Canada Industrial Relations Board Conseil canadien des relations industrielles

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Our File: 033113-C

Document No.: 0642126-D

June 27, 2023

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In the matter of the *Canada Labour Code (Part I–Industrial Relations)* and an application filed pursuant to sections 18 and 34 thereof by the International Longshoremen's Association, Local 1654, applicant; Bunge of Canada Ltd. and the Maritime Employers Association, employers; the United Food and Commercial Workers International Union, Local 175, intervenor. (033113-C)

Further to the hearing held in the above-noted matter, the parties will find enclosed the Reasons for decision issued by a panel of the Canada Industrial Relations Board (the Board), composed of Sylvie M.D. Guilbert, Vice-Chairperson, and Richard Brabander and Daniel Thimineur, Members.

To comply with section 20 of the *Official Languages Act*, the Reasons will be translated and published on the Board's website at www.cirb-ccri.gc.ca. A copy may be obtained upon written request to the undersigned.

Sincerely,

Tanya venable

Tanya Venable
Team Leader, Registry

Encl.

c.c.: Jesse Peters

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Reasons for decision

International Longshoremen's Association, Local 1654,

applicant,

and

Bunge of Canada Ltd.; Maritime Employers Association,

employers,

and

United Food and Commercial Workers International Union, Local 175*,*

intervenor.

Board File: 033113-C
Neutral Citation: 2023 CIRB **1076**
June 27, 2023

The panel of the Canada Industrial Relations Board (the Board) was composed of Ms. Sylvie M.D. Guilbert, Vice-Chairperson, and Messrs. Daniel Thimineur and Richard Brabander, Members. A hearing was held on September 27 and 28 and October 1 and 19, 2021, as well as on January 27 and March 7, 2022.

Appearances

Mr. Ronald A. Pink, K.C., for the International Longshoremen's Association, Local 1654;

Mr. Patrick Groom, for Bunge of Canada Ltd.;

Mr. John Mastoras, for the Maritime Employers Association; and

Mesdames Brittany Ross-Fichtner and Georgina Watts, for the United Food and Commercial Workers International Union, Local 175.

I. Nature of the Application and Background

[1] On June 10, 2019, the International Longshoremen's Association, Local 1654 (the ILA 1654 or the union) filed an application pursuant to sections 18 and 34 of the *Canada Labour Code* (the *Code*) with the Board to include Bunge of Canada Ltd. (Bunge) as a longshoring contractor under the geographic certification in the Port of Hamilton, Ontario, and the collective agreement between the ILA 1654 and the Maritime Employers Association (the MEA).

[2] The ILA 1654 is the certified bargaining agent for longshoring employees in the Port of Hamilton. Pursuant to order no. 4556-U issued on May 13, 1985, in Canada Labour Relations Board (CLRB) file no. 551-57, and superseded by order no. 5893-U issued on March 8 and September 25, 1991, in CLRB file no. 530-1790 (the Certification Order), the ILA 1654 holds a geographic certification for a bargaining unit described as follows:

> all employees of the employers in the longshoring industry in the Port of Hamilton employed as longshoremen, save and except the employees of St-Lawrence Warehousing Limited operating as Seaway Terminals who are represented by the International Union of Operating Engineers, Local 793, and who are represented by Teamsters' Local Union No. 938 and Teamsters' Local Union No. 879 for bulk cargo activities.

[3] Pursuant to the Certification Order, longshoring employers in the Port of Hamilton are represented by the MEA.

[4] Bunge is an agribusiness engaged in the processing of soybeans and canola seeds (oilseeds) for the production of oil. Some of Bunge's operations are located on or adjacent to Pier 11 West (Pier 11) in the Port of Hamilton, namely, its dock for receiving oilseeds by vessel, its receiving area for receiving deliveries by rail and by truck (the receiving area), its very large storage warehouse which can accommodate 64,000 metric tonnes of oilseeds and is colloquially referred to as the shed (the warehouse) and its oilseeds holding tanks. Bunge also operates conveyor machines that transport the oilseeds from the receiving area or the warehouse to the holding tanks and then onwards to the Bunge oil processing facility that is located in the city of Hamilton, Ontario,

on a property adjacent to Pier 11. For many years, all oilseeds coming into the Bunge facilities at Pier 11 have been transported by truck, rail and shipping vessel.

[5] Bunge is not a member of the MEA, nor is it a party to the collective agreement between the ILA 1654 and the MEA.

[6] In the present application, the United Food and Commercial Workers International Union, Local 175 (the UFCW) requested intervenor status as it is the bargaining agent for employees at Bunge in Hamilton. In *Bunge of Canada Ltd.*, 2019 CIRB LD 4235, the Board granted the UFCW full intervenor status.

[7] Since February 28, 1986, and pursuant to a decision of the Ontario Labour Relations Board (OLRB), the UFCW has been the bargaining agent representing employees at Bunge or its predecessors. The bargaining unit description is set out in article 2.1 of the collective agreement between the UFCW and Bunge:

> The Company recognizes the Union as the exclusive bargaining agent for all employees of the Hamilton Plants in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, quality control, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period. If part-time employees are required to clean tanks or working on boat unloading, the Company will at all times have the minimum of two (2) regular employees on the same job assignment.

[8] In addition to a case management teleconference held on February 8, 2021, the Board held a hearing in this matter on September 27 and 28 and October 1 and 19, 2021, as well as on January 27 and March 7, 2022.

[9] For the reasons explained below, the Board finds that Bunge is not involved in longshoring and is consequently not bound by the Certification Order or the collective agreement between the ILA 1654 and the MEA. Therefore, the present application is dismissed.

II. Facts

A. The Port of Hamilton and the Geographic Certification

[10] The Port of Hamilton is a large lake port located on Lake Ontario in the Hamilton Harbour. It is composed of various piers, facilities, rail accesses and roads.

[11] As explained above, pursuant to the Certification Order, the MEA is the appointed representative of longshoring employers operating in the Port of Hamilton. The ILA 1654 holds a geographic certification for a defined bargaining unit comprising employees of the employers in the longshoring industry in the Port of Hamilton.

[12] Mr. Mark Fortman is the Vice-President of the ILA 1654. He is retired from active employment on the Port of Hamilton, where he worked for many companies in a variety of roles. Mr. Fortman explained that longshoremen who are members of the ILA 1654 in the Port of Hamilton are organized in what are called gangs. A gang in the Port of Hamilton is made up of one foreman, two crane operators, one signal man (also known as a hatch tender), anywhere from four to six hatch men, two dock men and one lift truck driver. There are seven gangs which make up the longshoring system. Each gang is dispatched to work on a vessel that requires loading or unloading, and the gangs are dispatched according to a rotation system.

[13] Mr. Fortman explained that there are two types of cargo that come into the Port of Hamilton by vessel, namely bulk and breakbulk cargo. There is breakbulk cargo, which is basically general cargo that is merchandise in a package or a case and usually needs to be handled by machine or by hand when it is loaded or unloaded from a vessel. For example, the breakbulk cargo is offloaded from the vessels by a gang of longshoremen from the union, one piece or multiple pieces at a time, with lifting equipment operated by the longshoremen. There is also bulk cargo, which is loose material such as fertilizer, gypsum or grain and which is pumped into or taken out of a vessel's hold(s). That type of cargo is not packaged in any way. Mr. Fortman explained that the union members mainly work on breakbulk cargo.

[14] Mr. Fortman testified as to how the work was done on the Port of Hamilton prior to the advent of self-unloading vessels. He also explained that the practice now is to have self-unloading vessels for bulk cargo. He stated that self-unloaders are used for many of the companies that make up the MEA in the Port of Hamilton.

[15] Mr. James Reeves, the ILA 1654's former Recording Secretary and Business Agent, testified as to the work performed by the union with respect to self-unloading vessels docking at employers covered by the collective agreement between the ILA 1654 and the MEA. He explained that

self-unloading vessels have been a part of the industry for some 25 years and that he has experience working with them as an ILA 1654 longshoreman in the Port of Hamilton.

[16] Mr. Reeves provided an example of the work he once performed in December 2017 for Richardson International Limited (Richardson), an employer under the MEA and ILA 1654 collective agreement and under the Certification Order. He testified that when a self-unloading vessel docks in the Port of Hamilton, it is tied up along the side of the dock, close to the area on the pier where it will unload its cargo. The self-unloading vessel has a giant boom or arm which is close to the length of the vessel and which contains a conveyor belt that can take bulk cargo from the vessel, convey it along its length and discharge it in another area on the pier or elsewhere. The boom, which is structurally part of the vessel, is lined up from the vessel and pointed to a structure or area on the pier. There is usually a structure on the pier that has one or many openings on its roof or top, such as a hatch, a hopper or a combination thereof, into which bulk cargo can be discharged and come to rest inside the structure. The openings or hoppers on the structure have hatches that are either automatically or manually opened. Once the vessel's boom is aligned with the designated hopper, the boom's conveyor system syphons bulk cargo from the vessel, runs it on the conveyor belt inside the boom and discharges it in the structure through the hopper or the open hatch. The structure on the pier could then have grates or partitions inside of it to distribute the bulk cargo within the structure or elsewhere in the operations on the pier.

[17] As an ILA 1654 longshoreman working with a self-unloading vessel, Mr. Reeves explained that he would start his day by receiving a two-way radio, commonly known as a walkie-talkie, from the stevedoring contractor that is an employer under the collective agreement. For example, with this two-way radio, he would be in contact with the walking boss or the supervisor from Richardson, since the longshoremen would not be in direct contact with the vessel operators. The supervisor or walking boss, who works for Richardson and whose duties are to look after all vessel activities for that employer, would be the one in contact with the vessel. Mr. Reeves explained that he would give the signal to the walking boss or the supervisor and the grain would start flowing from the vessel to the structure on the pier. He also explained that he would be some 30 feet away from the hopper when performing that work. He further stated that his work was to monitor the flow of grain to ensure that it was not excessive and communicate with the supervisor or walking boss as

needed to slow down or stop the flow from the vessel. The supervisor or walking boss would then communicate with the vessel.

[18] Mr. Reeves further explained that vessels are also loaded by ILA 1654 members in the Port of Hamilton using equipment located on the pier. Mr. Reeves performed that work with Parrish & Heimbecker (P&H) and G3 Canada Limited (G3). He never unloaded vessels for P&H and G3.

[19] Mr. Reeves explained that twice a day, at 8:00 a.m. and 8:00 p.m., the Hamilton-Oshawa Port Authority (HOPA) sends to all facilities located in the Port of Hamilton a daily vessel report (DVR). This DVR contains a list of all vessels in the Port of Hamilton, their arrival date, the berth in which the vessel is located, their last port of call and their next port, the activity the vessel will be engaged in in the berth (i.e., whether it will be loading or unloading), the cargo and the name of the vessel's agent who is responsible for the shipping. A copy of the DVR is also provided to the ILA 1654. He explained that this report would provide him with information on upcoming work for the ILA 1654 members since it would advise him of expected vessels in the Port of Hamilton. He clarified that some of the reports are not always accurate and that vessels can appear in the port without having been mentioned in the DVR.

B. The 2019 Collective Bargaining Quid Pro Quo for Self-Unloading Vessels

[20] Mr. Fortman explained that during the round of collective bargaining in 2018, the union was concerned that the various grain companies in the Port of Hamilton would get into situations where bulk cargo would need to be reconfigured to ensure that it was properly stowed on board a vessel. This reconfiguration would cause delays and impact the dispatching of gangs of longshoremen. This would then have a ripple effect on the vessel crew's ability to secure a pilot to steer the vessel out of the harbour. The union and the MEA explored various solutions and agreed to come up with an emergency dispatch system. Mr. Fortman and Mr. Reeves testified that the "quid pro quo" the union would receive in return for agreeing to grant the MEA this emergency dispatch system was that the union "would get one person per shift for each self-unloading vessel." The parties concluded their negotiations and signed a new collective agreement on May 10, 2019, which contained the new rules for self-unloading vessels at article 13.04(iv) for grain. These rules read as follows:

13.04

…

iv) Self unloader manning will be one (1) Working leader.

[21] The collective agreement also contains rules with respect to bulk soybean meal (article X), bulk cargo (article XI), bulk cargo at Federal Marine Terminals (article XII) and other provisions with respect to staffing various activities in the Port of Hamilton. Specifically, articles 10.02 and 13.01 of the collective agreement provide certain rules applicable to new grain companies that did not exist at the time of the signing of the collective agreement on May 10, 2019. Article 2.07 of the collective agreement similarly deals with new operations.

