

A COMPARATIVE LOOK AT THE RESPONSE TO
ORGANIZED CRIME IN THE PORTS OF NEW YORK-NEW
JERSEY AND VANCOUVER

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INTRODUCTION

In the earliest hours of the morning, all potential longshoremen gather at the docks in hopes of being selected for that day’s work.¹ The

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hiring boss indicates that it is time to circle up around him. While looking at the eager prospective workers, the boss already knows who he will be selecting to fill the gang² that day – those who have a prior understanding that they will kickback a portion of their pay to him.³ Selections are made, positions are filled, and once again, a majority of the men are left with no work. Without a connection to the families in charge, another day passes with no chance for employment or payment. This scene depicts the daily routine of the workers in the Port of New York-New Jersey in the early to mid-1900s.

Ports around the world have long been susceptible to organized crime influence and activity.⁴ Seaports have been seen as crime generators and crime attractors.⁵ A port is a crime generator, for example, because it may contain an abundance of goods that are attractive to thieves.⁶ Additionally, a port is a crime attractor if: (1) a criminal network has a known reputation of operating there, thus driving out legitimate business; (2) the access to various economic

Pollack for his thoughtful suggestions and edits. I would also like to thank Paul Babchik from the Waterfront Commission of New York Harbor for helping me develop the topic.

¹ Only men were allowed to work as longshoremen in the Port of New York-New Jersey until 1979. Laurie Johnston, *First Women to Join New York City's Dockworkers*, N.Y. TIMES (Jan. 23, 1979), <https://www.nytimes.com/1979/01/23/archives/first-women-to-join-new-york-citys-dockworkers-move-to-make-permits.html> [<https://perma.cc/JB45-CMHR>].

² *Types of Longshoreman Jobs*, ARNOLD & ITKIN TRIAL LAWYERS (Feb. 7, 2014, 1:50 PM), <https://www.offshoreinjuryfirm.com/offshore-injury-blog/2014/february/types-of-longshoreman-jobs/> [<https://perma.cc/G3TR-WWVF>] (“Gangs are groups of different dockworkers, each with a different responsibility. The idea is to organize assignments by gang so that they can be completed fully without requiring additional assistance.”).

³ Anthony Depalma, *On the Waterfront, a Scared Silence*, N.Y. TIMES (Feb. 17, 1990), <https://www.nytimes.com/1990/02/17/nyregion/on-the-waterfront-a-scared-silence.html> [<https://perma.cc/R899-44RX>] (Sometimes, longshoremen would “wear a red scarf or place a toothpick behind their ear to signify their willingness to kick back part of their day’s pay to the hiring boss if selected.”).

⁴ Leonid Lantsman, *Seaport Vulnerability to Criminal Networks: A Mixed Method Approach to Measuring Criminological Vulnerability in the Top 30 U.S. Container Ports 3* (Mar. 24, 2017) (Ph.D. dissertation, the City University of New York) (on file with the City University of New York), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=3018&context=gc_etds [<https://perma.cc/TT6Q-5853>].

⁵ *Id.* at 13.

⁶ *Id.* at 14.

sectors attracts a criminal network; or (3) the specific companies operating there are vulnerable to criminal network use.⁷

The present-day Port of New York-New Jersey portrays a completely different scene. Due to state government regulation, the longshoreman workforce is stabilized and continues to work to rid itself of organized crime influence.⁸

The Increased Importance of Port Security

The sheer complexity of the nature of ports results in vulnerability to criminal networks.⁹ Ports are a physical space underlined by a complex system that incorporates public and private agencies, companies, and small entities.¹⁰ Beneath the administrative and logistical activity at a port, both public and private security agencies are at play working to regulate it.¹¹ Further, the ability to control the import and export of goods in a city provides a valuable opportunity for criminal activity to take place.¹² Ports have a reputation of serving as crucial points of entry for drugs and illegal goods, while also serving as an area of influence for organized crime to exercise labor racketeering in port workers' union.¹³ Government and police forces have found it increasingly difficult to regulate and control the criminal occurrences taking place in ports due to the size and nature of the workforce on the docks.

⁷ *Id.* (“As an example, multiple physical and administrative vulnerabilities may combine to make a specific terminal operator or janitorial services provider a crime attractor, resulting in increased criminal network use. When a single, already-compromised entity (such as a shipping line, terminal operator, or even freight forwarder) commands a large market share of a particular sector at a port, this may be sufficient to drive legitimate entities away and attract more criminal networks by reputation.”).

⁸ *See infra* Part I(D).

⁹ Lantsman, *supra* note 4, at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 171.

¹³ Anna Sergi, *Playing Pac-Man in Portville: Policing the Dilution and Fragmentation of Drug Importations Through Major Seaports*, 19 EUR. J. OF CRIMINOLOGY 675 (2020). *See also* Lantsman, *supra* note 4, at 3 (“Criminal networks use the maritime transportation system to move narcotics, stolen vehicles, people, and illicit goods around the world to access new markets, supply existing ones, and generate greater proceeds for their activities. The amount of harm generated by illicit criminal activity and dark markets can be measured in the billions of dollars, as illicit goods, such as small arms and narcotics, proliferate throughout the world.”).

Maintaining a secure port without organized crime influence is crucial to the well-being of the waterfront and overall operations. Strong security is critical to safeguarding a shipping port from terrorism, preventing theft and smuggling, and sustaining overall maritime safety.¹⁴ Securing ports is fundamental to the international economy due to ports' critical role in commerce and trade.¹⁵

The global push for secure ports can be seen in the International Ship and Port Facility Security Code ("ISPS").¹⁶ ISPS is a regulation put in place by the International Maritime Organization with the aim of regulating and improving the safety of ships, ports, seafarers, and government agencies.¹⁷ ISPS has an array of requirements, including monitoring activity of cargo and personnel, detecting security threats, requiring security authority on every ship, and assessing the flaws in the industry, among other things.¹⁸ There are different levels of security enforced depending the severity of the threat ranging from a low-security threat to an almost unmissable threat.¹⁹ Due to the ever-looming threats to port safety, a close look at how ports operate and respond in the face of such threats is increasingly important.

This Note will discuss organized crime in the Port of New York-New Jersey in the United States and the Port of Vancouver in Canada. Following a brief historic overview of the relevant organized crime groups and how they came to power, this Note will assess the responses instated by the respective governments in combatting such criminal activity. This Note will consider the relative success of each response, as well as discuss the issues that remain on the docks. Finally, this Note will conclude with a comparative evaluation of each system to determine the best approach for combatting organized crime

¹⁴ *The Importance of Port Security*, MAR. INSIGHT, <https://www.marineinsight.com/maritime-law/the-importance-of-port-security/> [<https://perma.cc/3BC2-XJYA>] (Sept. 30, 2021).

¹⁵ U.S. DEP'T OF TRANSP., PORT SECURITY: A NATIONAL PLANNING GUIDE (1997) ("Port security is an essential part of the safe, secure, and competitive operation of the maritime transportation system. It promotes the development of commerce and is an essential element in maritime trade competitiveness, which cannot be achieved merely by modernizing port infrastructure and increasing operating productivity.").

¹⁶ International Ship and Port Facility Security Code, International Maritime Organization, Dec. 12, 2003, SOLAS/CONF.5/34.

¹⁷ *The ISPS Code for Ships – An Essential Quick Guide*, MAR. INSIGHT, <https://www.marineinsight.com/maritime-law/the-isps-code-for-ships-a-quick-guide/> [<https://perma.cc/8W4W-HCAY>] (Jan. 1, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

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influence in ports. Though Vancouver does not presently have its own version of the Waterfront Commission,²⁰ this Note recommends that it create a centralized policing mechanism in the ports. Through centralized policing, Vancouver could maintain a register of the workers in the port. This would increase background checks (specifically into criminal backgrounds and personal affiliations with criminal groups), making the police force aware of anyone who is associated with organized crime.

I. THE PORT OF NEW YORK-NEW JERSEY

A. *History*

Organized crime families, specifically La Cosa Nostra,²¹ have a long history of influence over the Port of New York-New Jersey. Following the passage of the 18th Amendment and the beginning of Prohibition, organized crime groups gained significant power in New York City.²² Major crime families began running bootleg operations and were highly successful in doing so by hiring lawyers and organizing themselves like a business.²³ Once Prohibition was repealed in 1933, the “sophisticated black-market business schemes and money-laundering tactics of organized crime” were so developed that the operations withstood the change, and they focused on new business ventures.²⁴

It was later revealed that this network of organized crime members had a direct connection to the waterfront of New York-New Jersey.²⁵ Organized crime families secured positions of power on the

²⁰ See *infra* Part II(B).

