

Minutes of the Regular Meeting of the Board of Commissioners of the Lake Charles Harbor and Terminal District held at 5:00 P.M., Monday, August 25, 2008, in the Board Room of the Port of Lake Charles located at 150 Marine Street, Lake Charles, Louisiana.

In attendance and constituting a quorum, were:

Harry C. Hank, President
Kay C. Barnett, Vice President (arrived at 5:21 p.m.)
Mark T. Abraham, Secretary/Treasurer
David J. Darbone, Commissioner
Fred R. Godwin, Commissioner
C. Wade Shaddock, Jr., Commissioner

Absent:

Stephen L. Hebert, Assistant Secretary/Treasurer

Also Present:

R. Adam McBride, Port Director
Mike Dees, General Counsel
Bill Rase, Director of Operations
Donald Brinkman, Director of Engineering, Maintenance and Development
Dan Loughney, Director of Marketing and Trade Development
Channing Hayden, Director of Navigation/Security
Richert Self, Director of Administration and Finance
Michelle Bolen, Administrative Assistant

Mr. Hank called the meeting to order at 5:00 P.M. and Mr. Abraham gave the invocation. Mr. Darbone led the Board and audience in the Pledge of Allegiance.

Mr. Hank made a statement reminding the Public of the Port's procedure for the Public to address an agenda item to the Board.

Mr. Hank presented Richert Self, Director of Administration and Finance, with a certificate of achievement and a plaque from the Government Finance Officers Association (GFOA) commending the District for its excellence in financial reporting.

Mr. Hank stated the next Board meeting will be held September 29, 2008 replacing the September 22, 2008 Regular Board meeting.

-
1. Approval of the July 28, 2008 Regular Meeting Minutes.
-

Mr. Godwin offered a motion to approve the July 28, 2008 Regular Meeting Minutes with a supplement to the minutes stating the Administration, Personnel and Audit Committee received 73 responses and the responses and the summary report were turned in to personnel by Mr. Godwin to be placed in Mr. McBride's personnel file to only be retrieved or seen in accordance with state law. Mr. Shaddock seconded the motion and it carried unanimously.

-
2. Submission 2008 – 055 authorizing Harry C. Hank to travel to Rio de Janeiro, Brazil to attend the Oil and Gas Expo and meet with Port customers.
-

Mr. Godwin offered a motion to adopt Resolution 2008 – 055 to authorize Harry C. Hank to travel to Rio de Janeiro, Brazil to attend the Oil and Gas Expo and meet with Port customers. Mr. Abraham seconded the motion and it carried unanimously.

-
3. Submission 2008 – 056 approving Port Director R. Adam McBride, as the District's Official Representative at the 2008 American Association of Port Authorities Annual Convention.
-

Mr. Shaddock offered a motion to adopt Resolution 2008 – 056 to approve Port Director R. Adam McBride, as the District's Official Representative at the 2008 American Association of Port Authorities Annual Convention. Mr. Darbone seconded the motion and it carried unanimously.

-
4. Submission 2008 – 057 authorizing an agreement with the State of Louisiana, Department of Transportation and Development, Port Priority Division for assistance in the implementation of port security enhancements.
-

Mr. Shaddock offered a motion to adopt Resolution 2008 – 057 to authorize an agreement with the State of Louisiana, Department of Transportation and Development, Port Priority Division for assistance in the implementation of port security enhancements. Mr. Abraham seconded the motion and it carried unanimously.

-
5. Submission 2008 – 058 approving the republishing and implementation of the amended District Tariff No. 012.
-

Mr. Hillery Langley, President, ILA Local 1998 addressed the Board and voiced his opinion in opposition to the amendment of the Tariff. He read a letter from Clyde Fitzgerald, President South Atlantic and Gulf Coast District International Vice President Organizational Representative International Longshoremen's Association Affiliated with AFL-CIO, who opposed another stevedore operating at the Port.

“Dear Commissioners,

Please accept my apology for not appearing before you in person today. I would normally request the opportunity to be heard on an issue of this importance but did not learn of your meeting until today. The ILA locals in Lake Charles have represented dock workers for many years. They have been there for the Port in especially difficult times including the devastation of Hurricanes Rita and Katrina. They have played an important role in the local economy and the good wages and benefits provided in their union contracts have been a positive force in the local economy.