[22] In cross-examination, Mr. Fortman explained that in the Port of Hamilton, there are companies that receive and ship grain by vessel and thus are involved in longshoring activities covered by the collective agreement. Of note, Richardson, P&H and G3 are considered to be traditional grain companies since they are involved in buying, selling and shipping grain. He also explained that in the negotiations that occurred in 2018 that led to the collective agreement signed on May 10, 2019, Bunge was not considered to be a grain company.

C. Bunge's Operations

[23] Bunge is not a member of the MEA. It was not part of any collective bargaining between the ILA 1654 and the MEA at the time of the filing of the present application, nor has it ever been a party to the collective agreement between the ILA 1654 and the MEA.

[24] Since January 3, 1984, the UFCW has been certified by the OLRB as the bargaining agent for the bargaining unit at what is now Bunge. At the time of the present application, Bunge and the UFCW had a collective agreement in place.

[25] Bunge operates large facilities on or adjoining Pier 11, which is a dock in the Port of Hamilton (the Pier 11 property). Bunge also operates an oilseed processing facility on a property adjacent to the Pier 11 property. This processing facility is located in Hamilton.

[26] Bunge has a long-term lease with HOPA for the Pier 11 property and a dock agreement for use of the berth between Pier 10 (used by P&H) and Pier 11 (used by Bunge). Bunge or its

predecessor have operated on this Pier 11 property for many years. First established in 1947, the Pier 11 property and the processing facility became a vegetable oil processing operation in 1967.

[27] On Pier 11, Bunge receives oilseeds by truck, rail and vessel. Bunge owns all of the oilseeds that are delivered to its Pier 11 property and used in its processing facility.

[28] With respect to vessel deliveries, Bunge receives self-unloading vessels that transport oilseeds for delivery to Bunge on Pier 11. Bunge does not load, sell or distribute any oilseeds from Pier 11 or from the Pier 11 property or its processing facility located in Hamilton. It also does not load or ship anything from Pier 11.

[29] Bunge has been receiving oilseeds from vessels docking on Pier 11 for over 50 years. It commenced receiving oilseeds from self-unloading vessels in 1998 or 1999, after the completion of construction on a large warehouse, which is described below. Between 1996 and 2000, Bunge received oilseeds from traditional vessels and from self-unloading vessels. Since 2000, Bunge only receives oilseeds from self-unloading vessels. Bunge receives between 8 and 10 such self-unloading vessels per year.

[30] On the Pier 11 property, Bunge operates a very large warehouse that is located next to the dock on Pier 11. The warehouse, built around 1996, serves to receive and store oilseeds that are delivered to Pier 11. It was built to hold the volume of the self-unloading vessels. The warehouse is divided into two parts, with a partition to separate the soybeans from the canola seeds. The north part of the warehouse stores soybeans, and the south part stores canola seeds. There is a walkway inside the warehouse which is located on the upper parts of the building. The warehouse is connected to an underground conveyor and elevator system that can move the oilseeds from the warehouse to holding tanks located on the Pier 11 property and onwards to the processing facility. Bunge owns all of the oilseeds it stores in its warehouse.

[31] The warehouse has various hatches on its roof, which are openings cut into the roof to grant access to the inside of the warehouse from the roof. Each hatch is covered by two doors that are mounted on rollers and can slide apart to grant access to the hatch and thus to the warehouse. On the warehouse roof, there is an outdoor walkway that provides access to the hatches. The first

two hatches provide access to the side of the warehouse that houses soybeans, and the remaining hatches provide access to the area that houses canola seeds.

[32] Adjoining the warehouse, between the warehouse and the dock, is the receiving area for trucks and railcars. This receiving area has underground pits with grates into which trucks and railcars can unload their cargo of oilseeds (the receiving pits). The receiving pits are also connected to the underground conveyor and elevator system that can move the truck and railcar oilseed cargo from the receiving pits to the holding tanks and onwards to the processing facility.

[33] Adjoining the warehouse, on its south end, is a control room called the receiving office where the Bunge receivers monitor the machinery that operates the conveyor and elevator system that transports the oilseeds from the receiving pits or the warehouse to the holding tanks or the processing facility. When a vessel self-unloads its cargo into the warehouse, there usually will be a Bunge receiver who stays in the control room to watch over the equipment while the other receiver takes samples, communicates with the vessel crew member as needed, monitors the inside of the warehouse to ensure that the product is not overflowing and keeps an eye on the offloading process.

[34] Between the receiving pits and the holding tanks is a small area of Pier 11 that is owned and operated by Lafarge, a different and unrelated company to Bunge. This Lafarge area and the material, equipment and structures are not part of Bunge's operations. This area is not owned by Bunge, nor does it store Bunge property, equipment or oilseeds.

[35] As mentioned above, a conveyor and elevator system transports the oilseeds from the warehouse or the receiving pits to five holding tanks, three of which hold canola seeds and two of which hold soybeans. Oilseeds are subsequently drawn from the holding tanks and sent to the processing facility to be crushed into oil. The oilseeds in the warehouse or the holding tanks are not shipped or distributed anywhere other than to the processing facility by way of the conveyor and elevator system.

[36] The Bunge processing facility is located on a property in Hamilton, adjacent to the Pier 11 property, in an area south of the warehouse and the dock on Pier 11. The Bunge processing facility extracts and processes the oil from the oilseeds it receives from the holding tanks by way of the

conveyor and elevator system. The resulting oil is then refined, and the by-product meal is placed in tanks located on Pier 11 in an area called the “oil tank farm,” before being removed from the Bunge property. Mr. René Lemay, the Bunge Plant Manager, testified that Bunge sells the resulting by-product meal to P&H. The by-product meal is delivered to P&H by truck.

[37] Mr. Lemay explained that in addition to purchasing the meal from Bunge, with advance notice to and prior approval from Bunge, P&H sometimes uses the dock on Pier 11 when it unloads its own cargo into its own facilities on Pier 10 for technical reasons. Mr. Lemay explained that HOPA has not dredged the side of Pier 10 that is used by P&H. Therefore, when a fully loaded vessel arrives to deliver cargo to P&H, it must dock on Pier 11 and unload onto Pier 10 at first. As the cargo of the vessel gets unloaded into P&H’s facilities, the vessel gets lighter and therefore rises in the berth between Pier 10 and Pier 11. At some point, the vessel has risen enough above the waterline where it no longer risks hitting the bottom of the un-dredged Pier 10. The vessel can then move to the dock on Pier 10 to finish unloading at P&H. These P&H activities have nothing to do with Bunge’s operations.

[38] Bunge receives oilseeds (mainly soybeans) that it has purchased by truck. Approximately 90 percent of the oilseeds received by Bunge are received from truck deliveries. Bunge receivers use a stop light system that they control to provide signals to the truck drivers to drive to various places on Pier 11 and in the receiving area. Further to the instruction of the Bunge receivers, these large trucks with containers filled with oilseed cargo enter an area between the dock and the warehouse on Pier 11 where they are weighed. They then proceed to the receiving area and position themselves over the receiving pits, which are covered by a grate. The trucks then discharge the oilseeds from their containers into the receiving pits. Once fully discharged, they return to be weighed to ensure that they have discharged all their oilseed cargo. The oilseeds thus delivered are then taken by conveyor belts from the pits to the holding tanks. The Bunge receivers tidy up around the area of discharge when the trucks leave.

[39] A similar process exists for the oilseeds that are delivered by rail. A railcar is pulled into the Bunge receiving area with a cable system, the tugger. Once the railcar is positioned, the Bunge receivers empty the railcar either manually or with a ratchet machine. When the railcar is emptied of its oilseed cargo, the Bunge receivers contact the rail company for it to retrieve the railcar from the Bunge property. Bunge receives 28 trains of 25 railcars in a normal year.

[40] Bunge also receives oilseeds by vessel approximately eight to ten times per year. Bunge does not contract, and it and its predecessors have not contracted, with any third-party longshoring or stevedoring contractor to unload vessels, whether they be traditional vessels or self-unloading vessels.

[41] Ms. Susy Watson, the Materials Handling Supervisor at Bunge, testified about the work performed by Bunge receivers prior to the arrival of a vessel at the dock on Pier 11. Bunge only uses the dock at Pier 11. It does not use Pier 10. She explained that she identifies where Bunge has room to store the oilseeds that will be delivered and allocates and schedules Bunge receivers to complete the duties that will be required to receive the planned delivery of oilseeds in the warehouse. These Bunge receivers prepare the warehouse for receiving the oilseeds by opening side doors to the warehouse and then proceeding to empty the warehouse of any remaining product that has not descended into the conveyor and elevator system. To do this work, they push the oilseeds over the grates that are in the floor of the warehouse with a grater. The Bunge receivers then close the side doors to the warehouse and proceed to open a hatch on the roof.

[42] As needed, Ms. Watson communicates with the vessel by telephone, usually with the captain or the first mate. She has a list of contact telephone numbers for the vessels of the Algoma Central Corporation (Algoma), the shipping lines for the vessels that usually transport oilseeds to Bunge. Ms. Watson also communicates with the Port of Hamilton authorities as needed.

[43] Mr. Charles Smith, a former Bunge receiver who is now retired, and Mr. David Taylor, a Bunge receiver currently employed by Bunge, testified about the work done by Bunge receivers on traditional vessels prior to the arrival of self-unloading vessels at Bunge. They explained that Bunge receivers would board the vessel that would dock on Pier 11 and then open a hatch on the vessel to provide access to a cargo space that contained oilseeds. The Bunge receivers would drop marine legs, which are moveable elevators or chain conveyors, into the vessel hatch. The marine legs would be fitted with power shovels, which are large bucket-like receptacles that would draw the bulk oilseed that was located in the cargo bay of the vessel. Small bobcat loaders would also be dropped into the vessel hatch to push the cargo that had not been collected by the marine legs into the power shovels. The Bunge receivers would move from hatch to hatch to remove all of the oilseeds from the vessel. All equipment used for the removal of the oilseeds from the vessel would be operated by Bunge receivers.

[44] Mr. Charles Smith, Ms. Watson and Mr. Taylor also testified about the work done by Bunge receivers when a self-unloading vessel containing oilseeds for delivery to Bunge docks on Pier 11. The vessel calls the receiving office to inform Bunge receivers that the vessel is pulling into and docking at Pier 11. They explained that members of the vessel crew first line themselves up and tie the vessel to the dock at Pier 11. A gang plank is lowered from the vessel, and a member of the vessel crew disembarks from the vessel to meet with a Bunge receiver, either on the dock or in the control room. The vessel crew member provides the receiver with a copy of the ship manifest, which details the cargo contained on the vessel, and a two-way radio for the Bunge receiver to communicate directly with the vessel. Mr. Taylor explained that at that time, the vessel crew member discusses the unloading procedure with the Bunge receiver. The unloading procedure is a written statement whereby the vessel crew and the Bunge receiver agree on the methodology to be used by the vessel crew to unload the vessel, such as the rate of unloading and which hatch will be opened.

[45] No Bunge employee comes on board the vessel at this time, though Mr. Taylor testified that prior to the COVID-19 pandemic, the Bunge receiver may have gone on board the vessel to sign off on the unloading procedure. The Bunge receiver then walks up to the warehouse roof, on the outside roof walkway, to open one of the hatches on the roof. The receiver may also open the hatch earlier, as the vessel is docking on Pier 11. Mr. Taylor explained that sometimes, he also meets the vessel crew member on the roof walkway.

[46] The vessel crew then controls the boom and monitors the flow of oilseeds unloading from the vessel into the Bunge warehouse. To proceed with the unloading, a member of the vessel crew disembarks from the vessel and climbs up on the walkway located on the roof of the warehouse.

[47] During the unloading process, there is always a vessel crew member who oversees the process from the warehouse roof walkway to monitor any spillage that could occur on the roof of the warehouse. The vessel crew member usually will stay two to four hours and then be relieved by another vessel crew member thereafter, in shifts controlled by the vessel. The vessel crew member directs the boom to place it over one of the hatches that has been previously opened by a Bunge receiver. A vessel crew member attaches a guarding apparatus called the sock or the “Stanley Cup” at the end of the boom. This guarding apparatus is placed above or through the hatch to guide the unloading of oilseeds from the boom into the warehouse and thus minimize the

dust from the unloading process. Mr. Smith testified that he would advise the vessel crew member that he was ready to receive the oilseeds into the warehouse. The vessel crew member would then advise the vessel to start the flow of oilseeds from the vessel to the warehouse.