²¹ La Cosa Nostra is made up of the major crime families in the New York City area, including the Bonanno, Colombo, Gambino, Genovese, and Lucchese families. See Robert Anglen, *The Five Families of New York: How the Mafia Divides the City*, AZCENTRAL, <https://www.azcentral.com/story/news/local/arizona-investigations/2017/10/31/five-families-new-york-how-mafia-divides-city/777899001/> [https://perma.cc/6M8F-NZQ7] (Mar. 14, 2019).

²² Dave Roos, *How Prohibition Put the ‘Organized’ in Organized Crime*, HISTORY, <https://www.history.com/news/prohibition-organized-crime-al-capone> [https://perma.cc/YE3L-6EYP] (Mar. 9, 2021).

²³ *Id.* (“At first, the street gangs didn’t know a thing about business, but they knew how to handle a gun and how to intimidate the competition. They could protect illegal breweries and rum-running operations from rival gangs, provide security for speakeasies and pay off any nosy cops or politicians to look the other way.”).

²⁴ *Id.*

²⁵ Malcolm Johnson, *Underworld Syndicate, With Ties Abroad, Runs Vast Empire of Crime, Reputed to Include Waterfront Rackets Here*, N.Y. SUN (Dec. 6,

docks and were subsequently instituting “exploitative and inequitable” labor practices, such as shape-ups.²⁶ Longshoremen were required to shape up to obtain work, meaning they had to stand in a semi-circle around the hiring boss each morning, who would then select which longshoremen got to work that day.²⁷ To be selected, longshoremen had to be willing to pay a percentage of their wages to the hiring boss.²⁸ This practice left many without work, thus without pay, making the occupation of longshoremen highly unreliable and unstable.

The system was further corrupted through the “public loading racket.”²⁹ This system required that only “public loaders”³⁰ could move cargo from the piers to trucks.³¹ This was made possible by collective bargaining agreements from the International Longshoremen Association (“ILA”), which was infiltrated and run by individuals associated with organized crime.³² The scheme resulted in both increased costs for New York shippers and constant extortion.³³ There was also regular theft of millions of dollars in goods each year, which was a result of ILA watchmen turning a blind eye to such crimes.³⁴

1948), <https://www.pulitzer.org/winners/malcolm-johnson> [https://perma.cc/B3M5-QGL6].

²⁶ Colin J. Davis, “*Shape or Fight?*”: *New York’s Black Longshoremen, 1945-1961*, 62 INT’L LAB. & WORKING-CLASS HIST. 143 (2002).

²⁷ *Id.* at 146.

²⁸ WATERFRONT COMM’N OF N.Y. HARBOR, WATERFRONT COMMISSION OF NEW YORK HARBOR ANNUAL REPORT 2019-2020 2 (2020) (“Only those members of the local who supported the corrupt union leaders and have agreed to “kick back” a portion of their wages are guaranteed a spot in one of the gangs.”).

²⁹ Peter B. Levy, *The Waterfront Commission of the Port of New York: A History and Appraisal*, 42 INDUS. LAB. REL. REV. 508, 510 (1989).

³⁰ *Staten Island Loaders v. Waterfront Comm’n of N.Y. Harbor*, 117 F. Supp. 308, 309 (S.D.N.Y. 1953) (“The ‘public loader’ system is peculiar to New York Harbor, growing out of conditions resulting from World War I. Due to lack of labor during that period, truckmen got into the habit of hiring laborers available at the piers to load and unload their trucks. As time passed these laborers banded together and organized the ‘public loaders’ system. As the system grew public loaders organized themselves into corporations and partnerships and gained control over an important step in harbor operations . . .”).

³¹ *Id.*

³² MITCHEL P. ROTH, *GLOBAL ORGANIZED CRIME: A 21ST CENTURY APPROACH* (2d ed. 2017) (“According to the collective bargaining agreement between the ILA and the New York Shippers Association (NYSA), only public loaders were allowed to move cargo between a pier and a truck.”).

³³ Levy, *supra* note 29.

³⁴ *Id.*

Another way organized crime members profited from the docks was through loan sharking. Loan sharking is “the practice of lending money at exorbitant rates of interest,”³⁵ and organized crime members would lend money to longshoremen at such excessive rates.³⁶ Between being underpaid, needing financing to support one’s family, and engaging in the various gambling schemes taking place on the docks, there was no shortage of longshoremen in need of financial assistance. Loan sharks made themselves available to these longshoremen, many of whom in turn were unable to repay the debts.³⁷ This inability to repay loans “resulted in a strengthening of the mob’s grip on the piers and often in violent consequences for the longshoreman-borrower.”³⁸ Mob sanctioned bookmaking, a form of gambling, also resulted in an influx of business for loans sharks.³⁹

II. *Formation of the Waterfront Commission of New York Harbor*

In 1948, a series of Pulitzer Prize winning articles were published by Malcolm Johnson, exposing that the “underworld syndicate” of organized crime controlled the entire New York-New Jersey waterfront.⁴⁰ The articles detailed that the controlling organized crime groups were able to make a huge profit on both labor and the smuggling of drugs.⁴¹ This series inspired the film *On the Waterfront*, which depicted the corrupt practices taking place on the docks.⁴² Such broad exposure of the realities of the docks resulted in increased public awareness and outrage of the conditions that exploited workers and threatened economic and public safety. As a result, the government sought a way to mend such practices. In the early 1950s, the New York State Crime Commission and the New Jersey Law Enforcement

³⁵ *Loan-sharking*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/loan-sharking> [<https://perma.cc/Y92A-6DBH>] (last visited Sept. 16, 2022).

³⁶ WATERFRONT COMM’N OF N.Y. HARBOR, WATERFRONT COMMISSION OF NEW YORK HARBOR ANNUAL REPORT 2008-2009 5 (2009).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Johnson, *supra* note 25.

⁴¹ *Id.*

⁴² ON THE WATERFRONT (Horizon Pictures 1954).

Council conducted investigations and held public hearings to find a solution.⁴³

These efforts culminated in 1953 with the passage of the Waterfront Commission Act (“the Act”) by New York and New Jersey.⁴⁴ The Act detailed the proposed “scheme for governmental supervision of employment on the waterfront.”⁴⁵ New York and New Jersey then submitted their interstate compact for federal approval, in which they described the necessity for such governmental supervision.⁴⁶ “An interstate compact is a contract between two or more states” that establishes “a formal, legal relationship to address common problems” through the creation of “independent, multistate government authorities.”⁴⁷ Interstate compacts are governed by the Constitution, which requires that “[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State.”⁴⁸

Proponents of the creation of the Waterfront Commission of New York Harbor (the “Commission”) believed the bistate agency was necessary to regulate an industry that had proven itself incapable of self-regulation, as the industry was unable to rid itself of organized crime.⁴⁹ In 1953, with approval from Congress and the President of the United States, the Commission was created.⁵⁰ The Commission was initially introduced as a temporary body that would no longer be necessary once it completed its task of removing all organized crime

⁴³ *Brief History*, THE WATERFRONT COMM’N OF N.Y. HARBOR, <http://www.wcnyh.gov/history.htm> [<https://perma.cc/X962-VKFX>] (last visited Sept. 16, 2022).

⁴⁴ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9801 (McKinney 1953); N.J.S.A. 32: 23-1.

⁴⁵ *De Veau v. Braisted*, 363 U.S. 144, 145 (1960).

⁴⁶ *Id.* at 147-48. (“[T]he conditions under which waterfront labor is employed within the Port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees . . .”) (quoting 4th Report of the New York State Crime Commission, New York State Leg. Doc. No. 70 (1953)).

⁴⁷ AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT, WHAT IS A COMPACT? (n.d.), https://aslpcompact.com/wp-content/uploads/2019/08/80057-What-is-a-Compact_Final.pdf [<https://perma.cc/VH9C-E4X5>].

⁴⁸ U.S. CONST. art. I, § 10, cl. 3.

⁴⁹ *Levy*, *supra* note 29, at 512.

⁵⁰ *Brief History*, *supra* note 43.

influence on the waterfront.⁵¹ That ultimate goal, however, proved more of a challenge than anticipated.

III. *Functions of the Waterfront Commission*

The Commission's creation was justified on the basis that the states are responsible to protect public safety and welfare, as states are better equipped to police local issues and crimes than the federal government.⁵² The Commission is led by two commissioners; one appointed by the New York governor and the other appointed by the New Jersey governor.⁵³ The commissioners receive a token salary and do not work full-time; thus, most responsibility falls on the executive director, who is hired by the commissioners.⁵⁴ The agency is further divided into (1) the Division of Administration; (2) the Division of Licensing and Employment and Information Centers; (3) the Division of Investigation; and (4) the Division of Law (Enforcement).⁵⁵

The Commission was created "for the purpose of eliminating various evils on the waterfront in the Port of New York Harbor."⁵⁶ The Act provided for specific powers including the immediate abolishment of the shape-up and replacing it with state-run employment centers.⁵⁷ The Commission could also now register and license the various employers, union officials, and dockworkers that work on the waterfront, while immediately barring any individual with a criminal record from serving as a union official.⁵⁸ In conjunction with this, any individual dockworker or employer could either be denied registration or later have their registration suspended or revoked if the individual engaged in criminal activity.⁵⁹ The Act also allowed for the immediate prohibition of public loaders.⁶⁰ Ultimately, many of the corrupt

⁵¹ Levy, *supra* note 29, at 512.