The health insurance enjoyed by these workers is in itself an important benefit that is becoming increasingly rare. We think it is entirely appropriate and necessary that you consider these factors in deciding to approve or disapprove stevedoring licenses in the Port. Unfortunately we have seen this before. A typical pattern is that a nonunion company represents itself as providing better service at a lower price. It may even claim to bring new work to the Port. The simple fact is that these claims have proven to be unfounded in every case we are aware of. The old adage “You get what you pay for” is just as true in skilled labor as anything else.

We urge you to carefully consider these factors in your actions today. Working on the docks is hard work. It requires expertise and experience. You have a good workforce that cannot be easily replaced.

Please feel free to call on us if we can be of further assistance.

Clyde Fitzgerald
President, South Atlantic Gulf Coast District ILA”

Mr. Langley asked the Board to carefully review their decision.

Tom Flanagan spoke to the Board to give information on the recommendation.

He stated the recommendations sound positive and on the right track. He wanted to add a few things. Last summer the Board was in an exchange about how to bring business back

to the Port. A lot of good came from these meetings and they are on a positive trend now. His concern is not that he is afraid of competition but it is more that they know how ports evolve. The concern is that a nonunion company would come in here and make it impossible for them to do the things that they do extra for their clients. They are trucking all of their cargo all over the port and are absorbing a lot of extra costs.

He wants a chance to get their turnaround done here. They are trying to get things turning positive here. They are deeply concerned about nonunion competition destroying all they have done.

Matt Lundy, Lundy and David Law Firm, addressed the Board in opposition of the tariff allowing another stevedore to operate at the Port.

Mr. Godwin asked if there was any law that would permit the Board to operate with union labor only. Mr. Lundy stated that no, there was no authority or law that states the Port has to hire ILA union only.

Mr. Abraham asked if they could look at exclusivity and how long it would take to do it.

Several discussions arose about exclusivity and how that would affect the Port.

Mr. Dees stated it would be best for the Board to act on the submission before them tonight. The exclusivity is not actually part of this item before them. The Board has temporarily suspended for 90 days, which ends in the next few days, the issuance of license while the Board revamps the process. If they further delayed he would be concerned that someone could allege that the Board delayed too long and refused to issue anything other than the existing stevedore license. He recommended the Board act on this tonight and as Mr. Godwin indicated a permit could be applied by some and it would have to be reviewed and under the current proposal it would come to the Board for action. By doing this tonight it does not mean that you are going to approve or disapprove anyone in the future.

Mr. Abraham stated that if they approved this tariff today and someone applies tomorrow how long does it take to review all the requirements. Mr. Dees stated it would depend on how prompt they are in supplying the information and once they would do that staff would make the recommendation and be put on the next agenda.

Mr. Abraham stated then at that next meeting that they then decide that the Board is still looking at exclusivity then what do they tell these people when they come ask why the Board is turning them down. Does the Board have a leg to stand on for turning them down?

They have met all of the requirements. Do we tell them that we do not want to approve you because the Board is still looking at exclusivity? It seems strange to him to do it in that manner.

Mr. Dees stated that all permits are on annual basis. If the Board granted someone a permit it would go to December then they would have to apply again for renewal.

Exclusivity will not be addressed in a very quick fashion because in his opinion you would need to have some independent studies that would be able to stand up and demonstrate a justification that met the requirements Mr. Lundy outlined for the FMC. You would also need to take requests for proposals. There is nothing that says Flanagan would be the best stevedore. The Port would need to do an RFP and that would take time.

Mr. Abraham asked if they had to do that. Mr. Dees stated they did not have to but to demonstrate to the FMC that the Port is acting in a non-arbitrary or capricious manner and not showing favoritism to a particular contractor he highly recommends the Board do an RFP so that the Board can see if there are better stevedores out there that could provide better performance.

Mr. Abraham asked if it was better to continue the moratorium now or wait until the next meeting as this somewhat applies, and the Board will have to deal with them at the next meeting, and then you tell you tell them at the next meeting the Board is asking for a moratorium. He stated he thought it was better to ask for the moratorium now until they figure out this exclusivity arrangement. He is not a union guy and has never been a union guy but he does know a little about business. He does believe that in certain instances one person who has exclusivity can do a better job than two people with very little business. They want the person handling this job to be successful. They want them to make money to continue on. If they divide it up, where no one is making any money, he thinks history has proven that the Port might be in the same boat as in previous years.

This has just come up for him because he was not at the last meeting in the last three or four days. He believes it does deserve serious consideration because whoever has this contract needs to be successful. This is a small port in a sense. We are the 11th largest but most of that does not come from City Docks. It would be better to postpone this now than deal with a permit applicant and tell them at that time that the Board was going to postpone it.