[48] The boom and the conveyor system on the boom are operated only by the vessel crew member who controls the direction, location, speed and flow of the oilseeds from the vessel to the hatch into the warehouse. The vessel crew member located on the warehouse roof typically stands on the walkway and directs the flow of the oilseeds from the vessel, up the boom on the conveyor belt and into the opened hatch. It is the vessel crew member who will monitor whether there is any spillage on the Bunge roof and the discharge into the warehouse through the hatch. That vessel crew member will also monitor to ensure that the boom does not damage the warehouse roof or the hatches. Once the unloading is completed, the boom will turn back onto the vessel and the vessel crew member will leave the roof walkway and return to the vessel. The Bunge receiver will then close the hatch doors.

[49] During this time, the Bunge receivers monitor the progress of the delivery from the outside or the inside of the warehouse. They go inside the warehouse to take hourly samples of the oilseeds being discharged to run quality analysis on the product being unloaded from the vessel. They also process associated paperwork. Bunge employees communicate directly with the vessel crew through the walkie-talkie provided to the Bunge receiver by the vessel crew. It is only once the vessel is unloaded that the Bunge receiver then boards the vessel to complete a visual inspection of the hatches on the vessel and ensure that all of the oilseeds purchased by Bunge and transported by the vessel have been discharged into the Bunge warehouse.

[50] In addition to the Bunge receiver, Bunge also assigns duties to a security employee when a vessel is tied to the dock on Pier 11. This person is responsible for monitoring and documenting any person disembarking from or embarking on the vessel docked at Pier 11.

[51] Ms. Watson and Mr. Lemay also testified that a vessel has at times been used for winter storage of oilseeds. This means that a vessel filled with oilseed cargo was docked on Pier 11, with the cargo ready to be transferred to the warehouse as needed.

D. The Current Dispute

[52] Mr. Fortman testified that, when the ILA 1654 and the MEA were negotiating the collective agreement that was signed in 2019, the union “learned of the relationship of G3 and Bunge.” G3 is a member of the MEA and bound by the collective agreement between the MEA and the union. G3 operates out of Pier 25, whereas Bunge operates out of Pier 11.

[53] Mr. Reeves testified that he became aware of Bunge in April 2019 when he received information that Bunge would be importing sugar from South America for Sucro-Can and receiving it at its facility in the Port of Hamilton. He testified that he received this information from a labour relations specialist at the MEA who in turn had heard this information from a family member. He explained that he reached out to either Mr. Fortman or the President of the ILA 1654, Mr. Rick Smith, and explained what he had learned. From what he understood, the union authorized its legal counsel to send a letter to Bunge.

[54] Bunge never received delivery of any sugar in 2019. In fact, Mr. Charles Smith testified that Bunge never received delivery of any sugar between his hire in 1984 and September 1, 2020, when he retired from Bunge. He further explained that Bunge never took delivery of any other product except canola seeds and soybeans during that period.

[55] The ILA 1654 also claims that it first became aware that Bunge was receiving soybeans and canola seeds on April 3, 2019, when a self-unloading vessel, the Algoma Sault, called at Bunge’s at Pier 11 in the Port of Hamilton. The oilseeds were self-unloaded from the Algoma Sault vessel and placed in the Bunge warehouse through a hatch on its roof by the vessel’s boom. Bunge did not hire the ILA 1654 to unload this vessel, nor did it contract with a member of the MEA to perform this work.

[56] On April 16, 2019, counsel for the ILA 1654 wrote a letter to Mr. Kevin Chadwick, the Plant Manager of Bunge prior to April 2017, advising him that the union had a geographic certification in the Port of Hamilton that required that all longshoring work at the Port of Hamilton be performed by the ILA 1654, including work related to self-unloading vessels. Mr. Chadwick had been replaced as plant manager of Bunge by Mr. Lemay in April 2017.

[57] Mr. Lemay testified that when he received the letter addressed to his predecessor Mr. Chadwick from counsel for the ILA 1654, he contacted Mr. Daniel Decarie, the General Manager of G3's facility at the Port of Hamilton. Mr. Lemay explained that Mr. Decarie was the only other person in the Port of Hamilton that he knew who worked for a company that handled soybeans, namely G3.

[58] Mr. Lemay explained that G3 trades in soybeans, whereas Bunge does not engage in trading in the Port of Hamilton. He explained that G3 is a material trading company with locations throughout Canada not related to Bunge's operations in the Port of Hamilton. G3 is a joint venture between Bunge and the Saudi Agricultural and Livestock Investment Company (SALIC), which was created as a consequence of the privatization of the Canadian Wheat Board. He also explained that Bunge and G3 constitute separate corporate entities and are not related employers. He testified that Mr. Decarie has no involvement in Bunge's operations in Hamilton, in unloading vessels at Bunge or in the present application. He also testified that G3 is not an oilseed oil production facility. It has operations in the Port of Hamilton on Piers 25 or 26. It also has grain terminal operations elsewhere in Canada.

[59] However, Mr. Lemay explained that Bunge uses G3 as a broker to purchase soybeans, which are delivered to Bunge by truck. Bunge sends its morning inventory of soybeans to G3, which, based on the space available at Bunge, will purchase soybeans on behalf of Bunge and send delivery trucks to Bunge with the soybeans. Bunge has created a delivery schedule with availabilities for deliveries of soybeans by truck. G3 can fill those available slots with deliveries of soybeans by truck as appropriate based on the inventory already at Bunge and evidenced in the morning inventory. If Bunge has maintenance to do on its property and chooses not to receive soybean product, it will advise G3, which will stop sending delivery trucks.

[60] Mr. Lemay also testified that every morning, Bunge produces a bid sheet that it sends to G3 and that provides G3 with the price that Bunge is willing to pay for soybeans, the volume requested and the time of year it expects delivery of such. G3 then negotiates with farmers or sellers and secures the purchases, which are then paid for by Bunge. The soybeans thus secured are owned by Bunge. G3 does not warehouse soybeans for Bunge, nor does it warehouse its own products or cargo in Bunge facilities. G3 is not involved in handling Bunge's canola seeds or with the deliveries of oilseeds by vessel to Bunge. Bunge also purchases its own soybeans from the United

States, and G3 is not involved in that process. Bunge receives deliveries from G3 terminals in Canada, other than from the Port of Hamilton, including some by vessel. For deliveries by vessel, Bunge makes the arrangements for an Algoma vessel to pick up the oilseeds from the terminals, deliver them and unload them at its Bunge facility on Pier 11.

[61] As mentioned above, upon receiving the letter addressed to his predecessor, Mr. Chadwick, from counsel for the ILA 1654, Mr. Lemay discussed the matter internally at Bunge. He then chose to contact Mr. Decarie at G3 to learn more about the ILA 1654 and the claims the union was making in the letter. They discussed how G3 used the ILA 1654 to perform its work. The focus of the discussion was mainly on how G3 used the ILA 1654 to load vessels in the Port of Hamilton and not necessarily on unloading vessels. In his testimony, Mr. Lemay explained that prior to receiving this letter from the ILA 1654's counsel, he had no knowledge about the ILA 1654's claim with respect to unloading self-unloading vessels in the Port of Hamilton.

[62] On April 23, 2019, Mr. Reeves received a phone call from Mr. Decarie. Mr. Reeves testified that he frequently spoke to Mr. Decarie since the latter would order ILA members for longshoring work at G3 through the union hall by way of Mr. Reeves. They would speak as frequently as twice daily. According to Mr. Reeves, during this phone call, Mr. Decarie advised him that Bunge had been doing business on Pier 11 for years. Mr. Reeves explained to Mr. Decarie that if Bunge had "vessel activity and it is longshoring," then it was the union's work.

[63] After the phone call with Mr. Decarie, Mr. Reeves contacted Mr. Rick Smith and they discussed how "strange" it was that someone from G3 would be calling about a letter sent to Bunge. Afterwards, Mr. Reeves performed a search on Google and "found out that G3 and Bunge are somehow connected." According to Mr. Lemay, any communications between G3 and the ILA 1654 about Bunge were not made with the authority or by the request of Bunge.

[64] Until the date of the hearing, neither the ILA 1654 nor its legal counsel had been contacted by Mr. Chadwick or anyone else at Bunge in relation to the April 16, 2019, letter. Mr. Lemay testified that the letter from counsel for the ILA 1654 addressed to Mr. Chadwick made its way to him in May 2019. He explained that he did not respond to it because, before he could do so, the present application was filed.

[65] Mr. Fortman testified that, until the time of the present application, the ILA 1654 has never claimed jurisdiction over the work performed when self-unloading vessels discharge their oilseed cargo from the dock at Pier 11 into the Bunge warehouse. He explained that the union never believed that Bunge was in the longshoring business until it filed the present application, even though it was aware that Bunge had been receiving oilseeds from self-unloading vessels at Pier 11 since the mid-1990s.

III. Positions of the Parties

A. The ILA 1654's Position

[66] The ILA 1654 is asking the Board to order that Bunge is a longshoring contractor in the Port of Hamilton subject to the Certification Order. If the Board concludes that Bunge has contracted out some, or all, of the longshoring work at its facility, the ILA 1654 also seeks a declaration from the Board that the work related to the unloading of vessels at Bunge's facility at Pier 11 is longshoring work subject to the Certification Order.

[67] The ILA 1654 submits that the Port of Hamilton is different than other ports in many ways. It is a bulk and breakbulk port. It is also a lake port, not an ocean port.

[68] The ILA 1654 submits that the definition of longshoring has changed over time. The Board and its predecessor have enforced the language of section 34(1) of the *Code* in a variety of circumstances. The ILA 1654 submitted a list of jurisprudence that it believes establishes that Bunge is engaged in longshoring.

[69] The ILA 1654 submits that over time, a geographic certification such as the one it holds in the Port of Hamilton grows and shrinks as the port grows and the collective agreements develop over time. In short, the geographic certifications reflect the changes in the industry and in the employers. The ILA 1654 states that port-wide geographic certifications are initially based on what is going on in the port at the time of the application. If there is longshoring in the port at the time, then the Board will consider it appropriate to certify all of the port in a port-wide geographic certification. The ILA 1654 submits that the Certification Order must continue to reflect the changes in the Port of Hamilton. In the past, the movement of cargo required many employees. A vessel

can now be unloaded by a crew of only a few workers. This evolution shows that a certification in a port is an organic system that evolves over the years.

[70] The ILA 1654 states that the changes in the longshoring methodology are reflected in the Port of Hamilton. Self-unloading vessels are not a new operation in this port since they have been used for some 20 years or more for both the unloading of bulk cargo, grain cargo and salt and the loading of grain, salt and other products. It is important to consider the practices in the Port of Hamilton and, in particular, the work performed by the ILA 1654.

[71] The ILA 1654 submits that there is a history of self-unloaders in the Port of Hamilton. The ILA 1654 members routinely perform work related to the loading and unloading of bulk cargoes at the Port of Hamilton, including the loading and unloading of grain for other agribusinesses such as P&H, Richardson and G3 (collectively, the original three actors), as well as work related to the loading and unloading of self-unloading vessels. The original three actors all recognize that the unloading of self-unloading vessels in the Port of Hamilton is longshoring work covered by the Certification Order. The ILA 1654 submits that Bunge is the fourth actor that does the same work as the original three actors.

[72] The ILA 1654 argues that the application is timely. It submits that it was only recently, namely in April 2019, that it discovered that Bunge had what it considers to be “a grain operation” and that it was receiving bulk cargoes. Upon becoming aware of these activities, as outlined in the present application, the ILA 1654 immediately contacted Bunge to advise it of the Certification Order. After receiving no response, the ILA 1654 filed the present application. The ILA 1654 submits that there is no time limit for filing an application under section 34(1) of the *Code* and that neither Bunge nor the UFCW has produced any evidence suggesting that it has been prejudiced by any delay in bringing the present application. Therefore, the ILA 1654 submits that it acted swiftly and filed the present application to preserve the rights it has pursuant to the Certification Order. It is also the understanding of the ILA 1654 that G3 and Bunge are somewhat related companies.

[73] The ILA 1654 submits that Bunge has contracted the vessels to deliver to it the grain to be placed in the warehouse and that Bunge receivers perform tasks during the unloading. Therefore, there is a combination of both the vessel crew members and the Bunge receivers who unload the self-unloading vessels. This methodology is the same as that used at Richardson and P&H and

frequently at G3. Between the Bunge employees in the control room and the vessel crew member on the roof watching the discharge of product through the hatch, and both performing various tasks, they are ensuring the safe and adequate unloading of the vessel. The ILA 1654 submits that this combination of work is longshoring pursuant to the Certification Order, the practices in the Port of Hamilton and the collective agreement between the ILA 1654 and the MEA. It is longshoring because it is the loading or unloading of a vessel at a pier for the purpose of moving cargo.

