

Testimony in Support of S-5039

By Joseph Curto, President of the New York Shipping Association, Inc

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Thank you very much Mr. Chairman for convening this hearing on the Waterfront Commission of New York Harbor and S-5039 sponsored by Senator Hassel-Thompson. While we are here to primarily address the proposed changes in the regulations, we would also like to take a moment to address the Inspector General's Report and the future of the Commission.

My name is Joseph Curto and I am the President and Chief Executive Officer of the New York Shipping Association. The New York Shipping Association is an organization comprised of ocean carriers, terminal operators, stevedores, and marine related businesses that operate ships, move cargo, train and employ the laborers, provide and maintain the equipment, that moves more than \$190 billion in products to and from the largest and richest consumer market in the world.

The New York Shipping Association is the bargaining agent for the collective agreements that are in place between our members and the International Longshoremen's Association, AFL-CIO and with the Port Police and Guards Union.

Although I have only been with the New York Shipping Association a few short weeks, I have nearly 40 years of industry experience working in the Port of

New York and over the years I have worked directly with the Waterfront Commission on numerous occasions on a variety of procedural or investigative matters.

Almost six decades ago the Waterfront Commission was created as a temporary agency charged with eliminating illegal activities on the waterfront.

How has the Commission performed since it was given its original mission?

To quote directly from the Waterfront Commission's last published Annual Report of 2005, in the section describing "The Port Today," page 5, we find the following statements:

- Quote: "The results have been astounding."
- Quote: "Convicted criminals are banned from holding office in waterfront unions. No longer do racketeers dictate how business is accomplished on the piers."
- Quote: "Under the watchful eye of the Commission's Division of Licensing and Employment Information Centers, workers are selected for employment by licensed hiring agents, using computers and telephones, in accordance with industry and Commission regulations."
- Quote: "Longshorepersons obtain regular employment, earn substantial wages, and are no longer at the mercy of unscrupulous hiring bosses or criminals. The notorious practice known as the "shape-up" and "public loading racket" has been eliminated."

As the Waterfront Commission has proclaimed in their own words, they have “rid the Port of the criminal influence that had once dominated the docks.” These are indeed worthy accomplishments deserving of praise and recognition.

Unfortunately, as a result of the Inspector General’s recent investigation, certain deficiencies were found in the Commission’s operations and administration.

There may be parties in the public domain who will now say that the Commission has out lived its usefulness because it has achieved one of the major mandates that created its authority: “To establish hiring practices and conditions which will permit the termination of government regulation and intervention at the earliest opportunity.”{Article X, Section 3 (e), of the Waterfront Commission Act.}

However the industry that I represent does not believe that the Inspector General’s report should begin the process of elimination of the Commission. To the contrary, we agree with the Inspector General that this is an opportunity to refine the Commission’s mission going forward.

As was noted in the Inspector General’s report, the Commission has strayed somewhat from its original mission and we believe that it once again needs to focus on its core, law enforcement responsibilities. A mission and responsibilities that include the licensing of longshore industries and workers, monitoring and auditing those industries and workers, and conducting investigations of suspected illegal activities. This is a mission that the New York Shipping Association supports wholeheartedly.

As the Commission's Executive Director has publicly stated, that mission does not include patrolling and other routine police matters. We have more than enough local police departments in and around the Port for those purposes. Nor does the mission include Port security. Again, we have more than enough federal and state agencies tasked with that purpose. And, as Waterfront Commission statute and regulations make clear, its mission is not meant to interfere in the Collective Bargaining Agreements. Again, those matters are within the province of bargained grievance procedures, arbitrators, the National Labor Relations Board, and if necessary, the Courts.

The enactment of S-5039, which I will address more specifically in a moment, will not change or interfere with the Waterfront Commission's ability to continue to achieve its law enforcement mission. Under S-5039 the Commission will continue to screen new applicants by conducting mandatory criminal background checks, undertake criminal investigations, and will have the ability to deny or revoke the licenses of those who fail to make themselves available for work, or maintain the level of good character necessary to remain in the longshore workforce.

In addition, all registered workers including any new hires who enter the industry after S-5039 is enacted will be hired only by licensed hiring agents who perform their duties under the close supervision of the Commission.

In order to consider the impact of S-5039 it is first important to have some understanding of how the maritime industry here in the Port of New York works and elsewhere around the world. Our workforce is a casual workforce. By this I

mean that jobs for longshore workers are not of the 9AM to 5PM variety. It is hourly work and opportunities for work are based on the number of vessels which call upon our port and the amount of cargo there is to be moved to and from these vessels. Ships are worked on a 24 hour per day, 7 day per week basis and marine terminals may be open 18 to 24 hours a day. Everyone who comes into this industry is made aware of these facts before making their decision to enter the workforce.