⁵² *Id.*

⁵³ *Id.* at 513.

⁵⁴ *Id.* at 514.

⁵⁵ *Id.*

⁵⁶ Waterfront Commission Act, *Preface to reference compilation of the Waterfront Commission Act*, N.Y. UNCONSOL. LAW § 9801 (McKinney 1953); N.J.S.A. 32: 23-1.

⁵⁷ Levy, *supra* note 29, at 511.

⁵⁸ *Id.*

⁵⁹ *Id.* ("Dockworkers and their employers could be denied registration or have their registration suspended for the commission of a crime, misrepresentation of character, transference of privileges, or 'wilful commission of or wilful attempt to commit' physical harm to or theft from any other person on the waterfront.")

⁶⁰ *Id.*

practices that led to its necessity were immediately done away with upon the creation of the Commission.

While the ILA was initially in complete control of hiring practices, that changed with the creation of the Commission. The Commission gained the power to open and close the longshoremen's register – gaining “controlled register status.”⁶¹ Further, through the amendment of Section 5-p, employers who sponsored individuals to be included on the register were required to certify that the individual was selected on a non-discriminatory basis.⁶² This amendment posed a threat to the ILA's power, as many employers acknowledged that the majority of their employees were referred to them through the ILA.⁶³ The Commission gained more control over the hiring process through the amended requirement, desaturating the ILA's overall influence.

IV. *General Success of the Commission*

The Commission was initially successful in eliminating certain corrupt practices, such as the shape-up and public loaders, as they were stopped immediately upon the creation of the agency.⁶⁴ However, the overall success of decreasing organized crime's influence is not as clear. The first comprehensive assessment of the Commission was completed in 1989 by Peter Levy in his article *The Waterfront Commission of the Port of New York: a History and Appraisal*.⁶⁵ In his assessment, Levy noted that the exploitation of dockworkers greatly diminished, and racketeers halted from openly operating.⁶⁶

More recently, one tool for assessing the success of the Commission is in its annual reports and prosecution and enforcement actions. In the year 2019 to 2020, the Commission succeeded in interfering with criminal activity due to its special focus on the Port:

Commission investigations with [its] law enforcement partners resulted in arrests of 90 individuals on state and federal charges as well as the seizure of over 32 kilos of heroin, almost 158 kilos of cocaine, 729 pounds of marijuana, 2,500 fentanyl pills, and 5.5 kilos of crystal meth as well as the seizure of almost \$1.47 million in proceeds

⁶¹ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9920 (McKinney 1953).

⁶² *Id.*

⁶³ WATERFRONT COMM'N OF N.Y. HARBOR, WATERFRONT COMMISSION OF NEW YORK HARBOR ANNUAL REPORT 2013-2014 37 (2014).

⁶⁴ Levy, *supra* note 29, at 511.

⁶⁵ *Id.*

⁶⁶ *Id.* at 520-21.

from drug trafficking, loan sharking and illegal gambling and the recovery of 11 firearms.⁶⁷

The report further indicated that over one-third of the ILA's referrals were not able to secure registration with the Commission, as they presented a "danger to the public peace or safety, or because they lack the requisite good character and integrity."⁶⁸ This is significant, as the ILA previously had sole control over hiring, resulting in high levels of organized crime affiliates working in the port. Additionally, 18% of the ILA's deep-sea longshore referrals did not gain registration due to prohibited organized crime ties.⁶⁹ Through such statistics, the Commission notes both its importance and its success at keeping the docks relatively safe from the influence of organized crime.⁷⁰

The Commission has three main functions. First, the Commission aims to regularize the workforce (decasualize), which it is enabled to do by creating a register of workers.⁷¹ Next, the Commission works toward preventing discriminatory hiring practices by requiring that employers verify that the individual workers were selected on a non-discriminatory basis.⁷² Finally, the Commission is designed to prevent organized crime influence; through the Association Clause of the Act, the Commission is empowered to remove individual workers who are identified as an organized crime member or affiliate.⁷³

1. *Decasualization of the Workforce*

One way the Commission works toward achieving its goals is through decasualization, which is the practice of "regularization of

⁶⁷ *The Year in Review (2019-2020)*, WATERFRONT COMM'N OF N.Y. HARBOR, [http://www.wcnyc.gov/CSummary/WCNYH%20Case%20Summary%20\(2019-2020\).pdf](http://www.wcnyc.gov/CSummary/WCNYH%20Case%20Summary%20(2019-2020).pdf) [<https://perma.cc/4AAE-H9V8>] (last visited Sept. 16, 2022).

⁶⁸ WATERFRONT COMM'N OF N.Y. HARBOR, *supra* note 28, at 4.

⁶⁹ *Id.*

⁷⁰ *Id.* ("Without the Commission's specialized expertise and oversight, notorious organized figures would be free to directly control and operate at the critical points of interstate and international shipping. The Commission's presence has a strong deterrent effect, and substantially disincentives their placement directly in the Port, because attempts to do so expose those individuals, and their criminal source of employment, to law enforcement investigation. Removing this oversight has long been a goal of organized crime.")

⁷¹ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9810 (McKinney 1953); N.J.S.A. 32: 23-1.

⁷² *Id.* § 9920.

⁷³ *Id.* § 9913.

employment of longshoreman and checkers.”⁷⁴ Prior to the creation of the Commission, there were an estimated 40,000-50,000 men who would shape-up to work on the docks.⁷⁵ By 1985, that number shrunk to fewer than 8,000 men and women who were registered to work.⁷⁶ By 2007, that number was further reduced to 3,400 longshoremen.⁷⁷ This significant drop in workers resulted in more regular work hours and evenly distributed pay, which put dockworkers in the Port of New York-New Jersey among the highest earners of unskilled or semiskilled workers in the United States.⁷⁸

The Act instructs the Commission to maintain a register of persons eligible to work as longshoremen.⁷⁹ Additionally, the Act requires the Commission to remove longshoremen from the register if they fail to work or apply for work during six-month intervals for an established minimum number of days.⁸⁰ In determining the number of work days required, the Commission considers a variety of factors such as encouraging the regularization of employment, bringing the number of workers in balance with the demand for service, and eliminating the oppressive and unlawful hiring conditions that once existed.⁸¹ Pursuant to the stated goals, the Commission adopted rules and regulations that require each employee to be available for work at

⁷⁴ *Id.* § 9810. “Longshoremen checkers are responsible for supervising activities that deal with cargo and the docks, slips, berths and terminal areas involved in transporting it. They also inspect incoming and outgoing loads, record the details and report to the port captain.” Chron Contributor, *Job Description of a Longshoreman*, CHRON., <https://work.chron.com/job-description-longshoreman-checker-30279.html> [<https://perma.cc/4TMN-5JKZ>] (Oct. 12, 2021).

⁷⁵ Levy, *supra* note 29, at 515.

⁷⁶ *Id.* at 516.

⁷⁷ Joseph Goldstein, *Along New York Harbor, ‘On the Waterfront’ Endures*, N.Y. TIMES (Jan. 6, 2017), <https://www.nytimes.com/2017/01/06/nyregion/new-york-harbor-on-the-waterfront.html#:~:text=A%20century%20ago%20New%20York,of%20cranes%20and%20straddle%20carriers.> [<https://perma.cc/3FBX-JC6F>].

⁷⁸ Levy, *supra* note 29, at 517.

⁷⁹ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9827 (McKinney 1953).

⁸⁰ *Id.* § 9834.