[74] A key consideration in determining whether specific activities constitute longshoring is the specific practices in the port in which the activities occur. With respect to the practices in the Port of Hamilton, the ILA 1654 submits that by unloading self-unloading vessels at its facility, Bunge has engaged itself in the longshoring industry since the unloading of grain and/or oilseeds by Bunge and all ancillary activities are part of a continuum of activities constituting longshoring in the port. The activities associated with the unloading of oilseeds from self-unloading vessels at Bunge's facility are part of a continuum that is not only necessary but essential to the marine transportation of the oilseeds. By refusing to employ the services of the ILA 1654 directly or through a member company of the MEA, Bunge is operating in violation of the Certification Order.

[75] The ILA 1654 states that it does not dispute that Bunge is primarily engaged in oilseed processing or that its oilseed processing operation is provincial in nature. The ILA 1654 submits that it is not seeking to remove Bunge's overall operation from provincial jurisdiction. However, it is asserting jurisdiction over the unloading of oilseeds from vessels in the Port of Hamilton. These activities are discrete and severable from Bunge's oilseed processing operations. The ILA 1654 maintains that the Board has jurisdiction over Bunge because it is engaged in longshoring and the Board has jurisdiction over longshoring activities.

[76] The ILA 1654 submits that previous decisions of the Board and the similarities between Bunge's activities and the other work performed by ILA 1654 members strongly support the inclusion of Bunge as a longshoring contractor under the Certification Order.

[77] The ILA 1654 submits that activities constituting longshoring fall within the Certification Order and the Board's jurisdiction regardless of the level of such activity or the portion such activity represents in a company's overall business. The ILA 1654 states that a single incident of

longshoring activity by a provincially regulated entity is sufficient to establish that an employer has engaged itself in the longshoring industry.

[78] With respect to the collective agreement, the ILA 1654 submits that it and the MEA have come to an arrangement on the use of ILA 1654 members for self-unloaders and have confirmed in writing the practice of using one ILA 1654 member for a self-unloading vessel. In particular, the ILA 1654 notes that the recognition of its jurisdiction over the loading and unloading of bulk cargoes is demonstrated by the various provisions including, but not limited to, article X relating to the loading and unloading of bulk soybean meal, article XI relating to the loading and unloading of bulk cargoes generally, article XII relating to the loading of bulk cargoes at Federal Marine Terminals' piers and article XIII relating to the loading of grain vessels at Richardson's piers. The ILA 1654 and the MEA have recently confirmed their understanding of the scope of longshoring at the Port of Hamilton by renewing their collective agreement.

[79] The ILA 1654 further states that the present application simply seeks to have one ILA 1654 member attend the self-unloading at Bunge. It states that this is not an application that would see a gang of 8 to 12 longshoremen attend the unloading. The ILA 1654 claims that the application would not displace the UFCW members who operate as Bunge receivers, nor would it change any of the work that they perform, except maybe who would communicate directly with the vessel.

[80] The ILA 1654 invites the Board to intervene to ensure labour stability in the Port of Hamilton and require Bunge to have ILA 1654 members working when it handles grain. As has been recognized by the Board in previous decisions, allowing companies engaged in longshoring to operate outside of the geographic collective bargaining regime in place at a port would be to permit the unravelling of the collective bargaining system and invite labour relations problems into the port.

[81] According to the ILA 1654, the continued viability of the collective bargaining system requires that all longshoring in the Port of Hamilton be performed in accordance with the Certification Order. If Bunge is permitted to circumvent the geographic certification by using its own employees or by hiring an international commercial shipping company to perform longshoring work as practiced in the Port of Hamilton, this will encourage other entities to organize their operations in a similar manner to avoid the Certification Order. This would undermine the collective bargaining system,

invite labour relations unrest into the Port of Hamilton and defeat the purpose of section 34 of the *Code*. The ILA 1654 advances that if the purpose of a port-wide certification is to provide stability for the employees and the employers in the port, it is unfair to it and the MEA to have Bunge operating off-side. The ILA 1654 submits that the purpose of the present application is to ensure a level playing field in the Port of Hamilton.

[82] Finally, the ILA 1654 submits that it has made herculean efforts to try to find work for its members. It has a long history of protecting its geographic certification for the Port of Hamilton.

[83] The ILA 1654 submits that Bunge is clearly engaged in longshoring as defined by section 34(1) of the *Code* and by the jurisprudence. It is also engaged in longshoring based on the past practices and the collective agreement. Therefore, the Board should grant the application.

B. The UFCW's Position

[84] According to the UFCW, the present application seeks to expand the ILA 1654's bargaining rights over work that has been performed by UFCW members for over 33 years. While the ILA 1654 states that it does not wish to displace the UFCW, the UFCW submits that it will do so if the present application is granted since the ILA 1654 will be doing work that has been done by the UFCW for decades. The UFCW takes the position that it has bargaining rights at Bunge for unloading vessels.

[85] At the outset, the UFCW submits that the present application is untimely. The work claimed by the ILA 1654 is performed by Bunge employees and has been for over 50 years without complaint by the ILA 1654 until the filing of this application. While the ILA 1654 states that Bunge is a new grain company pursuant to the collective agreement between the ILA 1654 and the MEA, that claim is not borne out by the evidence before the Board. It is very clear from the evidence that Bunge is not a new grain company in the Port of Hamilton. In fact, Bunge has been performing work of unloading oilseeds from Pier 11 into the warehouse in the same manner since the mid-1990s. In addition, the work being claimed as longshoring has clearly been performed by Bunge employees and members of the UFCW for some 50 years since Bunge has been receiving oilseeds by vessel for that long. Accordingly, the ILA 1654 had to be aware for decades that Bunge was unloading oilseeds into its operations and facilities from the dock at Pier 11, first manually

before the advent of self-unloading vessels and then by self-unloading vessel. The UFCW submits that the ILA 1654 is a sophisticated union with experience in many ports and yet, for reasons not explained, it suddenly took the position that it had jurisdiction over work done by Bunge employees and UFCW members. The ILA 1654 knew that Bunge was not a member of the MEA or a party to the collective agreement. In such circumstances, the UFCW submits that the application is untimely and should thus be dismissed.

[86] On the merits of the application, the UFCW submits that Bunge is not engaged in longshoring activities in the Port of Hamilton and is not a longshoring contractor under the Certification Order. Bunge's core activity is oilseed processing. Bunge owns the oilseeds that are delivered to it by self-unloading vessel. Upon receipt of a shipment, Bunge utilizes the oilseeds for the purpose of oilseed processing.

[87] The Certification Order is quite precise. It only applies to MEA members actually engaged in longshoring and not to other employers in the Port of Hamilton. The CLRB, the Board's predecessor, has already made the seminal determination in *Maritime Employers' Association et al.* (1991), 84 di 161 (CLRB no. 857) (*MEA 857*), in which it found that employers in the Port of Hamilton that send out or receive products on their own account via vessels that are loaded or unloaded by their own employees are not engaged in longshoring. The Certification Order is to be applied to those employers that are in the business of contracting to load or unload vessels for remuneration. The UFCW notes that, at the time of that decision, it was certified to represent the employees at the predecessor of Bunge.

[88] The UFCW invites the Board to dismiss any evidence on any relationship between G3 and Bunge since the ILA 1654 did not produce actual evidence of a relationship short of a phone call, a Google search and hinting that the two companies are somehow related. Furthermore, there is uncontradicted evidence from Mr. Lemay that no one from G3 has any role in Bunge's operations. While Bunge uses G3 as a broker for purchasing soybeans, Bunge does not buy canola seeds through G3. Furthermore, all shipments of soybeans from G3 are transported by truck. The ILA 1654 has failed to demonstrate a corporate relationship between Bunge and G3. The ILA 1654 has not brought a sale of business application pursuant to section 44 of the *Code*. In such circumstances, Bunge cannot and should not be bound by a collective agreement that G3 entered into, including the collective agreement between the ILA 1654 and the MEA.

[89] The UFCW submits that Bunge is not engaged in longshoring since its core activity is oilseed processing and not maritime transportation. Bunge is a provincially regulated workplace. The oilseeds Bunge receives are delivered to it by truck, train and vessel and are processed on site. Bunge does not ship the oilseeds itself. It contracts to third parties. Bunge also owns all the oilseeds that are delivered to it. Prior to the construction of the warehouse, Bunge also received vessels with oilseed cargo. That oilseed cargo was also owned by Bunge. At that time, Bunge employees unloaded the vessels. Since the construction of the warehouse and the arrival of self-unloading vessels in the port, Bunge has been using self-unloaders to remove the cargo from the vessels and place it inside the warehouse. Either at the time the Bunge employees unloaded the vessels themselves or after the arrival of the self-unloading vessels, no grievances or complaints of any type have been filed by the ILA 1654 claiming that it had jurisdiction over this work of unloading at Bunge.

[90] With respect to the actual work being performed by Bunge during the unloading of the self-unloading vessels, the UFCW submits that this simply does not constitute longshoring. The vessel alone controls the unloading process. Bunge does not own the vessel or employ the vessel crew; Bunge employees perform limited tasks during the delivery of oilseeds by vessel. In such circumstances as detailed in the evidence before the Board, Bunge employees are not engaged in longshoring.

[91] Furthermore, although the activities in which Bunge engages are adjacent to a dock, they cannot be properly characterized as longshoring. To qualify as longshoring, the activities must be integral to maritime transportation. It is not sufficient to simply have activities on a dock. The ordinary meaning of longshoring includes the loading and unloading of cargo. The UFCW submits that if there is a longshoring activity going on when a self-unloading vessel delivers to Bunge, the longshoring ends when the oilseeds reach the shoreline and Bunge becomes the owner of the oilseeds. The stevedoring responsibility ceases at the shoreline.

[92] The UFCW submits that the work done by Bunge in the Port of Hamilton is very different than the work of P&H, Richardson and G3.

[93] The UFCW submits that even if the Board were to find that the work performed by Bunge employees in relation to the delivery of oilseeds by vessel is related to longshoring, it accounts for

only a small proportion of both the employees' time and Bunge's overall operations, and the UFCW has been doing the work for a very long period. Accordingly, Bunge's operation is not ancillary to longshoring or maritime transportation.

[94] The UFCW points out that the ILA 1654 has admitted that it is trying to find work for its members in the Port of Hamilton. The UFCW shares this motto; however, it cannot be to the detriment of the long-established labour relations reality in the Port of Hamilton. The UFCW submits that the ILA 1654 is attempting to draw into the certification the work that was clearly excluded from the Certification Order. In *MEA 857*, the CLRB had specifically cautioned that work such as that done at Bunge is not covered by the Certification Order and cautioned about claims that it was. Therefore, the Board in the present application should follow the intention of *MEA 857* and apply the Certification Order only to those companies that are in the business of contracting for loading and unloading for others, and not to Bunge, which is engaged in the oilseed processing business.

[95] While the ILA 1654 claims that not granting the present application would unravel the system of longshoring in the Port of Hamilton, the UFCW disagrees. In fact, the status quo at Bunge has existed for decades without labour relations issues, complaints or problems until the present application. In fact, the UFCW submits that to grant the present application would make labour relations more fraught and more complicated.

[96] The UFCW asks the Board to dismiss this application, as it is both untimely and an inappropriate attempt by the ILA 1654 to expand its bargaining rights over work performed by UFCW members for decades.

C. Bunge's Position

[97] Bunge echoes the UFCW's submissions. It submits that it is not engaged in longshoring in the Port of Hamilton as defined in the Certification Order and, as such, is not subject to the Certification Order applicable to the ILA 1654 and the MEA, nor to their collective agreement.

[98] Bunge states that the jurisprudence is clear in that longshoring is defined differently in every port because every port does things differently, including longshoring. In *MEA 857*, which accompanied the Certification Order, the CLRB explicitly stated the intention of what types of

employers and operations the Certification Order covered. This did not include operations such as Bunge.

[99] Bunge states that the unloading of vessels into its warehouse is *de minimus* to its operations in its warehousing and processing facilities. It invites the Board to review the evidence which establishes that the vessel crew performs the unloading from the self-unloading vessels.

[100] Bunge invites the Board to consider that the ILA 1654 has stated, as part of this application, that it just wants to get a little piece of the work at Bunge because it is longshoring. The ILA 1654 points to duties such as the use of a two-way radio, doing paperwork and checking that the vessel is empty. The ILA 1654 states that these are all duties currently performed by Bunge's receivers who are UFCW members. The rest of the unloading work is done by the vessel crew members. What the ILA 1654 really wants is to have one ILA 1654 member assigned at Bunge when a self-unloading vessel docks on Pier 11 and delivers oilseeds to Bunge's warehouse. However, this ILA 1654 member will not be able to perform the work done by the vessel crew members since the ILA 1654 member would not be able to operate the vessel's equipment. That ILA 1654 member would not be performing the other duties of the Bunge receivers such as taking the seed samples. Bunge submits that the present application is a jurisdictional dispute that is an unfair intrusion on the work performed by the UFCW and on Bunge's operations that have been running for decades.

