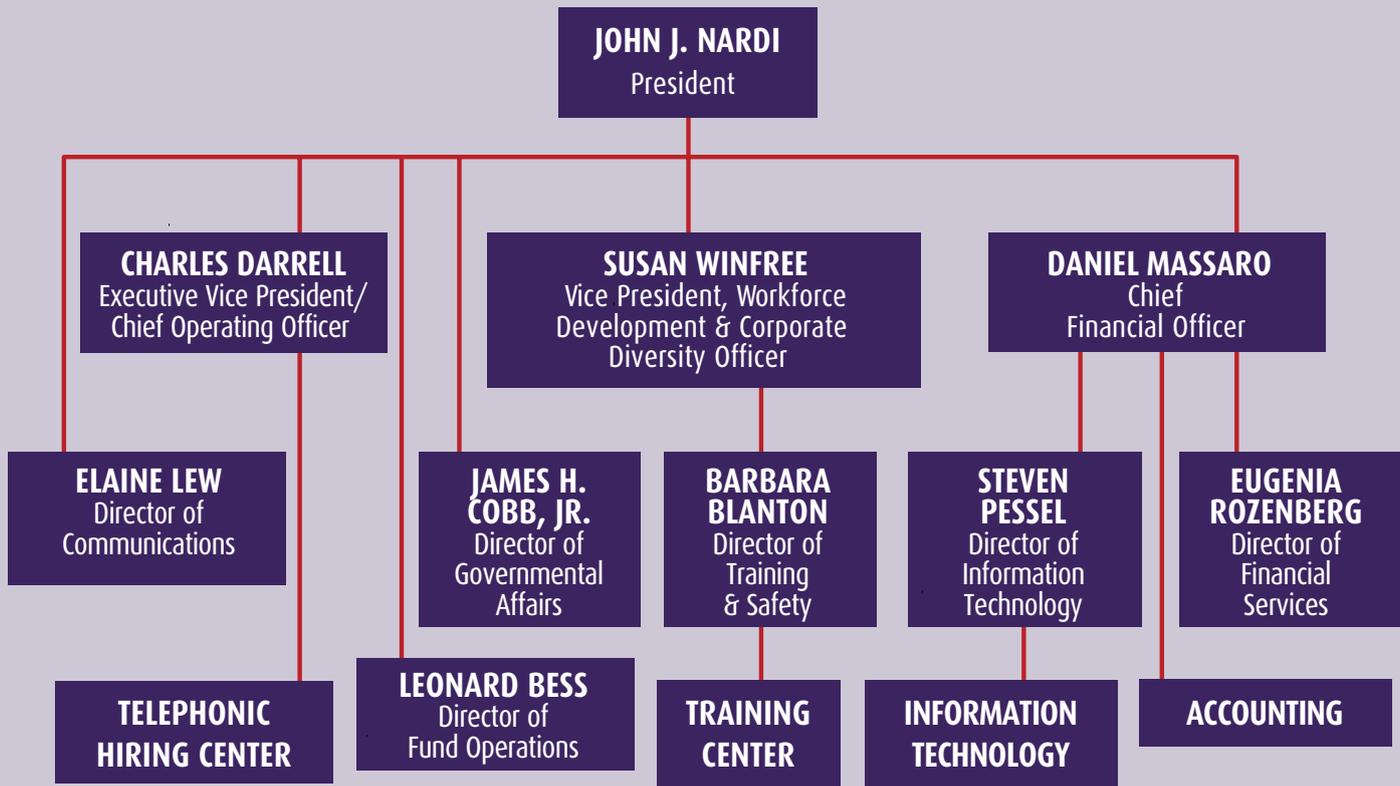
Liability insurance coverage for NYSA, its directors, officers, employees, and representatives is provided through commercial insurance policies with excess coverage provided by the NYSA Self-Insurance Trust. The Trust also provides Financial Injury Coverage to NYSA for its legal costs that arise from the implementation of the NYSA-ILA and NYSA-PPGU Collective Bargaining Agreements. NYSA did not file any claims with the Trust during the 2018-2019 Policy Year.







NYSA ORGANIZATIONAL CHART | December 2019



2019 NYSA MEMBERSHIP LIST

The American Sugar Refining Company
 APL (America), LLC
 APM Terminals Elizabeth, LLC
 APS Stevedoring, LLC
 Asset Protection Group
 Atlantic Container Line
 Bermuda Agencies Limited
 Cargotec Crane & Electrical/Kalmar USA
 Ceres Atlantic Terminals, Inc.
 CMA-CGM (America), L.L.C.
 Columbia Coastal Transport, LLC
 COSCO SHIPPING Lines (North America) Inc.
 Essex Cement Company
 Evergreen Shipping Agency (America) Corporation
 GCT Bayonne LP
 GCT New York LP
 Hapag-Lloyd (America) Inc.
 Hoegh Autoliners AS
 Hyundai America Shipping Agency, Inc.
 "K" Line America, Inc.
 Kinder Morgan
 M.P. Howlett, Inc.
 Maersk
 Maher Terminals, L.L.C.
 Mediterranean Shipping Company
 Metro Cruise Services LLC

Mitsui O.S.K. Lines, Ltd.
 MSA Security
 NYK Line (North America) Inc.
 Ocean Network Express (North America) Inc.
 OOCL, (USA), Inc.
 Port Newark Container Terminal L.L.C.
 Ports America, Inc.
 Red Hook Container Terminal, LLC
 Safmarine
 SIMS Metal Management
 Summit Security Services, Inc.
 Terminal Security Solutions, Inc.
 Turkon America, Inc.
 Wallenius Wilhelmsen Logistics Americas, LLC
 Yang Ming (America) Corp.
 Zim Integrated Shipping Services Ltd.
 ZPMC USA Inc.