Our system of casual hiring is not unique. Casual hiring has been the reality of the maritime industry pre-dating even the Port of New York which was born four centuries ago when early merchant ships arrived in the harbor and the call went out for “men along the shore.” On the other hand, it is not a minimum wage job sector either. Hourly wages range from \$20 to \$32 an hour with another \$20 in benefits and that doesn’t include overtime and flex-time hours. Before the current recession took its toll on our industry, our workers averaged \$100,000 in annual salaries.

What is unique in the Port of New York is the way daily hiring is managed and controlled. The Waterfront Commission of New York Harbor, working in close coordination with the New York Shipping Association and other stakeholders has established a failsafe system known as the Telephonic Hiring and Employment Information Center. This system was specially designed to prevent the abuses of the past in relation to daily hiring from ever occurring again. Here is how the system works, today:

- Registered longshore workers call into the hiring center daily to receive their work assignment. Their calls are routed on a random basis to a dispatcher. The longshore worker furnishes a unique identification number, issued to him or her by the Commission, to the dispatcher who inputs the worker's number into a computer system. The dispatchers are individuals who are licensed by and supervised by the Waterfront Commission in the hiring center.
- The workers are then told if there is work for them and where they are to report. Assignments are based on the worker's seniority and skill set within the workforce. This procedure is conducted in accordance with criteria collectively bargained between the NYSA and the ILA under the watchful eyes of the Waterfront Commission.
- Workers have the option to remove themselves from the system so they will not be hired; however excessive removal from the hiring system can result in suspension or the loss of registration. Excess unexcused absenteeism can also result in suspension or the loss of registration.
- All calls to the hiring center are recorded. In addition, a call log is generated and maintained along with the recordings for a period of six months. In the event that an error occurs in an assignment of a worker, these records provide the necessary information to investigate and resolve an issue.
- On rare occasions an employer may be required to pay an individual if they were not hired due to an error or given an incorrect assignment that had a negative impact on that individual.

The system has been in place for more than 20 years and works well, and will continue to work well, notwithstanding the size of the workforce. Enactment of S-5039 will not in any way change the operation or the monitoring of this location by the Waterfront Commission.

To the critics of this legislation who believe that enactment would have the “unintended effect of creating an opportunity for organized crime” we say your fears are unfounded.

The open register, which S-5039 would allow, permits the industry to react to the changing conditions that affect the industry. Ship operators want assurances from terminal operators that they can supply the labor that is necessary to safely and quickly unload their cargo from vessels whenever those vessels arrive. As in every other industry in the world it is the prerogative of the employer to determine its own labor needs. Unfortunately the closed register takes that decision away from employers in the Port of New York and New Jersey. There are approximately 361 ports in the United States. The Port of New York and New Jersey is the only port in the country that finds itself regulated by an agency like the Waterfront Commission which by the way, has no economic investment in the management of the port or its activities. All other ports in the country are free to adjust their labor needs as conditions warrant.

An open register will allow the Port of New York and New Jersey to quickly adjust labor needs to capture growth opportunities and ward off competition for the international commerce that fuels our regional economy. Our port is constantly in fierce competition with other ports along the US East coast, and

Canada. We cannot afford to jeopardize the economic activity, the jobs, the state and federal revenues that are generated by international cargo interests who want to use our port. Just as we cannot afford to allow the fear of what a few criminal minds concoct to interfere with our ability to shape the economy's future and protect the 270,000 jobs in this region in supported by port activities. This is also why the Waterfront Commission of New York Harbor must continue to focus on its law enforcement role: to thwart those who wish to engage in criminal activity.

In closing, Mr. Chairman and members of the Committee, I want to make sure that you are aware of a few additional facts:

- Section 5-P was added to the Waterfront Commission regulations in 1966 in response to a provision in the Collective Bargaining Agreement between the NYSA and ILA which provided a Guaranteed Annual Income to workers displaced due to the introduction of new technology into the marine terminal environment, not because of organized crime. Today, there are no provisions in the Collective Bargaining Agreement to pay GAI or Guaranteed Annual Income to any new employees.
- Identical legislation to S-5039 was passed overwhelmingly in both houses of the New Jersey State Legislature and was signed into law in September 2007.
- The importance of enacting S-5039 in the State of New York has risen to a level which has warranted communication between Governors Corzine of New Jersey and Paterson of New York.

Your support now for movement of S-5039 to enactment is of the utmost importance to the terminal operators, employers, and users of the facilities in the Port of New York and New Jersey to assure that there will always be an adequate supply of labor to carry out the needs and to protect the prosperity and quality of life for all those we serve.

In addition to my prepared testimony I have provided you with an Explanation of the Proposed Amendment which provides a more detailed summary of our thoughts as to why the employers in the Port of New York and New Jersey should be permitted to manage the size of their workforce and why Section 5-P of the Waterfront Commission Act should be Amended.

Thank you very much for your time and for the attention you have given to this matter today.