⁸¹ *Id.* § 9836 (“(a) To encourage as far as practicable the regularization of the employment of longshoremen”; “(b) To bring the number of longshoremen more closely into balance with the demand for longshoremen’s services within the port of New York district without reducing the number of eligible longshoreman below that necessary to meet the requirements of longshoremen in the Port of New York district”; “(c) To eliminate oppressive and evil hiring practices affecting longshoremen and waterborne commerce in the port of New York district”; “(d) To eliminate unlawful practices injurious to waterfront labor”; and “(e) To establish hiring practices and conditions which will permit the termination of governmental regulation and intervention at the earliest opportunity.”).

least ninety days in each six-month period, with at least fifteen days in each month for five of the months.⁸²

This requirement was contested in *Cambio v. Goldstock*, a case between an employee at the Port and the Commission.⁸³ In this case, John Cambio was credited with ninety-one days of work between January 1, 2009, and June 30, 2009, but he did not meet the minimum required fifteen days of work per month.⁸⁴ As a result, Cambio was removed from the register (meaning he was decasualized), but he later sought to retain his registered status asserting that he missed work because he took on additional responsibilities at a restaurant business due to “unforeseen disputes with his business partner.”⁸⁵ Additionally, Cambio argued that holidays should count as work days because he would meet the work requirement if they were credited as such.⁸⁶

The Supreme Court of New York County affirmed the Commission’s denial of Cambio remaining on the register.⁸⁷ The court recognized that the Commission was owed deference in interpreting the regulation, as it has specialized knowledge of the issue at hand – the necessity to decasualize the workforce.⁸⁸ Additionally, the court agreed that Cambio did not display that the Commission lacked “rational basis” for his removal,⁸⁹ and his restaurant business was not good cause for not meeting the required amount of work.⁹⁰ Judicial affirmation of Cambio’s removal from the register was necessary to align with the Commission’s mandate of eliminating casual workers from the waterfront.⁹¹

⁸² *Id.* § 9810.

⁸³ *Cambio v. Goldstock*, 29 Misc. 3d 888 (N.Y. Sup. Ct. 2010).

⁸⁴ *Id.* at 893.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 896.

⁸⁸ *Id.* at 895. (“Judicial deference to an agency’s interpretation of statutes and regulations is owed when specialized knowledge and understanding of underlying operational practices or an evaluation of factual data, with inferences to be drawn therefrom, is at stake.” (internal citation omitted)).

⁸⁹ *See Cambio*, 29 Misc. 3d at 890-91 (noting a lack of rational basis for [Cambio’s] removal can be proved by a showing that the Commission’s decision was “(1) made in violation of lawful procedure; (2) affected by an error of law; or (3) arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion”).

⁹⁰ *Id.* at 896. The court stated that having additional business responsibilities on the side leans toward the assertion that Cambio truly was a “casual” worker, which goes against the Commission’s mandate of eliminating such casual workers from the waterfront.

⁹¹ *Id.*

2. Preventing Discriminatory Hiring Practices

Another main purpose of the Commission is to prevent discriminatory hiring practices.⁹² The extent of the discrimination was revealed at the state hearings that took place following the Crimes Commission's reports that led to the creation of the Commission; at these hearings, Cleophus Jacobs, who was the secretary-treasurer of ILA Local 968 (a predominately black local), testified to the racial discrimination taking place.⁹³ Jacobs stated that less than one-fifth of his local members were given work following shape-ups.⁹⁴ The issue was further highlighted in the congressional hearings at which the representatives discussed whether to approve the compact and form the Commission.⁹⁵ At this hearing, Charles W. Tobey, a New Hampshire Senator, criticized the ILA's racially discriminatory hiring practices, including charging black union members double the initiation fee as white members were charged.⁹⁶

The Commission's first effort to combat such discrimination resulted in the 1999 Section 5-p amendment to the Act. Section 5-p controlled the register of workers, and the amendment required employers who sponsor individuals to be included on the register to certify that the hiring selection was made on a nondiscriminatory basis.⁹⁷ In 2013, the Commission further issued Determination 35, which expanded upon the antidiscrimination certification program contained within Section 5-p.⁹⁸ In 2016, Determination 35 was challenged in *New York Shipping Association v. Waterfront Commission of New York Harbor*, in which the New York Shipping Association ("NYSA") claimed it was unlawful.⁹⁹ The Third Circuit

⁹² Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9920 (McKinney 1953); N.J.S.A. 32: 23-1.

⁹³ *N.Y. Shipping Ass'n v. Waterfront Comm'n of N.Y. Harbor*, 835 F.3d 344, 354 (3d Cir. 2016).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9920 (McKinney 1953). See also *N.Y. Shipping Ass'n*, 835 F.3d at 351; WATERFRONT COMM'N OF N.Y. HARBOR, WATERFRONT COMMISSION OF NEW YORK HARBOR ANNUAL REPORT 2012-2013 26 (2013).

⁹⁸ *Determination 35*, WATERFRONT COMM'N OF N.Y. HARBOR (Dec. 3, 2013), <https://www.wcnyh.gov/news/determination35.pdf> [https://perma.cc/AZG9-2MDV].

⁹⁹ *N.Y. Shipping Ass'n*, 835 F.3d at 352 (attacking Determination 35 for the following reasons: (1) Determination 35 exceeds the scope of the Commission's

considered the plain language of the compact coupled with the legislative history and intent.¹⁰⁰ The certification requirement in Determination 35 furthers a concrete purpose of the Commission, and thus it inherently possesses legislative approval.¹⁰¹ The court held that the efforts to combat discrimination, particularly in hiring, through Determination 35 is within the scope of the compact and thus within the Commission's powers.¹⁰²

While *NYSA v. Waterfront Commission of New York Harbor* was a win for anti-discriminatory practices, the work is not completed. As of 2020, records indicate that little progress has been made to diversify registered longshoremen among each ILA local.¹⁰³ The highly sought-after checker positions are primarily filled by white males, and registered maintenance workers and mechanics are even more highly segregated among each ILA local.¹⁰⁴

3. Preventing Organized Crime Influence

The last major goal of the Commission is to prevent organized crime influence on the docks by removing any dock workers who have organized crime ties.¹⁰⁵ This power is granted to the Commission through the Association Clause of the Act.¹⁰⁶ The Association Clause allows for the removal of a person who is identified as an organized crime member, or associate, if their presence on the waterfront is inimical to the policies of the Act.¹⁰⁷ This clause has been challenged over the years in cases in which a port worker is removed for their

powers, (2) Determination 35 interferes unlawfully with NYSA's collective bargaining rights, and (3) Determination 35 violates NYSA's due process rights).

¹⁰⁰ *Id.* at 353–54.

¹⁰¹ *Id.* at 355.

¹⁰² *Id.* at 353.

¹⁰³ WATERFRONT COMM'N OF N.Y. HARBOR, *supra* note 28, at 3 (noting that ILA Local 1233, a predominately black local's membership is 86% black and 8% white. In contrast, ILA Local 1's (which is comprised of the highly sought checker positions) members are 85% white, 7% black, and 7% Hispanic).

¹⁰⁴ *Id.*

¹⁰⁵ Waterfront Commission Act, N.Y. UNCONSOL. LAW § 9913[6] (McKinney 1953).

¹⁰⁶ *Id.* § 9913.

¹⁰⁷ *Id.* (“This clause empowers the Commission to may revoke or suspend a license for “association with a person who has been identified by a federal, state or local law enforcement agency as a member or associate of an organized crime group . . . under circumstances where such association creates a reasonable belief that the participation of the licensee or registrant in any activity required to be licensed or registered . . . would be inimical to the policies of the Act.”).

association with an individual, raising questions regarding how to define association and inimical.¹⁰⁸

The question of what is considered “association” was raised by Margaret Dillin, who worked on the waterfront.¹⁰⁹ Dillin was found to have attended two parties that an associate of the Genovese crime family attended and that were hosted by Nicholas Furina (a member of the Genovese crime family).¹¹⁰ Dillin reportedly boasted to others about her relationship with Furina and how it was to her benefit to maintain that friendship while working on the waterfront.¹¹¹ Ultimately, the Commission sought to revoke her license, and an Administrative Law Judge (“ALJ”) allowed for her revocation, finding that Dillin posed a threat to the public peace and safety on the waterfront.¹¹²

Her removal from the waterfront was upheld in *Dillin v. Waterfront Comm’n of N.Y. Harbor*, where the court held that Dillin engaged in conduct that undermined the Commission’s efforts to prevent corruption on the waterfront.¹¹³ Based on the proof of her relationships with multiple individuals who were part of organized crime groups, Dillin was found in violation of the Association Clause and appropriately removed from her position on the waterfront.¹¹⁴

The Association Clause was further clarified by the case of *In re Pontoriero*. Pasquale Pontoriero’s license to work on the waterfront was revoked following hearings and a decision by an ALJ due to his association with Tino Fiumara and Stephen DePiro.¹¹⁵ Pontoriero’s association with these figures was evidenced through meetings, including a dinner attended by Fiumara and DePiro and two visits to DePiro’s home.¹¹⁶ The Commission brought an administrative proceeding to revoke, cancel, or suspend Pontoriero’s license for “association” that was “inimical to the policies” of the Act and for lack

¹⁰⁸ See *Dillin v. Waterfront Comm’n of N.Y. Harbor*, 119 A.D.3d 429 (N.Y. App. Div. 2014) (discussing the definition of “association”); see *In re Pontoriero*, 106 A.3d 532 (N.J. Super. Ct. App. Div. 2015).

¹⁰⁹ *Dillin*, 119 A.D.3d 429.

¹¹⁰ *Id.* at 430.

¹¹¹ *Id.*

¹¹² *Id.* at 429-30.

¹¹³ *Id.* at 430.