[101] Bunge submits that it is not a grain company. Bunge does not store, resell or ship out grain. It does not trade in grain and is not a broker. It does not buy grain for others. It does not store grain for others. It does not make arrangements for shipment for third parties. It just buys oilseeds for its own operations. It receives oilseeds and then makes vegetable oil and has by-product meal, both of which are sent out of the processing facility by rail or by truck. Bunge has been doing this for the entire time that it has owned the operations and facilities on Pier 11. Those operations have been around for more than 50 years.

[102] Bunge's operations are completely different than those of P&H, Richardson or G3. Even though P&H has a processing plant on Pier 10, it ships raw material and flour out of that pier, which is different than what is done at Bunge. Bunge does not use stevedoring contractors and is simply not engaged in longshoring.

[103] Bunge invites the Board to disregard the ILA 1654's attempt to connect Bunge and G3 since there is simply no link between the two companies. Bunge states that the allusion to such a link is a red herring. The present application is not a related employer application. Short of a Google search, the results of which were not tendered into evidence, there is no evidence before the Board that G3 and Bunge are related. G3 is the broker for Bunge. That is the only relationship on the Port of Hamilton between the two companies.

[104] Bunge states that it has had a certification and a collective bargaining relationship with the UFCW prior to the ILA 1654 even obtaining its certification with the MEA in 1991. Bunge has been receiving oilseeds from vessels since the 1980s and from self-unloading vessels since the mid-1990s. The ILA 1654 receives two DVRs per day containing details of all activities in the Port of Hamilton. Yet the ILA 1654 submits that it had no knowledge of Bunge's operations and the fact that it was receiving oilseeds by vessel until April 2019. Bunge submits that it is unreasonable to conclude that the ILA 1654 did not know about it, especially when ILA 1654 members are on the other side of the pier at P&H. Bunge submits that this is important since the collective agreement refers to grain companies and only names P&H, Richardson and G3, not Bunge. The collective agreement contains rules for new grain companies. Yet, Bunge was operating in the Port of Hamilton when these provisions were negotiated. Therefore, the terminology "new grain company" must be given a purposeful meaning since it was drafted by two sophisticated parties, the ILA 1654 and the MEA. Bunge is not a new grain company in the Port of Hamilton.

[105] Bunge also states that the present application is untimely. It does not even meet the standards of the clause in the collective agreement that the ILA 1654 wants to enforce with respect to new grain companies. There is no evidence that Bunge has been trying to obscure or hide its receipt of oilseeds from vessels and then from self-unloaders. Bunge submits that there are giant lake freighters that are docked on Pier 11 and that unload into the Bunge warehouse, right across from P&H where the ILA 1654 has members working. Bunge submits that if the ILA 1654 did not see the unloading on Pier 11, it was willfully blind, and it is improper to say that it did not know about Bunge's operations until 2019.

[106] Bunge submits that the work it does as an oilseed processor does not fall within the definition of longshoring as it has evolved through the jurisprudence. Bunge receivers may have a radio, direct the crew to the hatch to be used, take samples and check that the vessel is empty, but the

actual operation of the equipment that removes the oilseeds from the vessels is performed by the vessel crew members. Therefore, what would the ILA 1654 do if the present application were granted? It could not operate the equipment operated by the vessel crew. This means that it would do the work performed by the UFCW members. This would create confusion and conflict as employees would fight over who does what. Bunge anticipates that hours of work or positions would need to be cut in its operations because, for the past two years, UFCW members in Bunge receiver positions have been performing the work safely. Bunge submits that this goes contrary to the principles that the Board upholds on labour peace and avoidance of conflict. Bunge submits that granting the application would not lead to more productive labour relations.

[107] Furthermore, there is no meaningful work for the ILA 1654 in Bunge's operations. Bunge submits that the only thing that changed in 2019 is that the ILA 1654 negotiated with the MEA for a new clause with respect to self-unloading vessels as a quid pro quo for another concession. There have been no changes with the self-unloading vessels in the Port of Hamilton since they arrived in the late 1990s. Bunge has been manufacturing vegetable oil in one form or another on Pier 11 for over 50 years. Bunge is not new and is not a grain company. It is not engaged in longshoring simply because the ILA 1654 negotiated with the MEA for a new clause in the collective agreement.

[108] Bunge submits that the present application is not an application pursuant to section 18 of the *Code* since it is not a clarification or an expansion application. Bunge submits that if it is a clarification application, the evidence is that the UFCW is doing the work. Even if it is an expansion application, the ILA 1654 has failed to file any double majority membership evidence. Therefore, it has to be a section 34(1) application, which the Board should dismiss since the ILA 1654 has not established that Bunge performs longshoring. Bunge does not load or unload cargo for others for remuneration, and it is thus not engaging in longshoring as defined in *MEA 857*. Bunge submits that this decision provides a complete answer to the present application, which is inappropriate and untimely. Bunge has received oilseeds by vessel in the same manner for decades without complaint or comment from the ILA 1654. Furthermore, the work claimed by the ILA 1654 is, and has been, performed by members of another union.

[109] Considering the foregoing, an expansion of the ILA 1654's bargaining rights to include Bunge is inappropriate. Bunge submits that the application should be dismissed.

D. The MEA's Position

[110] The MEA takes no position on the present application and defers to the Board's assessment of whether the application ought to be allowed.

[111] However, the MEA submitted a substantial book of authorities to the Board and invited it to apply the principles found in that jurisprudence.

[112] The MEA states that the definition of longshoring started in 1955 with a decision of the Supreme Court of Canada (*Validity and Applicability of the Industrial Relations and Dispute Investigation Act*, [1955] S.C.R. 529) and that the Board or its predecessor have been providing commentary on this definition since that time. A basic principle is that longshoring is defined in each port, including for the Port of Hamilton.

[113] In 1991, the CLRB granted a unique geographic certification covering certain operations in the Port of Hamilton and defined longshoring to reflect the reality in the port at the time. The Certification Order was crafted by the CLRB to reflect the fact that there were other unions in the mix with employers located in the Port of Hamilton. However, longshoring is not precisely defined. Its definition is malleable and can evolve over time.

[114] With respect to a geographic certification such as the one under review in the present application, it does not work according to the traditional rules of applications for clarification or expansion of bargaining unit descriptions pursuant to sections 18 and 18.1 of the *Code*. The geographic certification is used to minimize the labour strife in shipping by creating a level playing field for those engaged in longshoring in the port.

[115] The MEA invites the Board to disregard the reasons why the quid pro quo was put in place in the collective agreement since they are not helpful. The MEA disputes the characterization of a quid pro quo. It is nothing more than a perception by one side to the collective agreement that was negotiated between the ILA 1654 and the MEA.

[116] The MEA has no knowledge of the alleged longshoring activities conducted by Bunge, as described in the application. However, if the facts as pled by the ILA 1654 in the application are

correct, the MEA submits that Bunge's impugned work would constitute longshoring captured by the collective agreement between the MEA and the ILA 1654 in the Port of Hamilton.

IV. Analysis and Decision

[117] The key issue for the Board to determine in this matter is whether Bunge's activities constitute longshoring within the meaning of the *Code*. If these activities do constitute longshoring, Bunge would necessarily be covered by the geographic certification granted to the ILA 1654 in the Port of Hamilton and subject to the collective agreement in place between the ILA 1654 and the MEA.

A. The Origin and Purpose of Section 34 of the *Code*

[118] Section 34 (formerly section 132) was added to the *Code* in 1973 to give the Board discretion to issue geographic certifications in the longshoring industry.

[119] Section 34(1) of the *Code* was later amended in 1999 to include the words "actively engaged":

> **34. (1)** Where employees are employed in
>
> > **(a)** the long-shoring industry, or
> >
> > **(b)** such other industry in such geographic area as may be designated by regulation of the Governor in Council on the recommendation of the Board,
>
> the Board may determine that the employees of two or more employers actively engaged in the industry in the geographic area constitute a unit appropriate for collective bargaining and may, subject to this Part, certify a trade union as the bargaining agent for the unit.
>
> **(2)** No recommendation under paragraph (1)(b) shall be made by the Board unless, on inquiry, it is satisfied that the employers actively engaged in an industry in a particular geographic area obtain their employees from a group of employees the members of which are employed from time to time by some or all of those employers.

[120] A contributing factor to the introduction of this provision was the perceived need to address contentious labour relations disputes in the 1960s in various ports located in the St. Lawrence, namely in Québec, Montréal and Trois-Rivières. There had been numerous work stoppages and a sharp decline in productivity at these ports due to a surplus of workers, the introduction of technological changes and the resulting lack of job security, a high crime rate, jurisdictional

conflicts between unions and management problems. A series of commissions of inquiry were established to consider the specific situations in those ports (see L. A. Picard, *Report of the Inquiry Commission on the St. Lawrence Ports* (Ottawa: Queen's Printer, 1967); and Arthur J. Smith, *Report of the Industrial Inquiry Commission into Certain Conditions, Conduct and Matters Giving Rise to Labour Unrest at the Ports of Montreal, Trois-Rivières and Quebec* (Ottawa: Queen's Printer, 1970)).

[121] The Woods Task Force (H. D. Woods, *Canadian Industrial Relations: The Report of Task Force on Labour Relations* (Ottawa: Privy Council Office, 1968)) was another factor in the introduction of section 132 (now section 34) into the *Code*. The Woods Task Force recommended the creation of an accreditation system for employer associations on a trial basis in the trucking and longshoring industries and any other federal industry that the CLRB, the Board's predecessor, considered appropriate. It stated that such multi-employer associations were necessary in the longshoring industry to address the lack of unity and strength of management when compared with that of the unions with hiring hall work referral systems.

[122] In 1996, in the context of a full review of Part I of the *Code*, a recommendation was made by the authors in *Seeking a Balance: Canada Labour Code, Part I, Review* (Ottawa: Human Resources Development Canada, 1995) (the Sims Report) that section 34 should be amended to "make it clear that the reference to the longshoring industry applies only to employers who employ longshoring employees in the way set out in section 34(2) and not to employers who maintain their own workforces and who do not, as a result, draw upon the common pool." The Sims Report stated that the section "should not apply to an employer who has never used, or ceases to use, a pool approach to employment, using instead only their own work force." Its recommendation preceded the addition of the phrase "actively engaged" to section 34(1) of the *Code* in 1999.

B. Early CLRB Jurisprudence on Section 132 (Now Section 34) of the *Code*

[123] Following the introduction of section 132 to the *Code*, which is now section 34, two distinct approaches to its application and interpretation emerged in the CLRB's jurisprudence.

[124] In certain early cases, the CLRB only exercised the discretion to grant a geographic certification when "compelling" circumstances justified it. For example, it declined to exercise its

discretion to grant a geographic certification in the Port of St. John's, Newfoundland, because the parties had maintained relatively stable labour relations for over 80 years (*St. John's Shipping Association et al.* (1983), 53 di 114; 3 CLRBR (NS) 314; and 83 CLLC 16,039 (CLRB no. 421)). In that case, the CLRB contrasted the situation at the Port of St. John's with that of the St. Lawrence ports, where geographic certifications had been issued. The CLRB disagreed with the rationale for the granting of the prior certifications, stating the following:

> Why then did Parliament take that extra step to compel the designation of an employers' organization in the longshoring industry? With respect, it was not as the Board said in *Gagnon et Boucher*, *supra*, the legislature's intent to create consolidated bargaining units in this industry, even to the detriment of individual rights, because of the strategic role played by ports in municipal, regional or the national economy. This industry plays no greater a role, or less, in that regard than others, for example, the airline industry, the railways, the grain industry and the postal services. Nor was it intended to hand the trade unions in the longshoring industry an additional organizing tool to expand their bargaining rights, that others elsewhere would not be entitled to Section 132 is not simply an extension of the certification process where a trade union or an employers' organization with a majority in a monopoly situation could gain bargaining rights over non-unionized or other unionized employees or assert jurisdiction over work.
>
> It is our respectful opinion that Parliament merely followed the path set by the Woods Task Force when it correctly recognized that the hiring hall system in the industry created a situation that literally cried out for a unified employer front in collective bargaining, or, as it recommended, an "accreditation system".
>
> It is that hiring hall system that makes the longshoring industry unique in the federal jurisdiction. Employers do not hire their employees in the traditional sense, they take who the union dispatches, subject of course to the provisions of the collective agreement. The dispatch of workers on a daily or even a shift basis, in response to the varying employers' demands, makes it difficult to associate a specific employee with any particular employer for any length of time. It is the worker's membership in the trade union and his participation in the hiring hall referral system which flows from the collective agreement to which the union is a party that provides the nexus for continuous employee status in the industry, even between referrals (see *Terrance John Matus* (1980), 41 di 278; and [1981] 1 Can LRBR 115). The Supreme Court of Canada recognized those special circumstances in *International Longshoremen's Association et al.* v. *Maritime Employers' Association et al*., [1979] 1 S.C.R. 120; and (1978), 78 CLLC 14,171.
>
> When the section was adopted, the pressing need to create multi-employer bargaining structures in the longshoring industry, as had been identified by various commissions of inquiry as well as by the Woods Task Force, had passed. Employers' organizations were already in place at most major ports in Canada. Those voluntary relationships could receive legal blessing under section 131, should the parties so desire. The main concern had to be their preservation, therefore, a means was provided whereby some "legal glue", to use Professor Paul Weiler's words, could be applied by the Board should the system begin to crumble. Section 132 is the "glue gun".
>
> (pages 136–137; 332–333; and 14,347–14,348)

[125] The CLRB went on to state that this “glue gun” was an extraordinary power, only to be used when there were “compelling reasons” for so doing. The CLRB also referred to comments of the Deputy Minister of Labour at the time, appearing before the Standing Committee of the House of Commons on June 8, 1972, that section 132 would only be used by the CLRB in “very restricted circumstances.”