Mr. Dees stated that the only problem with that was moratoriums are meant to be temporary. He said Mr. Abraham indicated a 90 day temporary period which the Port is at the end of. If you continue to extend that, then what the FMC could say is in effect, even though you have not by law or the wording of the tariff or what you put into your paperwork, you have not selected an exclusive contractor but in fact you have because, in fact Flanagan is the only one who is permitted today and so continuing to delay and maintain a moratorium which in effect gives him exclusivity. He would be concerned about that. They can do that on a temporary basis, which they are at the end of and all they are doing is establishing a process for someone to apply for a permit that is going to run until December 31, 2008. In his opinion it will take at least until then to really to do what they need to do on exclusivity.

Mr. Abraham stated that there has been a lot of talk about people changing their minds. Sometimes he believes it is good to change your mind if new information is brought to you. For the last ninety days he did not think of exclusivity. It did not cross his mind. They have been dealing with union vs. nonunion. How can we put more teeth into the tariff? Now, at the last minute, new information has been brought to the table. That is reason enough to

extend it. This new information is worth considering now. It is not that they had this new information 90 days ago. They just discovered this Friday. He believes the FMC would look on it as they are acting in a prudent manner because they have new information.

Mr. Dees stated that was certainly an argument but he was concerned because to implement exclusivity it will take a rather large amount of time. It will not happen by the next meeting or the next meeting after that one. By continuing a moratorium the Board is in effect granting him exclusivity. He would be real leery about that.

Ms. Barnett asked Mr. Flanagan what the exclusivity would include – period or a short term. Mr. Flanagan stated he would do what they wanted. They need a little time to enact their turnaround efforts. It would not be forever. It is for a short period of time, whatever the Board would feel comfortable with or staff would recommend.

The Board discussed the legal ramifications of declaring exclusivity and extending the moratorium with the FMC.

Tony Damron, Gearbulk, read a statement from Chris Sheils, General Manager of Gearbulk, Inc., objecting to exclusivity.

“We had not been approached by J.J. Flanagan regarding this matter and thank the Port for the courtesy of letting us know. So that the Port Authority management and Commissioners are clear on our position, we would like to strongly state our objection to this possibility and any other initiative that would anyway limit Gearbulk or Arrow Terminals ability to employ any qualified operator of their choosing. We are not desirous to enter into any exclusive agreement with J.J. Flanagan.”

Mr. Damron stated they would like to be able to make their own choice as to their stevedore.

Mr. Abraham offered a motion to extend the moratorium and have staff look at all criteria how exclusivity works and how proper procedures work with the moratorium not to extend later than December 31, 2008 as it relates to stevedoring permits and licenses. Mr. Godwin seconded the motion and it carried unanimously.

-
- 6. Public Hearing relative to the District selling certain property to J1B2 West River, LLC.
-

Mr. Dees stated the Port must have a public hearing on the captioned item in order to hear public comments. There were no comments on this issue and no action was taken. Final action will be taken at the Special Board Meeting on September 29, 2008.

-
- 7. Submission 2008 – 059 authorizing and ratifying an Assignment of Agreement to Purchase and Sell with J1B2 West River, LLC.
-

Mr. Darbone offered a motion to adopt Resolution 2008 – 049 to authorize and ratify an Assignment of Agreement to Purchase and Sell with J1B2 West River, L.L.C. Ms. Barnett seconded the motion and it carried unanimously.

-
- 8. Submission 2008 – 060 authorizing and/or ratifying a Cash Deed with John Glen Bacon, Jeffrey Robert Bacon, and Michael David Bacon.
-

Mr. Darbone offered a motion to adopt Resolution 2008 – 060 to authorize and/or ratify a Cash Deed with John Glen Bacon, Jeffrey Robert Bacon and Michael David Bacon. Mr. Godwin seconded the motion and it carried unanimously.

-
- 9. Submission 2008 – 061 accepted the contract of F. Miller Construction, LLC as complete for the Container Handling Improvements.
-

Mr. Abraham offered a motion to adopt Resolution 2008 – 061 to accept the contract of F. Miller Construction, LLC as complete for the Container Handling Improvements. Ms. Barnett seconded the motion and it carried unanimously.

-
- 10. Submission 2008 – 062 authorizing an agreement with CIBER to provide maintenance for the Port’s Harbor Management System.
-

Mr. Godwin offered a motion to adopt Resolution 2008 – 062 to authorize agreement with CIBER to provide maintenance for the Port’s Harbor Management System. Mr. Darbone seconded the motion and it carried unanimously.