¹¹⁴ *Id.* at 431.

¹¹⁵ *In re Pontoriero*, 106 A.3d 532, 535-38 (N.J. Super. Ct. App. Div. 2015). Tino Fiumara is identified as a “capo” and Stephen DePiro is identified as an “associate.” *Id.*

¹¹⁶ *Id.* at 536.

of good character and integrity.¹¹⁷ The ALJ issued an opinion finding all charges were “established by a clear preponderance of the evidence.”¹¹⁸ The ALJ went on to define association as “to keep company as a friend, companion or ally” and inimical as “adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the [Act].”¹¹⁹

On appeal, Pontoriero argued that the Commission’s findings and ultimate decision were arbitrary, capricious, and unreasonable:

[A]ppellant argues that the Commission’s findings and decision were arbitrary, capricious, and unreasonable because: (1) the factual findings were not supported by sufficient credible evidence; (2) the ALJ and Commission’s interpretation of the Waterfront Act as a strict liability statute was erroneous; (3) the ALJ and the Commission failed to use the proper definitions of ‘association’ and ‘inimical’; (4) the relevant sections of the Waterfront Act are unconstitutionally vague; (5) the finding that appellant lacked good character and integrity was not supported by competent, credible evidence; and (6) the revocation of appellant’s license was disproportionate to the alleged offenses and shocking to one’s sense of fairness.¹²⁰

The court was unpersuaded by his arguments, agreeing that the proper way to interpret “association” was through the common meaning as the ALJ stated, and not as it is defined in a criminal context, which requires an illegitimate purpose.¹²¹ The court continued to define “inimical” as used in the Act, as “adverse to the public confidence and trust in the credibility, integrity and stability of the waterfront and in the strict regulatory process of the Act.”¹²² The court ultimately agreed that the record supported the Commission’s fact-finding and concluded that Pontoriero created “an unacceptable risk of corruption”¹²³ as a result of his relationship with Fiumara and DePiro.¹²⁴

¹¹⁷ *Id.* (The Commission sought to revoke Pontoriero’s license as contrary to N.J.S.A. 32:23-93(6) to (7) and N.J.S.A. 32.23-15(a)-18(a).).

¹¹⁸ *Id.* at 537.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 538.

¹²¹ *In re Pontoriero*, 106 A.3d at 540.

¹²² *Id.* at 541.

¹²³ *Id.* at 543.

¹²⁴ *Id.* (The court additionally notes on pages 543-44 that “a reasonable observer could conclude that Fiumara and DePiro held influence over appellant in his role as

E. *Continued Issues with the Port*

The Commission was not the ultimate remedy for all existing corruption on the waterfront. In Levy's assessment, he noted that the failure to completely prevent organized crime influence on the docks was a result of the lack of broad jurisdiction and the complexities of the criminal activity taking place.¹²⁵ While the Commission was successful in eliminating the original concerning practices, there is still a prevalence of corruption that the Commission seeks to prevent. The ILA continues to greatly influence hiring on the docks through collectively bargained provisions that allow the ILA to provide workers to employers in need of labor.¹²⁶ Additionally, revoking one's license does not always mean they will be completely removed from the docks.¹²⁷ Instead, these individuals can be placed in "non-covered" positions, in which organized crime groups will provide overpriced labor for services such as cleaning, trash removal, snow removal, or repairs.¹²⁸ Other continued concerns include loansharking, cargo theft, "[w]orkers' compensation fraud, narcotics importation, and the illegal use of drugs, especially prescription medications."¹²⁹

1. *"Low Show" or "No Show" Jobs*

Prevailing corruption is also displayed through the existence of "low show" or "no show" jobs. In these positions, longshoremen are paid disproportionately high salaries for their positions, while working very little time or not working at all.¹³⁰ A recent example of this is the case of Paul Moe. Paul Moe worked as a General Foreman at APM Terminals.¹³¹ APM Terminals and Moe's union, ILA Local 1804-1, were part of a collective bargaining agreement that was amended in a 2013 Memorandum of Settlement.¹³² Through this amendment, Moe qualified as an "incumbent," which meant he would be paid through a

a hiring agent. Accordingly, the association is inimical, as adverse to the public confidence and trust in the credibility, integrity and stability of the waterfront and in the strict regulatory process of the Waterfront Act.").

¹²⁵ Levy, *supra* note 29, at 521.

¹²⁶ WATERFRONT COMM'N OF N.Y. HARBOR, *supra* note 28, at 3.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ WATERFRONT COMM'N OF N.Y. HARBOR, WATERFRONT COMMISSION OF NEW YORK HARBOR ANNUAL REPORT 2017-2018 20 (2018).

¹³¹ United States v. Moe, 810 Fed. Appx. 114, 116 (3d Cir. 2020).

¹³² *Id.*

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Special Package.¹³³ This Special Package awarded Moe a high salary for twenty-four hours a day, seven days a week.¹³⁴ Annually, he was earning over \$500,000, making him the fourth highest compensated special package longshoreman in the Port of New York-New Jersey.¹³⁵

Moe indicated that he was working on his time sheets while he was actually on vacation, away with his mistress, and otherwise not at work.¹³⁶ Eventually, the Commission discovered the discrepancies in the time sheets, and Moe was indicted and later convicted by a jury for thirteen counts of wire fraud and one count of conspiracy to commit wire fraud, violating 18 USC §§ 1343 and 1349.¹³⁷ The case of Moe exemplifies why the Commission is still necessary, even after eliminating the initial evils it was created for.

In 2017, the Commission found that 500 individuals received over \$117.5 million in compensation for hours they did not actually work.¹³⁸ Due to the staggering economic impact of these “low show” positions on the waterfront, the Commission’s discovery of Moe’s situation and success in the case against him was a significant step in the direction of eliminating the unfair pay system. Without the regulation and intervention of the Commission, those like Moe would get by without interference and punishment. The industry likely cannot be left to self-regulate, as it is easier for companies to maintain good relations with union leaders and organized crime members than it would be to punish them.

2. *Organized Crime Association*

Another way in which corruption is still prevalent on the waterfront is displayed in organized crime association cases. While the court in *Pontoriero* established that the Commission is acting within its power to remove those who have an “association” with an organized crime member (based on the common definition, not the criminal law definition), these cases cannot always be easy for the Commission to prove due to a lack of concrete evidence.¹³⁹

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ WATERFRONT COMM’N OF N.Y. HARBOR, *supra* note 130, at 24.

¹³⁶ *Moe*, 810 Fed. Appx. at 117 n.9, 118.

¹³⁷ *Id.*

¹³⁸ WATERFRONT COMM’N OF N.Y. HARBOR, *supra* note 130, at 2.

¹³⁹ These cases require evidence of the social lives of the longshoremen to prove whether they are associated with organized crime members. Unless there is concrete evidence from the longshoremen themselves, such as them telling others about their

Various individuals have had their licenses revoked in recent years due to organized crime association. For example, Jose “Pepe” Rodriguez, a checker, was removed from his position due to his association with Manuel Rodriguez, who is a Genovese crime family associate and career offender convicted of racketeering activities.¹⁴⁰ Additionally, he associated with Albert “The Bull” Cernadas, a career offender who victimized members of the ILA union.¹⁴¹ Without the Commission to investigate organized crime associations, these groups would continue to have significant influence on the docks. Those who have connections to organized crime groups in power are seen to be given higher paying positions and preference in hiring.¹⁴² If discovered, the connected individual will be removed from the workforce, but the Commission does not immediately find all organized crime associations.

It is thus apparent that while the Commission was successful in initially removing organized crime influence on the docks, the practices are not completely gone. The existence of many organized crime affiliates and continued corrupt practices indicates that the Commission has not completely resolved the issues in the ports. This is likely because while the Commission can identify many of the individuals and present issues, it is not something that will ever be completely resolved, as some individuals may slip through the cracks and obtain licenses to work regardless of a potential organized crime affiliation. The presence of a casual workforce and prevailing discriminatory hiring practices sheds light on how organized crime groups remain influential over the ports, emphasizing that corruption is not completely extinguished. However, this may also be a reflection of the continued need for the Commission as a regulatory figure over

association, this type of evidence can only come to light through social media, depositions, etc.

¹⁴⁰ *Checker Removed from Waterfront for Association with a Genovese Crime Family Associate and Career Offender Convicted of Racketeering Offenses; “Snitches Get Stitches” on Genovese Associate’s Facebook Page and Committed Multiple Acts of Fraud, Deceit or Misrepresentation*, WATERFRONT COMM’N OF N.Y. HARBOR (Mar. 8, 2021), <http://www.wcnyh.gov/newspage361.html> [<https://perma.cc/ESN5-CAYX>].