[126] A similar restrictive approach was taken by the CLRB in the Port of Hamilton when it dismissed two applications for geographic certifications filed by locals of the International Longshoremen’s Association (the ILA locals). The CLRB expressed concerns about the potential consequences of giving the ILA locals and the MEA a monopoly over all longshoring work in the Port of Hamilton. Given the relatively peaceful labour relations climate in that port, the CLRB was not convinced of any “pressing” labour relations advantage to granting a geographic certification (*Maritime Employers’ Association* (1984), 56 di 162 (CLRB no. 470) (*MEA 470*)). This case is discussed in more detail below.

[127] The second approach to geographic certifications was a more liberal approach taken in cases involving the ports of the St. Lawrence. In these cases, the CLRB described the purposes of the new section 132 of the *Code* as encouraging the consolidation of certified bargaining units to promote industrial peace. The CLRB also emphasized the strategic role played by ports in the municipal, regional or national economy (see *Murray Bay Marine Terminal Inc.* (1981), 46 di 55 (CLRB no. 352); and *Maritime Employers’ Association* (1981), 45 di 314 (CLRB no. 346); application for judicial review allowed on other grounds by the Federal Court of Appeal (FCA) in *I.L.A., Local 1739* v. *Maritime Employers’ Assn.*, 1983 CarswellNat 516).

[128] In this approach, the CLRB used its discretionary power to issue a geographic certification without requiring evidence of industrial chaos, as long as the geographic certification contributed or had the potential to contribute to sound labour relations. For example, the CLRB issued a limited geographic certification in the Miramichi estuary to ensure greater stability and reduce the “potential for conflict and chaos” between the parties that had been operating under a voluntary recognition agreement. In addition, the majority of the CLRB found that a hiring hall system was not a prerequisite for a geographic certification (see *W.S. Anderson Co. Ltd. et al*. (1984), 55 di 105; and 84 CLLC 16,023 (CLRB no. 454)).

C. The Subsequent Jurisprudence

[129] In 1987, Mr. Marc Lapointe, then Chairperson of the CLRB, adopted the liberal approach in dealing with a geographic certification combining the ports of Trois-Rivières and Bécancour in *Maritime Employers' Association and Terminaux Portuaires du Québec* (1987), 65 di 162; and 19 CLRBR (NS) 34 (CLRB no. 642) (*Terminaux Portuaires*). This decision was upheld by the FCA in *Terminaux Portuaires du Québec Inc.* v. *Maritime Employers' Assn. (F.C.A.)*, [1988] F.C.J. No. 705 (QL).

[130] In *Terminaux Portuaires*, Chairperson Lapointe stated that the principal purpose of the geographic certification provision was to ensure industrial peace and avoid potential conflicts that can occur when there are multiple employers and a single labour pool. The provision was an attempt to address the precarious employment situation of most longshoremen and to help ensure that a reliable, stable pool of skilled workers was available at the ports. Chairperson Lapointe considered and disagreed with the CLRB cases that had applied a narrow interpretation of the geographic certification provision. He stated that the likelihood of improved industrial peace and more productive labour relations were sufficient reasons for the CLRB to exercise its discretion:

> Despite the dearth of indications noted earlier, we must not hesitate to apply this provision in circumstances where it would be likely to contribute to the introduction, maintenance or improvement of industrial peace in the longshoring industry, within a given geographic area.
>
> Finally, this panel does not share the reluctance of some to exercise the power conferred by section 132. Some have held the opinion that "compelling" reasons were required in order for the Board to exercise its discretion. We do not agree with this interpretation or the meaning that some have read into it. We believe that section 132 supports a liberal interpretation. Certainly there must be reasons, valid reasons, to take advantage of the section, but we believe that these may be found within the situation of this industry in a particular case.
>
> The purpose of section 132 is to ensure industrial peace and avoid the conflicts to which a situation where there are many employers may lead. We would say that the exercise of this discretion should be guided by the likelihood of improved stability and more productive collective bargaining. We believe that it is better to prevent war than to limit oneself to trying to end it once it has begun. Having said this, we would point out that where specific cargoes or operations require special arrangements, it will be up to the parties to settle them in their negotiations. Both sides are well aware that realism will always be their best guide. The fact that certain customs may be disturbed, however firmly rooted they may be, should not mean that section 132 cannot be applied, if it appears that a more peaceful future can be guaranteed by its application.
>
> (pages 204–205; and 78)

[131] Subsequent panels of the CLRB appeared to follow this broader approach and were more inclined to grant geographic certifications. For example, the CLRB ended up issuing the geographic certification in the Port of Hamilton in 1991 (see *MEA 857*). Similarly, the Board eventually issued a geographic certification in the Port of St. John's in 2001, even though there was no evidence of labour relations conflict. The Board noted the likelihood of rapid and significant changes in the level of activity at the port in the near future and took a "practical approach" in assessing whether the requested geographic certification would further industrial peace (see *St. John's Shipping Association Limited*, 2001 CIRB 126 (*St. John's Shipping Association*)).

[132] The next case in which the Board considered an application for a geographic certification was not until 15 years later, in 2016 (see *Toronto Port Authority*, 2016 CIRB 844 (*Toronto Port Authority*)).

[133] All of the other applications filed under section 34 of the *Code* since *St. John's Shipping Association* had involved a determination of whether certain activities or employers were within the scope of an existing geographic certification order.

[134] In *Toronto Port Authority*, the Board acknowledged the past jurisprudence and endorsed a liberal and practical approach:

> [117] The Board's caselaw with respect to the exercise of its discretion under section 34 of the *Code* has evolved over time. Although the Board initially took a restrictive approach to determine whether it was appropriate to grant a geographic certification, that jurisprudence evolved concurrently with the labour relations context in the ports. The Board now takes a more liberal and practical approach and will assess, on a case by case basis, whether there is a labour relations purpose justifying the exercise of the Board's discretion to advance labour-management relations. However, it must do so with prudence, ensuring a balance of the interests of all parties potentially affected by a geographic certification while supporting collective bargaining rights.
>
> [118] The Board recognizes that a geographic certification is a unique tool that departs from the conventional employer-base unit of employees and extends a common collective bargaining framework on multiple employers. As discussed in *Halifax Grain Elevator Limited* (1989), *supra*:
>
> > Section 34 of the *Code* (formerly section 132) is unique in that the Board has been given the extraordinary power to join together, for the purposes of collective bargaining, independent and unrelated federal works, undertakings or businesses. Section 34 is applicable only to the longshoring industry and, although the Board does have the power to recommend the extension of section 34 to other industries, this has never been done.
> >
> > (page 163)

> [119] Although there is no need to demonstrate chaos or major labour disruptions, the Board must be convinced that a geographic certification is necessary to promote labour relations stability and assist the parties in resolving existing or potential labour disputes.

[135] The Board ultimately determined that the activities of the Toronto Port Authority did not constitute longshoring. However, the Board stated that if it was incorrect in that determination, it would decline to issue a geographic certification, as it was not convinced that it would alleviate the labour relations issues, lead to more productive relations between the parties or ensure the viability of the bargaining units.

D. The Jurisprudence Pertaining to the Port of Hamilton

[136] Section 34 of the *Code* does not provide a definition of longshoring or longshoring industry. Aside from the obvious functions of loading and unloading vessels engaged in marine transportation, the Board and the courts have made a deliberate decision not to specifically define longshoring since the various activities that constitute longshoring vary from port to port depending on local practices.

[137] This approach was recently confirmed by the Board in *Toronto Port Authority*, in which it explained that:

> [99] The Board has been careful over time not to strictly define “longshoring”, and has stated that what constitutes longshoring will vary from one port to another depending on the circumstances of each case. It has also recognized that not all work performed on a dock is to be automatically considered longshoring without further analysis of the overall operation of the Port.

[138] In light of the Board’s approach of emphasizing the importance of the overall operations of the port in question, it is important to examine the jurisprudence and the current practices in the Port of Hamilton to determine which activities constitute longshoring in that port.

[139] In *MEA 470*, the CLRB considered two applications filed by the ILA locals for two geographic certifications in the Port of Hamilton: one for the activities of loading and unloading vessels (Local 1654, the same local that filed the present application and is referred to elsewhere in this decision as the ILA 1654), and one for checking activities (Local 1879 (the ILA 1879)). Following discussions before the CLRB, the locals limited the scope of their proposed bargaining units by specifically excluding employees who were already represented by other unions at the following employers at the Port of Hamilton: the Hamilton Harbour Commissioners (HHC), the Canada Ports

Corporation, Seaway Terminals, Port Colborne Quarries Limited, Ramey's Bend Stone Dock and Stelco Inc. (Stelco).

[140] The CLRB dismissed the applications. In making its determination, the CLRB described the history of collective bargaining at the port (see *MEA 470*, at pages 165–168). For the 30 years prior to the applications, union representation of longshoring employees had primarily been through voluntary recognition.

[141] At the time of the applications, there were three collective agreements in place that pertained to the ILA locals:

- A collective agreement between the ILA 1654 and the MEA, which represented five employers at the Port of Hamilton, covering employees engaged essentially in the loading and unloading of vessels;
- A collective agreement between the ILA 1654 and Seaway Terminals, concerning bulk cargo; and
- A collective agreement between the ILA 1654, the ILA 1879 and the HHC, covering terminal, checking and warehouse work.

[142] The MEA and the ILA locals argued that a geographic certification would help ensure continued peace and stability at the port. The HHC opposed the applications because it feared a monopoly situation that would cause a loss in business.

[143] In considering the applications, the CLRB noted how the situation at the Port of Hamilton was not the same as that in the St. Lawrence ports. It expressed concerns about the potential consequences of a geographic certification in that it would give the ILA locals and the MEA a monopoly over all longshoring work in the Port of Hamilton. It stated that it was not convinced that there was any pressing industrial relations advantage for the public interest. While noting that it had very wide discretion under section 132 (now section 34) of the *Code* to grant a geographic certification, the CLRB stated the following:

> As a matter of principle, except where strong considerations dictate otherwise, this Board believes that monopolies under section 132 should be avoided. This particular provision is the more or less equivalent of employer "accreditation" provisions for the construction industry in provincial labour relations legislation. Those statutes generally give employer groups exclusive bargaining rights only

> for those construction employers who are unionized at the time of the application or become unionized subsequently, not for **all** employers, union or non-union, who may be currently, or may become engaged in the particular activity. Thus, there is room for non-union employers or for employers whose employees belong to other unions. That model seems to us to be generally good public policy and to be the one that ought normally to be emulated by this Board when and if it applies section 132.
>
> The wording of the application raises a serious difficulty. It refers to "all the employees of all the employers employed in the loading and unloading of ships...". There is, of course, a lengthy list of exceptions from employees of Stelco to employees of Seaway Terminals. Thus, an attempt has been made to confine the current impact of the proposal. But what of the future? What if within the next five (5) years new manufacturing concerns are set up around the harbour of Hamilton? Will they be able to use their own employees to unload their raw materials or to load their product? Or does the applicant propose that they will have to use I.L.A. members? The strong inference is that they would have to follow the latter course.
>
> Section 132 applies specifically to the longshoring industry. The longshoring industry is not defined in the statute, nor is it particularly easy to define. **While the business of the industry, so to speak, is the loading and unloading of ships, this does not necessarily mean that everybody who loads and unloads ships is and must be a longshoreman per se or that every business which loads and unloads ships with its own employees in the course of making and distributing a product is in the longshoring industry**. Perhaps the applicants did not intend their requests to be read in such a way, but the exclusion of Stelco and Dofasco employees, who do unload coal and ore from ships, in fact recognizes that these companies are in the steel industry and that any "longshoring" work by their employees is incidental to the business in which they are engaged. The Board believes that any definition of a section 132 bargaining unit should be written with as much care as possible so as to ensure that it encompasses only the longshoring industry.
>
> (pages 169–170; emphasis added)

[144] With respect to the ILA 1879, the CLRB found that it could not issue a geographic certification because the ILA 1879 only had one employer, namely the HHC, which it proposed be excluded from the application, and it had not identified any other employers to the CLRB. Therefore, the application did not meet the requirement of section 132 (now section 34) of the *Code* that there be two or more employers engaged in the longshoring industry.