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.
 Portwide Cargo Securing Company

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Michael Stamatīs
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Red Hook Container Terminal, LLC

NYSA Committee Assignments

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



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William M. Spelman, Esq.
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ACKNOWLEDGMENTS

Thanks to everyone who contributed to the content of the annual report including NYSA members and staff, The Lambos Firm, Paul H. Bea, Jr., and the Port Authority of New York & New Jersey Port Commerce Department.

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The Port Authority of New York & New Jersey

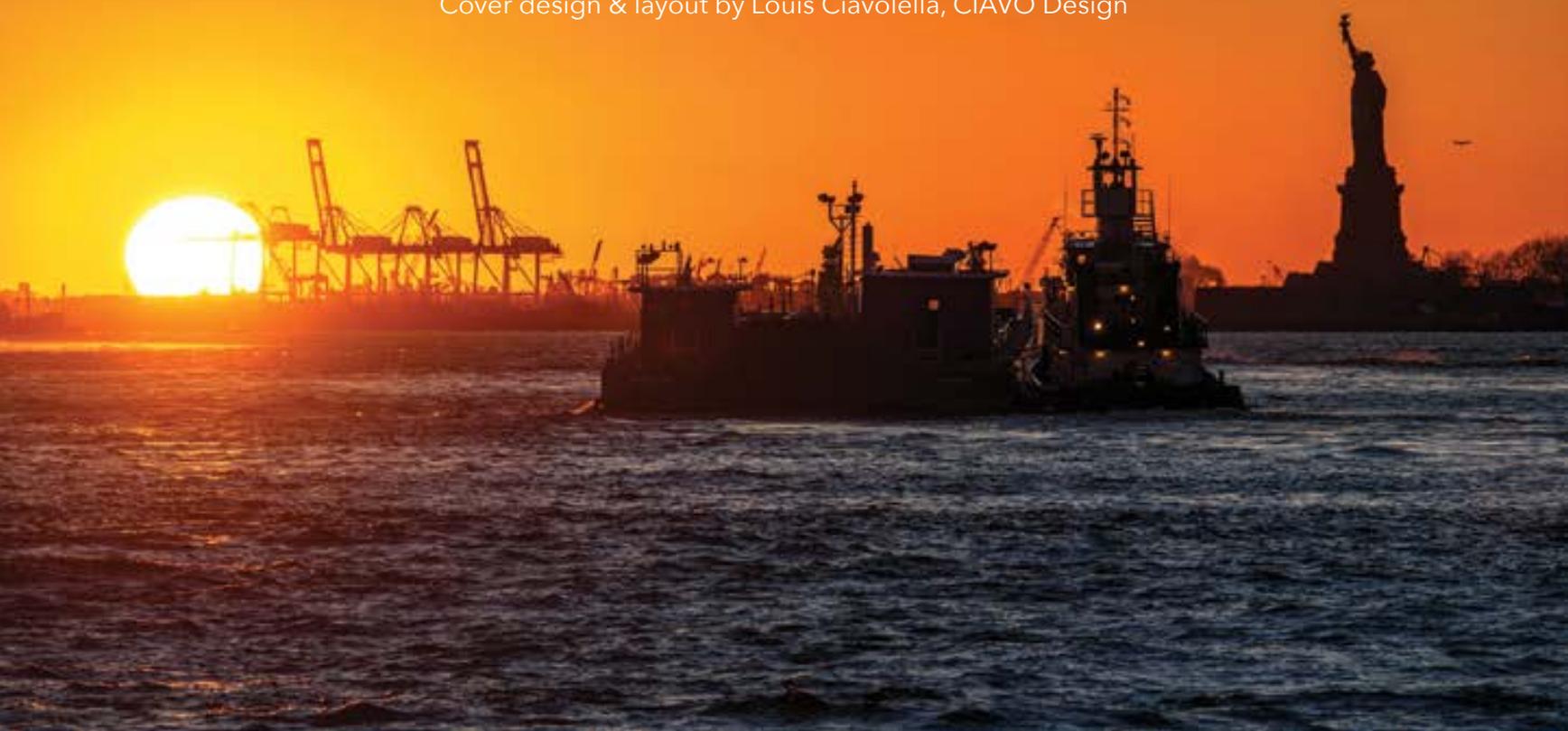
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Cover design & layout by Louis Ciavolella, CIAVO Design





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