¹⁴¹ *Id.*

¹⁴² WATERFRONT COMM’N OF N.Y. HARBOR, *supra* note 130, at 20 (“[E]very terminal within the Port still has special compensation packages given to certain ILA longshore workers, the majority of whom are white males connected to organized crime figures or union leadership.”).

the Port. Based on the numbers recorded in the annual reports,¹⁴³ leaving the waterfront completely unregulated, with only itself as a governing figure, would likely be dangerous to the economic and public wellbeing. While the Commission does not keep out all organized crime individuals, affiliates, and influence, without its interference the numbers would be strikingly higher.

V. THE PORT OF VANCOUVER

The issue of organized crime infiltration in a port is not a unique issue to the Port of New York-New Jersey. The Port of Vancouver has faced a similar challenge, as the Hells Angels Motorcycle Club (“Hells Angels”) has become an influential force there.¹⁴⁴ Below is a discussion of the government’s response to the Hells Angels’ influence on the Port of Vancouver, followed by a comparative analysis to the New York-New Jersey response.

A. *History of Hells Angels in Canada*

Hells Angels was founded in 1948 in California.¹⁴⁵ The international club began with veterans of World War II and is now predominately made up of white males who ride Harley-Davidson motorcycles.¹⁴⁶ The motorcycle gang spread to Canada in 1977, and its presence has vastly grown in the country since then.¹⁴⁷ However, it was not always the only powerful group in Canada. From 1977 to 1982, the Hells Angels and the Outlaws, a rival biker gang, fought in the First Biker War, which the Hells Angels won.¹⁴⁸ To gain legitimacy the Hells Angels implemented a new management philosophy that resembled a business.¹⁴⁹ In an attempt to enforce this new business-like philosophy and management style, in 1985, five members of the notoriously reckless and partying Hells Angels Laval chapter were

¹⁴³ *Annual Reports*, WATERFRONT COMM’N OF N.Y. HARBOR, <https://www.wcnyh.gov/ar.htm> [<https://perma.cc/3VCP-M9Q5>] (last visited Nov. 22, 2022).

¹⁴⁴ *See infra* Part II(A).

¹⁴⁵ *Hells Angels*, ENCYC. BRITANNICA.

¹⁴⁶ *Id.*

¹⁴⁷ Patrick Lejtenyi, *How the Hells Angels Conquered Canada*, VICE (Oct. 27, 2016), <https://www.vice.com/en/article/bn3vnq/how-the-hells-angels-conquered-canada> [<https://perma.cc/MA5P-VK6A>].

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

murdered.¹⁵⁰ Following the Second Biker War, from 1994 to 2002, in which the Angels once again were victorious, the group further established its place in Canadian crime.¹⁵¹

Canadian ports are uniquely attractive to organized crime groups for a variety of reasons including low chances of inspection, physical layout, and difficulty in establishing adequate security measures.¹⁵² Naturally, Hells Angels aimed to gain some influence over the ports as they expanded throughout Canada. During its growth in the 1980s, Hells Angels aimed to expand to British Columbia due to the fact that Vancouver was a port city.¹⁵³ Vancouver was an attainable goal, as it is in close proximity to Hells Angels' strong presence in California.¹⁵⁴ In addition to the ease at which it could obtain control, Vancouver was attractive for two more reasons. First, according to a 1986 report by the Royal Canadian Mounted Police ("RCMP") and the Drug Enforcement Agency, Vancouver was an important place for transmitting drugs, weapons, and other contraband.¹⁵⁵ Second, it was attractive because it housed the largest addict population, which proved to be a lucrative market for the Hells Angels to sell drugs in.¹⁵⁶

The infiltration of criminals, such as Hells Angels, into the Vancouver ports' workforce was perpetuated by employment practices in place. For example, such practices allow for existing union members to "nominate friends, relatives and associates" when there are available jobs.¹⁵⁷ This employment practice is the legal standard in

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² PUBLIC SAFETY CANADA, MARINE PORTS AND ORGANIZED CRIME: ORGANIZED CRIME RESEARCH BRIEF NO. 25 (n.d.), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rgnzd-crm-brf-25/rgnzd-crm-brf-25-eng.pdf> [<https://perma.cc/3D7K-2FZG>] ("Factors such as the high volume of traffic, reduced likelihood of inspection, existing storage protocols within container terminals permitting storage of domestic and international containers (as well as empty containers) in the same compound, contribute to the vulnerability of the marine ports to OC groups. Moreover, the challenging physical layout and spatial characteristics of these marine ports add to the difficulty of providing adequate security and law enforcement.").

¹⁵³ PRESIDIA SEC. CONSULTING, ECONOMIC SECTORS VULNERABLE TO ORGANIZED CRIME: MARINE PORT OPERATIONS 23 (Jan. 2011).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Kim Bolan, *Organized Crime and the Port: Part One of my Series*, VANCOUVER SUN (May 8, 2015), <https://vancouver.sun.com/news/staff-blogs/organized-crime-and-the-port-part-one-of-my-series> [<https://perma.cc/E89L-U7W7>].

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the port, and it does little to attempt to prevent increased organized crime. There are “full-patch” Hells Angels who are also members of the International Longshore and Warehouse Union (“ILWU”), who could then nominate fellow Hells Angels for open positions.¹⁵⁸ The current process for hiring requires the ILWU to put forward potential employee names; subsequently, the Port Metro Vancouver will issue a basic port pass, which does not require a criminal record check.¹⁵⁹

Having influence in large ports can prove to be very beneficial for criminal groups such as Hells Angels. It allows groups to corrupt the labor practices, seamlessly smuggle contraband, and tip off the group members should there be a seizure by law enforcement to avoid any capture or arrest. As a result of Hells Angels’, among other criminal groups’, influence, the Port of Vancouver has become “an entry point for heroin, cocaine, synthetic drugs, precursor chemicals, and counterfeit goods.”¹⁶⁰ It is reported that “[A]ngels are among the first to board arriving ships. They unload goods, place them for storage, load them onto trucks and prepare the necessary documents for shipping.”¹⁶¹ Another way Hells Angels have been known to control the docks is through intimidation practices. For instance, Canadian Customs officials testified before the Standing Senate Committee on National Security and Defense that they were subjected to intimidation when inspecting containers.¹⁶² Members of Hells Angels are known to wear their colors for intimidation purposes when working on the docks.¹⁶³

B. Government Involvement in the Port of Vancouver

Historically, the Canadian government’s role in regulating ports differs greatly from the government’s role in the Port of New York-

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ PRESIDIA SEC. CONSULTING, *supra* note 153, at 22.

¹⁶¹ *Organized Crime in Canada: A Quarterly Summary*, OSGOODE HALL L. SCH. OF YORK UNIV. 1, 7 (2015), <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1011&context=summaries> [<https://perma.cc/6F55-L9DH>].

¹⁶² STANDING SENATE COMM. ON NAT’L SEC. & DEF., *Report of the Standing Senate Committee on National Security and Defence*, CAN. SEC. & MIL. PREPAREDNESS 1, 45 (Feb. 2002).

¹⁶³ Victor Malarek, *Organized Crime Feared Colluding with Terrorists on Waterfront*, GLOBE & MAIL (Aug. 31, 2002), <https://www.theglobeandmail.com/news/national/organized-crime-feared-colluding-with-terrorists-on-waterfront/article4142459/> [<https://perma.cc/VUL3-3J8S>].

New Jersey. The Canadian federal government was first given control over the ports from the British North American Act of 1867, which gave the federal government exclusive jurisdiction over navigation and shipping, and an Act of 1868, which established the national department of marine and fisheries.¹⁶⁴ The “primacy of federal jurisdiction” was reinforced in the National Harbours Board Act of 1936, which resulted in the central government assuming direct administrative control over fifteen major Canadian ports.¹⁶⁵

In the late 1960s, theft and pilferage were the dominant form of crime on the Vancouver waterfront.¹⁶⁶ Subsequent to the advent of shipping containers, drug smuggling became predominate.¹⁶⁷ Human trafficking, import of prohibited weapons, and export of stolen cars also took place.¹⁶⁸

The Canadian system operated in three groupings of ports: (1) those subject to the Canada Ports Act of 1983, which repealed the 1936 Act and provided for greater flexibility in local board governance; (2) nine harbor commission ports, established under a variety of Parliamentary enactments; and (3) more than 500 small commercial ports throughout Canada, which were administered by Transport Canada.¹⁶⁹ During its time of operation, the Ports Canada Police (“PCP”) “regularly seized quantities of illegal drugs and disrupted other criminal activities.”¹⁷⁰ The PCP worked with the RCMP to share intelligence in drug enforcement matters.¹⁷¹ However, this was all subject to major change in 1996, following the expansive review of Canada’s marine sector conducted by the House of Commons Standing Committee on Transport. Legislation, known as the “Canada Marine Act,” was introduced and took effect in 1999. The Canada Marine Act brought vast change including: (1) the creation of a National Ports System, made up of eighteen independently managed

¹⁶⁴ Rexford B. Sherman, *Seaport Governance in the United States and Canada*, AM. ASS’N OF PORT AUTHS. 1, 6, https://www.aapa-ports.org/files/pdfs/governance_uscan.pdf [<https://perma.cc/D5N7-EANH>] (last visited Sept. 22, 2022).