[145] With respect to the ILA 1654, the CLRB determined that there were not any strong policy considerations supporting a geographic certification and dismissed the application.

[146] Subsequently, the ILA 1654 applied for a "regular" certification for a bargaining unit of employees of the member employers of the MEA employed as longshoremen in the Port of Hamilton. On May 13, 1985, the CLRB granted the requested certification order under section 131 (now section 33) of the *Code* to the ILA 1654.

[147] In December 1989, the ILA locals again applied to the CLRB for the same geographic certifications as in *MEA 470*. This time, the CLRB granted the applications in *MEA 857*.

[148] In *MEA 857*, the CLRB considered the circumstances that had changed since its earlier rejection of the geographic certification applications in 1984. The main change was that Seaway Terminals had diversified its business beyond the handling of bulk cargo to include the handling of general cargo. Seaway Terminals had wished to conclude separate collective agreements with both of the ILA locals for this expanded work but did not want to join the MEA. Rather than signing the proposed collective agreements, the ILA locals brought the applications to the CLRB for a geographic certification that would bring Seaway Terminals into a bargaining structure with other members of the longshoring industry at the port.

[149] The CLRB determined that the conditions were such that it was in the public interest to issue the geographical certification as it would have a stabilizing effect on labour relations at the Port of Hamilton. It stated:

> With the likelihood of another stevedoring contractor not allied to the MEA entering the scene and making separate collective agreements with the ILA locals, there now appears in prospect on the Hamilton waterfront just the kind of confused and possibly unstable collective bargaining situation that section 34 was intended to prevent. The purpose of this section is to provide for consolidated employer bargaining, thereby minimizing the number of possible friction points and the general potential for instability. It is intended to eliminate the possibility of whip-sawing by a union and destructive under-cutting by employers within an industry based upon collective bargaining or even non-union advantages; it seeks to ensure that the costs and benefits associated with dealing with a single labour pool are equally shared and that the members of that pool have an optimum opportunity to work and earn.
>
> (page 167)

[150] Thus, the CLRB amended the existing ILA 1654 certificate to provide for a geographic certification in the Port of Hamilton. With respect to the scope of the certification order, the CLRB stated the following:

> **It must be understood that, in using the term "longshoring industry," in the port of Hamilton, the Board intends not to draw into the certification order employers who are not in the business of longshoring, but do send out or receive products on their own account via vessels which are loaded or unloaded by their own employees. The intention is to apply the certification order in the port of Hamilton to those who are in the business of contracting to load or unload ships for others for remuneration.** At this time, it will in practice apply only to the MEA members, the HHC and Seaway Terminals. Thus, for example, Stelco, which, as far as we

> know, is in the steel-making business, does not itself become part of the longshoring industry when its employees unload ore or coal from vessels or alternatively load steel onto ships on its own account. Stelco and the many other similarly situated enterprises that use the port will not be affected by the Board's decision. The Board was told that the actual amount of tonnage handled by the "longshoring industry" in Hamilton is very small; the vast bulk is cargo handled on their own account by firms like Stelco, United Co-operatives and many others.
>
> (page 168; emphasis added)

[151] With respect to the application by the ILA 1879, the CLRB stated that although the ILA 1879 had a collective agreement with only one employer (the HHC), Seaway Terminals had intended to enter into a collective agreement with the ILA 1879 to cover the checking aspect of its proposed general cargo business. The CLRB also noted the evidence that the ILA 1879 personnel did occasionally perform a small amount of checking work for MEA member companies. Therefore, the CLRB determined that the conditions had sufficiently changed to warrant a geographic certification for the ILA 1879 as well.

[152] The Board ordered the affected employers—the MEA members, the HHC and Seaway Terminals—to appoint under section 34 of the *Code* an employer representative to act on their behalf in respect of each unit. The parties could not agree on an employer representative, so on July 28, 1993, the CLRB designated the MEA as the employer representative for the ILA 1654 unit and the HHC as the employer representative for the ILA 1879 unit (see *Maritime Employers' Association et al.* (1991), 86 di 131 (CLRB no. 902)). The MEA subsequently became the employer representative for the ILA 1879 unit.

[153] The next case that dealt with the definition of longshoring in the Port of Hamilton was *Maritime Employers Association*, 2011 CIRB 581 (RD 581), upheld on reconsideration in *415607 Ontario Limited o/a Waterford Crushing and Screening*, 2011 CIRB 600. The MEA had filed a referral pursuant to section 65 of the *Code*, asking the Board to define the proper scope and interpretation of "longshoring" work at the Port of Hamilton.

[154] 415607 Ontario Limited, operating as Waterford Crushing and Screening (Waterford), was a contractor that worked all year on the US Steel Canada site in the Port of Hamilton performing three types of operations: material handling operations; conversion operations (Waterford used equipment to convert US Steel Canada waste material into useful products); and longshoring operations. In a prior Board file, file no. 027443-C, the Board had issued an order, on consent,

which declared that Waterford was an employer in the longshoring industry in the Port of Hamilton and bound by the Certification Order held by the ILA 1654.

[155] In RD 581, Waterford argued that it had stopped performing longshoring operations and that US Steel Canada contracted with another company, Great Lakes Stevedoring Co. Ltd. (GLS), to perform the longshoring work. However, Waterford provided the equipment (conveyor) and labour to do the work, pursuant to a subcontracting agreement with GLS. The Board described the resulting work arrangement as follows:

> [9] … When GLS and Waterford are notified that there is a ship to be loaded, Waterford uses its own employees, operating its front end loaders and supervised by one of its foremen, to transport product from a stockpile on or near the dock to the bottom of the conveyor and to feed it into the hopper attached to the conveyor, under contract to US Steel Canada. Waterford supplies the conveyor and an employee to operate it under contract to GLS. All of this work is directed by GLS. None of the Waterford employees performing these operations are members of ILA 1654. The product is transported by the conveyor up onto the ship, where GLS uses two ILA members to load it into the vessel through the ship's hatches. …

[156] The ILA 1654 became aware that Waterford employees were doing this work and filed a grievance alleging that Waterford and GLS were violating the collective agreement. The arbitrator's proceedings were adjourned following the MEA's referral under section 65 of the *Code*.

[157] In the Board proceedings, the ILA 1654 conceded that the activities performed by Waterford in screening, converting and storing US Steel Canada's products on US Steel Canada's site were not longshoring. However, it argued that moving the product from the stockpiles to the hopper for the purpose of loading it onto the vessel did constitute longshoring.

[158] In RD 581, the Board cited *Cargill Grain Co., Gagnon and Boucher Division* v. *International Longshoremen's Assn., Local 1739*, [1983] F.C.J. No. 948 (QL), and stated that:

> [24] … the pickup of materials from a stockpile and the transportation and unloading of those materials into a hopper that is connected to a conveyor which transports the materials onto the ship, for eventual delivery to their intended recipient, is part of a continuum that is not only necessary but essential to complete the marine transportation operation. …

[159] The Board determined that Waterford's performance of these activities on US Steel Canada's site constituted longshoring activities within the meaning of the *Code*.

[160] In *Rideau Bulk Terminal Inc.*, 2011 CIRB 608 (RD 608), the MEA filed an application under sections 21, 34(5) and 34(5.1) of the *Code* alleging that Rideau Bulk Terminals Inc. (Rideau) engaged in longshoring activities when a self-unloading vessel discharged a load of salt in bulk at Pier 22 of the Port of Hamilton on two occasions. The MEA requested as a remedy that Rideau pay it the assessments and charges required from employers subject to the geographic certification.

[161] In RD 608, the primary business of Rideau was described as the handling, including stockpiling, storage and truck-loading, of road salt for three major salt companies serving eastern Canada.

[162] The Board examined the activities in question in detail. One Rideau employee was involved in communicating with the crew of the self-unloader prior to the delivery of the salt and in directing the crew of the self-unloader as to where to place the piles of salt on the pier. This employee then returned the next day to use a bulldozer to level the piles of salt.

[163] The Board found that these activities constituted longshoring. It described the unloading of salt cargo from a vessel, including a self-unloading vessel, as "a continuous and consecutive continuum of events" and therefore found that the activities of the Rideau employee on the pier before, during and after the actual unloading from the vessel were all part of the unloading process.

[164] The Board consequently found that Rideau was an employer in the longshoring industry in the Port of Hamilton and subject to the geographic certification. The fact that Rideau was not a party to the contract of carriage for the salt and that its handling services were not retained by the vessel or the vessel's agent was not significant—it was the nature of the activities being performed that was determinative.

[165] It is notable that, in RD 608, the Board did endorse the statement in *MEA 857* that employers that send out or receive products on their own account are outside the scope of the Certification Order:

> [126] As previously stated, the essence of longshoring is the loading and unloading of ships, including the necessarily incidental activities of handling and storage of the goods, which have been loaded or unloaded, at dockside. As noted by the CLRB in its 1991 decision in *Maritime Employers' Association et al. (857)*, *supra*, granting the geographic certification, **the employers who "send out or receive products on their own account" are outside the scope of the geographic**

> **certification order while those who "are in the business of contracting to load or unload ships for others for remuneration" come within its scope.** RBT [Rideau] is in the business of contracting to load or unload ships for others for remuneration.
>
> (emphasis added)

[166] In 2014, the ILA 1654 filed a grievance alleging that P&H had violated the collective agreement between the ILA 1654 and the MEA by performing longshoring work in the Port of Hamilton without using ILA 1654 labour. The MEA then filed a referral pursuant to section 65(1) of the *Code* asking the Board to determine whether P&H was one of the parties bound by the collective agreement. The Board determined the question in *Parrish & Heimbecker, Limited*, 2014 CIRB LD 3337.

[167] In *Parrish & Heimbecker, Limited*, the Board noted that P&H operated a warehouse and distribution facility at Pier 10 at the Port of Hamilton. P&H argued that the work performed there was not within the scope of the Certification Order and that, therefore, it was not bound by the port-wide collective agreement. It based this argument on the fact that its current operations in the port—the loading of its own grain into vessels at its own facility—came within the "historic exception" in the Certification Order, referring to the cases of *MEA 857* and RD 608.

[168] The Board ultimately determined the case on the basis that P&H had entered into a memorandum of agreement (MOA) with the other parties in the context of a previous application brought to the Board by the ILA 1654 pursuant to section 18 of the *Code*. The Board noted that the prior application did not directly relate to the current operations of P&H, but it did involve the scope of the Certification Order in the Port of Hamilton and, at the request of the parties, the MOA became an order of the Board (order no. 615-NB). The Board found that the MOA was determinative as it provided that P&H was an employer bound by the Certification Order in the Port of Hamilton and that it would follow the provisions of the collective agreement.

[169] Although the Board did not decide the case on this basis, it did seem to accept the existence of an "own product, own employees" exception to the geographic certification, stating the following:

> … This panel of the Board is unanimously of the view that the first substantive paragraph of that MOA is determinative of the reference now before the Board. Stated another way, pursuant to section 65(1) of the *Code* and by virtue of the subject MOA, the Board determines that P&H is a party bound by the collective agreement in effect between the MEA, as employer representative,

> and the ILA 1654, within the POH [Port of Hamilton]. In our view, having agreed to the first substantive paragraph of the MOA, P&H is no longer able to invoke the "own product, own employees" exception to the single labour pool. It is not the role of the Board, as part of the within referral, to determine the specific matter or matters in dispute in the labour grievance filed by the ILA 1654.
>
> (page 9)

E. Applying the Jurisprudence to the Present Application: The Board's Decision

[170] As described in the jurisprudence above, the Board defines what constitutes longshoring separately in each port depending on local practice, and the same principle must be applied in the Port of Hamilton.