-
- 11. Security and Risk Management Committee
-

The Security and Risk Management Committee met August 12, 2008 to discuss the following items:

- Communication of TWIC obligations and requirements to affected parties.
- Development of procedures and consultation regarding procedures for the handling of credentialed and non-credentialed persons seeking access to Port facilities.
- Physical plant changes to accommodate traffic and management needs for TWIC implementation.

- Weston’s evaluation and recommendations for a provider to upgrade the Harbor Management and Security Systems.

Mr. Shaddock stated that with regard to the physical plant changes to accommodate traffic and management needs for TWIC implementation, a recommendation by the Committee to the Board to adopt Resolution 2008 - 063 to accept Weston, Inc. to assist the Port with a traffic management study to relocate or reconfigure the entrance gate at City Docks. Being a Committee nomination, no second to the nomination is needed.

Mr. Abraham stated that he would like Mr. McBride to check on the radar concerns and investigate to ensure there is compatibility with the equipment.

The motion passed unanimously.

Mr. Shaddock stated that with regard to the item of Weston’s evaluation and recommendations for a provider to upgrade the Harbor Management and Security Systems a recommendation to adopt Resolution 2008 – 064 to authorize the Port to enter into a professional services agreement with Weston Solutions, Inc. Being a Committee nomination no second to the nomination is needed. The motion passed unanimously.

 12. Strategic Planning Briefing Note.

The Briefing Note regarding Strategic Planning was rendered to the Board and is on file in the Executive Offices.

 13. BT-1 Labor Briefing Note.

The Briefing Note regarding BT-1 Labor was rendered to the Board and is on file in the Executive Offices.

The following people spoke out in opposition to the Briefing Note on BT-1 and the clerk/timekeeper job.

- Hillery J. Langley, President, ILA 1998
- Dennis Ware, ILA 2047
- Tony Hidalgo, ILA 1998
- Andrew Bernard, ILA 1998
- Chris Hyatt, ILA 1998

Mr. Godwin made a motion to have the Board advise the Port Director to pursue the solution #2 stating to offer the clerk/timekeepers an 8 hour clerk, per vessel, plus an 8 hour clerk per 24 hours of barge plus an 8 hour clerk per 24 hours of barge work based on commodities, and accepting the concessions offered by the deep sea local 2047 with the proviso that

manning on barges must be more in keeping with actual workload. These clerk/timekeeper provisions are in keeping with wide industry practice in the Gulf where ILA workers are employed, and they go beyond industry practice where non-union workers are employed. Mr. Shaddock seconded the motion and it carried unanimously.

13. July 2008 Financials Briefing Note.

The Briefing Note regarding the Port Director Quarterly Expenses was rendered to the Board and is on file in the Executive Offices.

14. Monthly Staff report from General Counsel.

The General Counsel's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

15. Monthly Staff report from Director of Administration and Finance.

The Director of Administration and Finance's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

16. Monthly Staff report from Director of Navigation and Security.

The Director of Navigation and Security's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

17. Monthly Staff report from Director of Terminal Operations.

The Director of Terminal Operations' Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

18. Monthly Staff report from Director of Marketing and Trade Development.

The Director of Marketing and Trade Development's Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

-
- 19. Monthly Staff report from Director of Engineering, Maintenance, and Development.
-

The Director of Engineering, Maintenance, and Development’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

-
- 20. Monthly Staff report from the State Port Lobbyist.
-

The State Port Lobbyist’s Monthly Staff Report was rendered to the Board and is on file in the Executive Offices.

-
- 21. Monthly Staff report from the National Port Lobbyist.
-

The National Port Lobbyist’s Monthly Staff Report was not rendered to the Board.

-
- 22. Executive Session.
-

- a. West Cameron Port Authority Litigation
- b. Discussion of Potential Litigation with F. Miller and Sons, LLC., et al

Mr. Dees stated there was no need to enter into Executive Session.

-
- 23. Other Matters which may properly come before the Board.
-

There being no further business to come before the Board, on a motion made by Ms. Barnett seconded by Mr. Godwin and approved unanimously among those present the meeting resumed regular session and adjourned at 7:34 p.m.

All discussions held on the above items were recorded on Compact Disc Number 1, and filed in the Executive Offices of the District.

Please note that when the votes are shown as unanimous, it is the policy of the Board that the President does not vote except in the event of a tie vote by the rest of the Board and/or unless otherwise indicated.

H. C. Hank, President

ATTEST:

Mark T. Abraham, Secretary/ Treasurer