¹⁶⁵ *Id.*

¹⁶⁶ Chris Madsen, *Pacific Gateway: State Surveillance and Interdiction of Criminal Activity on Vancouver’s Waterfront*, 6 SALUS J. 26, 28 (2018).

¹⁶⁷ *Id.* (“This is in large part due to increased supply in source countries, as well as domestic demand, and included cannabis, heroin, cocaine, and in later years, methamphetamine-based narcotics.”).

¹⁶⁸ *Id.*

¹⁶⁹ Sherman, *supra* note 164, at 6.

¹⁷⁰ Madsen, *supra* note 166, at 29.

¹⁷¹ *Id.*

Canada Port Authorities (“CPAs”); (2) streamlining the regulatory regime of the new CPAs; (3) dissolving the Canada Ports Corporation; (4) repealing the Public Harbours and Ports Facilities Act among other acts; and (5) authorizing federal divestiture of ports that did not qualify for CPA status to non-federal interests.¹⁷²

Additionally, the Marine Transportation Security Regulations were enacted to restrict waterfront employees who work in sensitive and restricted areas.¹⁷³ These regulations gave authorities the power to collect information about those who work in security-sensitive positions in ports as a safeguard.¹⁷⁴ Further, these regulations required disclosure of biographical details about the individual applying for security clearance and their spouse.¹⁷⁵ Those who “pose an unacceptable security risk to marine transportation” are not granted clearance.¹⁷⁶ The regulations were upheld as constitutional in a 2009 court case, in which the court stated that “in view of the potentially grave nature of the threats to the security of maritime transportation from terrorists and organized crime, the information required by the Regulations can [not] be said to be overly intrusive and insufficiently tailored to the perceived risks.”¹⁷⁷ Connection with Hells Angels is grounds for review of transportation security clearance.¹⁷⁸

Today, the Port of Vancouver, as a CPA, assumes the sole responsibility for facilitating “the safe movement of Canada’s trade in a manner that protects the environment and considers local communities.”¹⁷⁹ Responsibility for policing the waterfront is distributed among the local police forces, the RCMP, and Canada Border Services Agency.¹⁸⁰ In 2007, the RCMP told the Standing Senate Committee on National Security and Defence that traditional organized crime groups, including the Hells Angels, were extremely active in the Port of Vancouver.¹⁸¹ The RCMP further conceded that while the groups threaten port security, they are only able to prevent

¹⁷² Sherman, *supra* note 164, at 6.

¹⁷³ Marine Transportation Security Regulations, SOR/2004-144 (Can.).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at part 5.

¹⁷⁶ Reference re: Federal Courts Act (2009) F.C. No. 1266 para. 11 (Can.).

¹⁷⁷ *Id.* at para. 69.

¹⁷⁸ *Id.*

¹⁷⁹ *Crime on the Waterfront*, PORT OF VANCOUVER, <https://www.portvancouver.com/about-us/faq/crime-on-the-waterfront/> [<https://perma.cc/3PSX-CEQE>] (last visited Sept. 22, 2022).

¹⁸⁰ *Id.*

¹⁸¹ STANDING SENATE COMM. ON NAT’L SEC. AND DEF., CANADIAN SECURITY GUIDE BOOK – SEAPORTS 4 (2007).

around 30% of the activity as a result of limited resources.¹⁸² While the Vancouver Port Authority initially provided funding toward policing and security at the port, it has since discontinued all funding of the policing units, as it claimed that policing was not its core mandate.¹⁸³ Former RCMP Commissioner Peter German detailed the struggles that resulted from the demise of the PCP, claiming that it left a “serious gap in our law enforcement umbrella.”¹⁸⁴

There is a wide array of shared responsibilities among various groups regarding port security in Vancouver. The RCMP exercises jurisdiction over drug enforcement, and the local police force is delegated a portion of this as well.¹⁸⁵ Information sharing is facilitated by Marine Security Operations Centre, which serves as a liaison between security and law enforcement partners who are subject to security restrictions on intelligence sharing.¹⁸⁶ The Department of National Defence (“DND”), Canadian Security Intelligence Service (“CSIS”), Communications Security Establishment (“CSE”), and Canada Border Services Agency are additional examples of agencies involved in these security operations.¹⁸⁷

The B.C. Maritime Employers Association (“Maritime Employers Association”) is responsible for approving employees for port access.¹⁸⁸ The Maritime Employers Association is aware of the Hells Angels’ presence on the docks, but maintains that its only job is to ensure longshoremen are properly trained, not to assess criminal backgrounds.¹⁸⁹ While no criminal background check is required for a basic port pass – a sharp contrast to the Port of New York-New Jersey

¹⁸² PRESIDIA SEC. CONSULTING, *supra* note 153, at 39.

¹⁸³ PORT OF VANCOUVER, *supra* note 179 (“At the end of 2015, Vancouver Fraser Port Authority discontinued its financial contribution to the RCMP-led Waterfront Joint Forces Operation – a policing organization intended to fight crime on the waterfront. . . . [S]ince policing is not core to our mandate, we decided it was more prudent to fund security measures that do fall within our mandate, and focus on complementing the activities of the police agencies.”).

¹⁸⁴ Jen St. Denis, *Revive Port Police to Fight Organized Crime on the Waterfront, Delta Chief Says*, TORONTO STAR (Sept. 11, 2019), <https://www.thestar.com/vancouver/2019/09/11/revive-port-police-to-fight-organized-crime-on-the-waterfront-delta-chief-says.html> [<https://perma.cc/4HNS-UMN7>].

¹⁸⁵ Madsen, *supra* note 166, at 30.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 30-31.

¹⁸⁸ PORT OF VANCOUVER, *supra* note 179.

¹⁸⁹ Bolan, *supra* note 157 (“We are a service provider to the industry – primarily to labour relations and training and secondarily in terms of government relations and social outreach.”).

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process of looking into all applicants to a longshoreman position's criminal history – the Maritime Employers Association does screen individuals for organized crime associations and criminal records that are seeking higher-security Transportation Clearance passes that allow them in restricted zones on the waterfront.¹⁹⁰

C. Success of the Vancouver Government Response

Canada Border Services Agency (“CBSA”) has reportedly successfully seized more than half a ton of cocaine, two tons of ketamine, and more than 20,000 liters of chemicals used in the production of meth between 2010 and 2014.¹⁹¹ A 2010 CBSA report indicated that Hells Angels working in key positions, such as longshoremen, equipment operators, foremen, and truck drivers, has allowed the group to re-establish its dominance at the ports following any government intervention in criminal activity.¹⁹²

The specific numbers of those who have been refused security access or had their security access cancelled or suspended due to the Marine Transportation Security Clearance Program can be seen below.

Table 1.¹⁹³

	Refused	Cancelled	Suspended
2010	1	1	0
2011	10	6	1
2012	5	2	0
2013	15	9	1
2014	21	14	2
2015	3	4	1

In 2017, a Transport Canada report indicated that there remained widespread organized crime influence in British Columbia due to knowledge that organized crime members, such as those of the Hells Angels, were members of the longshoremen's union.¹⁹⁴ The majority of the policing responsibility fell on the RCMP's Federal Serious and Organized Crime Unit, but the unit is responsible for investigating

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Madsen, *supra* note 166, at 36.

¹⁹⁴ St. Denis, *supra* note 184.

across all of the Lower Mainland, not just at the Port of Vancouver.¹⁹⁵ The municipal force responds to incidents called in from the ports, but this is typically an individual crime such as assault or theft.¹⁹⁶ Said force does not have the necessary resources required to “delve into complex organized-crime investigations.”¹⁹⁷

There have been cases in which an individual’s organized crime affiliation was revealed, leading to the denial of their request for a high level of clearance in the port. In *Randhawa v. Canada*, Randhawa submitted an application for judicial review of the Minister’s decision denying his application for Marine Security Clearance.¹⁹⁸ The application for clearance was denied based on Randhawa’s association with his two brothers, who were executive members of a criminal organization known for smuggling drugs, which had ties to other groups including Hells Angels.¹⁹⁹ Randhawa argued that he personally was not a member of the organized crime group and thus should be granted the security clearance.²⁰⁰ The court held that “[d]espite the Applicant’s counsel able argument, I am not satisfied that the Applicant’s association with his brothers falls within the category of ‘innocent associations.’”²⁰¹ Though the potential threats had not materialized yet, Randhawa’s association “provided . . . a rational basis for holding a reasonable suspicion of subornation and potential risk to marine transport security.”²⁰² The court cited to *Wu v. Canada*, in which Wu’s airport security clearance was cancelled based on her continued association with her ex-husband who was a full patch member of the Hells Angels.²⁰³ Parallels were drawn between the threat to security in ports and airports, as both are highly susceptible to crime influence.²⁰⁴

Similarly, in *Canada v. Farwaha*, the Federal Court of Appeals decided upon a case regarding security clearance.²⁰⁵ The underlying facts were that Mr. Farwaha was a dock worker at the Port of

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Randhawa v. Canada* (Minister of Transport), [2017] F.C. 556 (Can.).