[171] The Board is also being guided by the raison d'être of section 34(1) of the *Code*, which is to contribute or have the potential to contribute to sound labour relations. To summarize the principles above, the Board takes a liberal and practical approach in deciding whether to exercise its discretion to grant a geographic certification. The Board must be satisfied that a geographic certification is necessary to promote labour relations stability and assist the parties in resolving existing or potential labour disputes.

[172] The Board has examined the jurisprudence cited by the parties and the jurisprudence cited above. For the Board, it is very notable and important that the CLRB and the Board's jurisprudence has referred to the existence of an exception to the definition of longshoring in the Port of Hamilton for the loading and unloading of a company's own products by its own employees. This definition, containing the exception, has been applied on a consistent basis in the jurisprudence since *MEA 857*.

[173] The Board notes that importantly, in 1984, the CLRB refused to grant geographic certifications in the Port of Hamilton for longshoring because it was concerned with employers engaged in manufacturing activities in the Port of Hamilton that loaded vessels with their own employees in the course of making and distributing a product and with employers with other existing unions (*MEA 470*). A key factor in the 1984 decision was the reality that existed in the Port of Hamilton at the time, namely that various employers physically located in the port were already certified with other unions and had collective agreements in place, as described above, and certain employers in the port were loading or unloading vessels in the course of producing

something in the Port of Hamilton. In 1984, in the Port of Hamilton, some established employers had unionized employees performing the loading and unloading of vessels to bring product into a plant or a processing facility and were then loading vessels with processed or manufactured goods or products to bring them to market. At the time, the CLRB was also not convinced that there was an industrial relations advantage for the public interest to granting a geographic certification.

[174] The Board also notes that significantly, in 1991, and in adopting the broader approach of Chairperson Lapointe, the CLRB decided to grant a geographic certification in *MEA 857* and in the Certification Order with a very specific and unique scope for the Port of Hamilton.

[175] Indeed, as part of its decision to grant the Certification Order, at page 168 of *MEA 857*, the CLRB clearly defined the scope of the Certification Order to include employers "who are in the business of contracting to load or unload ships for others for remuneration" and to exclude employers "who are not in the business of longshoring, but do send out or receive products on their own account via vessels which are loaded or unloaded by their own employees." In that decision, to illustrate who those excluded employers were, the CLRB gave the example of what was then Stelco. Stelco brought coal into the Port of Hamilton by vessel for use in its steel plant. It then loaded the resulting manufactured steel onto vessels in the Port of Hamilton for market. All of this unloading and loading at Stelco was done by Stelco's own employees and on Stelco's own account. The CLRB specifically and very clearly excluded employers such as Stelco from the Certification Order. In fact, the CLRB went as far as to say, "Stelco and the many other similarly situated enterprises that use the port will not be affected by the Board's decision" (page 168). Furthermore, the CLRB again named certain other such employers or similarly situated enterprises located in the Port of Hamilton in a non-exclusive list when it described employers that were not engaged in longshoring for the purposes of the Certification Order at the Port of Hamilton. The CLRB stated at page 168 that "Stelco, United Co-operatives and many others" were in fact handling cargo on their own account and thus were excluded from the Certification Order.

[176] The Board is of the view that the intended scope of the Certification Order was to be limited to those employers that were in the business of contracting to load and unload vessels for others for remuneration and to exclude all the other employers in the Port of Hamilton that sent out and received products on their own account via vessels that were loaded or unloaded by their own employees. The Board further notes that in *MEA 857*, the CLRB could have very easily used the

example of Bunge instead of Stelco to illustrate the exclusion from the Certification Order since the evidence shows that, at the time and to this day, Bunge brings oilseeds (instead of coal) for its processing facility (instead of a steel plant) and then loads the resulting vegetable oil and by-product meal (instead of steel) onto trucks and rail for market. All of this loading and unloading at Bunge is done and has been done by Bunge employees and on Bunge's own account, just as was the case at Stelco where Stelco used its own employees and did so on its own account.

[177] The Board is reinforced in this view by the further detail provided in *MEA 857* where the CLRB specifically stated that the Certification Order did not intend "to draw into the certification order employers who are not in the business of longshoring, but do send out or receive products on their own account via vessels which are loaded or unloaded by their own employees" (page 168).

[178] The Board is also keenly aware that in 2009, it issued order no. 582-NB on consent of the parties, which declared Waterford to be an employer in the longshoring industry in the Port of Hamilton and bound by the Certification Order between the ILA 1654 and the MEA. Following this, in 2011, when dealing with an application pursuant to section 65 of the *Code* in RD 581, the ILA 1654 conceded that when Waterford was screening, converting and storing US Steel Canada (the successor of Stelco) products on US Steel Canada's site, it was not engaged in longshoring. However, it was engaged in longshoring when it moved product from stockpiles to the hopper for the purpose of loading it onto a vessel. In short, when Waterford was engaged by US Steel Canada to load vessels, it was in the actual business of contracting to load and unload vessels for US Steel Canada for remuneration. Waterford was not loading its own product with its own employees on its own account. Therefore, Waterford properly was deemed to be engaged in longshoring for the purposes of the Certification Order for the Port of Hamilton.

[179] The Board also reviewed the 2011 *Rideau Bulk Terminal Inc.* decision in which Rideau was performing certain tasks associated with the unloading of salt by a self-unloading vessel. In that decision, the Board clearly determined that Rideau was a longshoring employer within the meaning of the Certification Order because it was engaged, through its employees and by a third party, to participate in the unloading of salt arriving in the port by maritime transportation. Rideau was not doing this unloading on its own account. It was doing so under contract to Sifto for remuneration. Therefore, under the definition of longshoring applicable in the Port of Hamilton,

Rideau was in the business of contracting to load or unload vessels for others for remuneration and was therefore engaged in longshoring and subject to the Certification Order.

[180] Finally, the Board reviewed the 2014 *Parrish & Heimbecker, Limited* decision dealing with P&H's operations. This decision was made on the basis that there was a Memorandum of Understanding between the ILA 1654 and the MEA in which they agreed that P&H was an employer bound by the Certification Order in the Port of Hamilton. However, in the decision, the Board also addressed P&H's argument that it fell within the "own product, own employees" exception. The Board noted the fact that not all of the grain that was loaded onto vessels was P&H's own product, that P&H expressly anticipated that some of the grain handled at its facility would belong to someone other than it and that P&H was not using its own employees to perform the vessel side of the loading. In short, the Board found that P&H could not claim the exclusion from longshoring because it had not adduced the evidence to satisfy the Board that it was an employer sending out or receiving products on its own account via vessels that were loaded or unloaded by its own employees.

[181] In the present matter, the Board has heard uncontradicted evidence that Bunge or its predecessors have been receiving oilseeds on Pier 11 and the adjoining properties for over 50 years by truck, rail and vessel. It is also uncontradicted evidence that Bunge owns these oilseeds, stores them in its facilities, processes them to make oil and by-products and then delivers its processed oil to market by truck or rail and has been doing so for over 50 years. For the Board, Bunge is not a grain company, new or otherwise, as defined by the collective agreement that binds the ILA 1654 and the MEA. The uncontradicted evidence also reveals that Bunge is not contracted by any other company to load or unload vessels for remuneration and has never been. Furthermore, Bunge used its own employees, the Bunge receivers, to perform the unloading from traditional vessels prior to the construction of the warehouse and the advent of self-unloading vessels. Bunge now uses its own employees, the Bunge receivers, to perform certain activities such as opening and closing the warehouse hatches and doors, collecting oilseed samples and carrying a two-way radio for communications with the vessel and uses a security employee to control disembarking and embarking on the dock on Pier 11. Bunge engages the self-unloading vessel to discharge Bunge-owned oilseeds from the vessel, up the boom on the conveyor belt, through the sock or "Stanley Cup" into the hatch and into the warehouse. In fact, the evidence

reveals that the oilseeds are purchased by Bunge and owned by Bunge for its own processing in its own facility located on a property adjacent to Pier 11 and connected to Pier 11 through a system of conveyors and elevators.

[182] In short, it is very clear to the Board that Bunge is not engaged in longshoring as defined in the Certification Order. It is not a longshoring employer. It is not a new grain company. It is an oilseed processor. It is engaged in purchasing, storing and processing soybeans and canola seeds. It is not in the business of contracting to load or unload vessels for others for remuneration. Therefore, it is not an employer that falls within the scope of the Certification Order.

[183] Furthermore, the Board finds that Bunge falls within the exclusion built into the Certification Order for employers that receive and handle cargo on their own account via vessels that are unloaded by their own employees. Over the years, the advent of self-unloaders on Pier 11 has meant that Bunge employees have to perform much less physically demanding tasks when cargo is unloaded into the warehouse by the vessel crews. However, this fact does not change the purpose for which the exclusion was created in the Port of Hamilton in the Certification Order in 1991. The reality of Bunge operating its oilseed processing facility and not operating in longshoring remains, even with the advent of self-unloaders, since Bunge is not in the actual business of contracting to load or unload vessels for remuneration.

[184] Finally, the Board is also keenly aware of the purpose for which the longshoring provisions were placed in the *Code* and modified over the years. These provisions are meant to address labour relations issues. In the present case, the Board is convinced that there is no labour relations issue to address. While the ILA 1654 has stated that it is a fervent defender of its geographical certification in the Port of Hamilton and is always defending the work of its members, that certification was always and continues to be interpreted based on the reality that other employers with other bargaining units operate in various industries in the Port of Hamilton. Of note, Bunge has been around for more than 50 years. It has had a certified bargaining unit and a collective bargaining relationship with the UFCW since 1986. Bunge and the UFCW's labour relationship has been living alongside the ILA 1654 and the MEA's own labour relationship since 1991 without the two relationships coming into disharmony. In fact, since 1991 and until the present application in 2019, Bunge and the UFCW on one side and the ILA 1654 and the MEA on the other have had industrial peace and avoided conflicts with each other.

[185] The Board is also mindful of what Chairperson Lapointe wrote in 1987 in *Terminaux Portuaires*, when he stated that the goal of a geographic certification is "to contribute to the introduction, maintenance or improvement of industrial peace in the longshoring industry, within a given geographic area" (pages 204; and 78). Upon a full review of the evidence and arguments presented by the parties, the Board is of the view that granting the application would have a damaging effect on labour relations and industrial peace in the Port of Hamilton since it would fail to give effect to the exclusion of certain employers from the Certification Order, which has been a central labour relations concern since the mid-1980s in that port. Such is not the purpose of section 34(1) of the *Code*.

[186] Finally, the Board notes that Bunge and the UFCW raised issues regarding the timeliness of the application before the Board, claiming that Bunge has been receiving oilseeds by vessel for over 50 years, first from traditional vessels and in the past 20 years from self-unloading vessels, all without any complaints from the ILA 1654. Furthermore, the UFCW notes that it has been certified for some 33 years as the bargaining agent for Bunge employees who perform work related to the receiving of oilseeds by vessel. The ILA 1654 argued that its application was timely, claiming that it only discovered that Bunge was using self-unloading vessels on Pier 11 in 2019. The ILA 1654 further claimed that the doctrines of *res judicata* and estoppel had no application in the present matter.

[187] On this issue of timeliness, the Board is mindful that there are no time limits for filing an application under section 18 of the *Code* (see *Nolisair International Inc. (Nationair Canada) et al.* (1992), 89 di 94 (CLRB no. 960)). However, the Board is also mindful that Bunge's operations, or those of its predecessor, with respect to traditional vessels and self-unloaders have existed for decades without a single complaint by the ILA 1654. Furthermore, the Board has considered that, since February 28, 1986, the UFCW has been certified as the bargaining agent at Bunge and its members have been involved in receiving oilseeds from vessels at Bunge. Notwithstanding these important considerations, in the present case, due to the importance of determining the scope of the Certification Order for the stability of labour relations in the Port of Hamilton, the Board accepted the present application as timely. The Board bases its decision on the ILA 1654's assertions that it only found out about the self-unloaders at Bunge in 2019 and the evidence that Bunge also had no knowledge about the ILA 1654's claims with respect to unloading

self-unloading vessels in the Port of Hamilton until 2019. Therefore, the Board dealt with the present application on the merits.

V. Conclusion

[188] For all the above reasons, the Board dismisses the application.

[189] This is a unanimous decision of the Board.

Sylvie M.D. Guilbert
Vice-Chairperson

Daniel Thimineur
Member

Richard Brabander
Member