¹⁹⁹ *Id.* at para 1.

²⁰⁰ *Id.* at para 7.

²⁰¹ *Id.* at para. 29.

²⁰² *Id.* at para. 31.

²⁰³ *Id.* at para. 34.

²⁰⁴ *Randhawa*, [2017] F.C. 556 at para. 36.

²⁰⁵ *Canada (Transport, Infrastructure and Communities) v. Farwaha* (2014), [2015] 2 F.C.R. 1006 (Can.).

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Vancouver, and he obtained security clearance under the Security Regulations to work in certain areas of the port.²⁰⁶ However, a subsequent report came from the lead officer of the RCMP's Federal Operations Criminal Intelligence Support Unit, which disclosed that Farwaha was potentially associated with the Hells Angels.²⁰⁷ The court recognized that "reasonable grounds to believe that a person is a member of such an organization is a factor to be considered in denying a security clearance or cancelling one that has been granted."²⁰⁸ Ultimately, the court found the Minister's reasoning for revoking his clearance to be adequate and transparent.²⁰⁹

Such cases exhibit the importance of preventing individuals with organized crime affiliation from working on the docks. The court itself stated that affiliation with Hells Angels is reason enough to believe an individual may be suborned into acts that could be a threat to the security of the Port.²¹⁰ Further, while the regulations aim to prevent an individual associated with an organized crime group from working in a high-security area, there is nothing done to prevent that person from working in other parts of the port. This fact is a shortcoming of the Canadian system, which does little to intervene with Hells Angels affiliates from working on the waterfront.

VI. A COMPARATIVE LOOK

There are a variety of key differences between New York-New Jersey's approach and Vancouver's approach to organized crime in their ports. To start, the former requires that each worker on the waterfront is licensed through a government agency.²¹¹ Contrarily, Vancouver's port only requires those who work in high-security areas

²⁰⁶ *Id.*

²⁰⁷ *Id.* at para. 7. "On October 1, 1999 Surrey RCMP received a complaint that Mr. FARWAHA and two other individuals forced their way into the residence of the victims and stated they were part of the 'Hells Angels'. The suspects demanded all of the resident's money. FARWAHA and another suspect assaulted a resident to unconsciousness, which resulted in a concussion, facial lacerations, 'cauliflower ears' and extensive bruising. During this assault, a suspect other than [*sic*] FARWAHA assaulted another resident, who was also threatened. This resident eventually agreed to give all her money (\$30,000.00) to the 3 suspects." *Id.* at para 36.

²⁰⁸ *Id.* at para. 38.

²⁰⁹ *Id.* at para. 105.

²¹⁰ Canada (Transport, Infrastructure and Communities) v. Farwaha (2014), [2015] 2 F.C.R. 1006, para. 101 (Can.).

²¹¹ Levy, *supra* note 29, at 511.

to go through a background check and obtain permission to work.²¹² This results in the ability for members of Hells Angels, or other organized crime groups, to be members of the ILWU and to work in other roles on the Port.

Additionally, New York-New Jersey relies on the Waterfront Commission of New York Harbor to regulate the industry and maintain port security and safety.²¹³ However, in Vancouver, following the demise of the Ports Canada Police and overall shifts in the government involvement, this responsibility is shared among a variety of units.²¹⁴ The Maritime Employers Association screens those who seek to possess higher security; the FCMP's Organized Crime unit is responsible for investigating organized crime actions; the RCMP exercises jurisdiction over drug enforcement; and the local police force is delegated work as well.²¹⁵

While the above discussion focused on La Cosa Nostra in New York-New Jersey and Hells Angels in Vancouver, both ports screen for involvement in an array of different organized crime groups. In the Port of New York-New Jersey, the Commission screens for any and all criminal activity or gang affiliations. Similarly, while Hells Angels is a large player in the organized crime realm in Vancouver, association with any Outlaw Motorcycle Gang or criminal group is grounds for terminating high-security clearance.

VII. CONCLUSION: A PUSH FOR CENTRALIZED GOVERNMENT COORDINATION

The Port of New York-New Jersey takes an extremely centralized approach to combatting organized crime on the waterfront. The Commission is solely responsible for regulating the workforce and preventing organized crime members, or associates, from working there.²¹⁶ The Commission has made great strides toward ridding the waterfront of corruption through its fair labor practice initiatives and its strict regulation of licensing.²¹⁷ In contrast, Vancouver takes a decentralized approach to maintaining port security.²¹⁸ After the dissolution of the Ports Canada Police, the workload was spread thin

²¹² Bolan, *supra* note 157.

²¹³ *See supra* Part I(C).

²¹⁴ *See supra* Part II(B).

²¹⁵ *Id.*

²¹⁶ *See supra* Part I(C).

²¹⁷ *See supra* Part I(D).

²¹⁸ *See supra* Part II(B).

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across a variety of organizations.²¹⁹ Having an array of government units involved in the policing process can create an information sharing and coordination issue. The RCMP acknowledged the activity of Hells Angels, among other organized crime groups, and further stated that due to limited resources, it is only able to prevent around 30% of the activity.²²⁰

It would be beneficial for the Port of Vancouver to reinstate a port-specific police force or regulatory agency.²²¹ Due to the sheer quantity of employees and the amount of goods going through the port, a centralized unit is almost necessary to combat criminal efforts. A local, centralized force would be able to invest its time and resources into the specific issue of crime at the Port of Vancouver. Through such efforts, Hells Angels members could quickly be identified and removed from the workforce. Additional organized crime groups and efforts could be prevented from continuing their various operations. To increase efforts toward ridding the port of organized crime, there must be a stronger sense of surveillance. Presently, only those accessing high-security areas must pass a background check. This leaves the majority of the port open to anyone, regardless of criminal past or connections.²²²

²¹⁹ *Id.*

²²⁰ PRESIDIA SEC. CONSULTING, *supra* note 153, at 39.

²²¹ Madsen, *supra* note 166, at 37. (“Vancouver is Canada’s gateway to the Pacific. In an era of increased threats to North American security, the area’s seaport has become a contested arena that places law enforcement and government agencies against criminal groups like the Hells Angels, which has been infiltrating waterfront unions (confidential source). As such, it is important that public officials should not underestimate the influence and sophistication of these organised crime groups to find creative ways to conduct their illegal business in these venues. The situation in the Port of Vancouver is neither intractable, nor unmanageable, though continued vigilance remains necessary. Surveillance and interdiction efforts on behalf of the Canadian state target criminal elements, and the drug trade that motives them by drawing upon various law enforcement agencies’ capabilities.”).

²²² Peter Avis, *Surveillance and Canadian Maritime Domestic Security*, CAN. MIL. J. 9, 14 (2003) (“Surveillance is an integral part of maritime domestic security. It appears from many sources and in many forms. To achieve Canadian aims, we will be forced to re-examine our huge challenges and seek synergies among government departments where overlap and complimentary capability exists. By finding the means to bring individual parcels of information from different departmental sources together in a central system, then analyzing the data and fusing it with background data through comparison and selection, we will create a common picture. What is needed is the construction of an organizational architecture that formalizes the exchange of information and coordinates ensuing activities. A lead agency must be selected to organize the surveillance data into a recognized maritime picture that allows decision-makers quick access to the pertinent information that is

It is recognized, however, that the situation in Vancouver does not necessitate the equivalent of its own “Waterfront Commission.” The circumstances in the Port of New York-New Jersey required that an agency be created solely with the purpose of regulating the waterfront due to the vast control La Cosa Nostra held over the docks and the ILA. The massive amounts of corruption taking place rendered it necessary.²²³ However, Vancouver’s situation is not identical to that in the Port of New York-New Jersey in the 1950s. While there is a known presence of organized crime, such as Hells Angels, it does not reach the magnitude of what resulted in the Waterfront Commission.

Once organized crime individuals and groups are identified and removed from the workforce, the resulting criminal activity would greatly decrease and become much more manageable. While it is not feasible, nor necessary, to create its own Waterfront Commission, Vancouver can look to the Commission’s practices of licensing the workers and keeping a register of those in the workforce to aid in the extinguishing of organized crime.

needed to support operational decisions. The result is a national capability to fuse surveillance data, analyse it, and coordinate action in the maritime sphere.”).

²²³ Johnson, *supra* note 25.