

1994-1995 ANNUAL REPORT

PROPERTY OF
NEW JERSEY STATE LIBRARY
JAN 22 1997
185 W. STATE ST.-CN 520
TRENTON, N.J.

974.901
W19
1994-95c-2



WATERFRONT
COMMISSION of
NEW YORK
HARBOR



*To the Honorable Christine Todd Whitman, Governor,
and the Legislature of the State of New Jersey*



*To the Honorable George E. Pataki, Governor,
and the Legislature of the State of New York*

We are pleased to forward the Annual Report of the Waterfront Commission of New York Harbor for its fiscal year 1994–1995. Contained herein are representative activities of the Commission, together with pertinent observations concerning its administration and enforcement of the Waterfront Commission Compact between the States of New York and New Jersey. The Commission has continued to perform its designated responsibilities under the Compact, with particular concern for the improvement of the overall economy and well-being of the bi-state Port.

ANNUAL REPORT 1994–1995



THE WATERFRONT COMMISSION OF NEW YORK HARBOR

AN INSTRUMENTALITY OF THE STATES OF NEW YORK AND NEW JERSEY



THE WATERFRONT COMMISSION

In 1953 the legislatures of New Jersey and New York catalogued the then pervasive corrupt conditions infecting the bi-state waterfront:

... 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; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment and a loss of respect for the law; that not only does there result a destruction of the dignity of an important segment of American labor, but a direct encouragement of crime which imposes a levy of greatly increased costs on food, fuel and other necessities handled in and through the port of New York district.

* * *

... that ... stevedores have engaged in corrupt practices to induce their hire by carriers of freight by water and to induce officers and representatives of labor organizations to betray their trust to the members of such labor organizations.

* * *

These notorious practices and others were the subject of an intensive investigation of the Port of New York and New Jersey in the early 1950's by the New York State Crime Commission in conjunction with the New Jersey Law Enforcement Council and various law enforcement bodies. As a result, the Waterfront Commission of New York Harbor

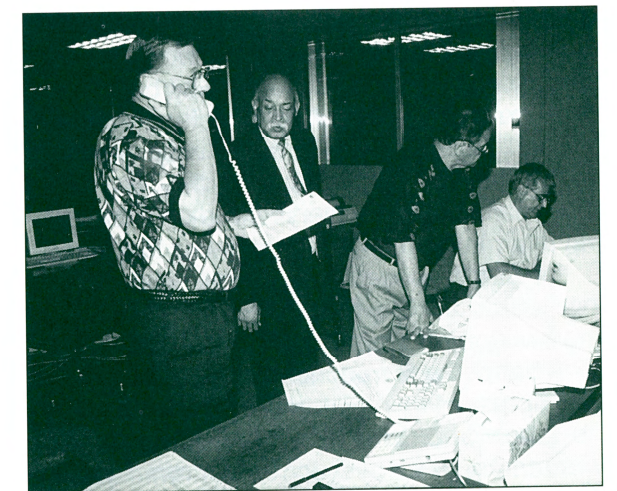
was created by Compact between New York and New Jersey, when President Dwight D. Eisenhower, on August 12, 1953, signed into law the Congressional bill authorizing this bi-state Compact.

The Commission is granted broad investigative, police, licensing and regulatory authority by the Compact. Its jurisdiction throughout the 1500-square mile Port District encompasses piers and waterfront terminals located in Brooklyn, Manhattan, Staten Island, Yonkers, Port Newark-Elizabeth, Bayonne, and Jersey City.

The Compact eliminated the notorious "shape-up" and the "public loading" racket which plagued the docks for years.

The "shape-up" allowed criminals to control the employment and livelihood of hapless dockers. When work was available at a pier, longshoremen would gather around the hiring boss in a semi-circle. The boss, often an ex-felon, would select those who would be employed for the day without regard for the seniority or qualifications of those hired. As a quid pro quo, the dock boss would receive a kickback or other form of tribute.

Today the hiring of dockworkers takes place through a Commission-established Employment Information Center. Under the close supervision and monitoring of Waterfront Commission employees, the hiring process is carried out by licensed hiring agents and registered telecommunications system controllers through the use of sophisticated computers and telephone systems. The Commission insures that the hiring is accomplished in



Monitoring the Hiring of Dockworkers at the Commission's World Trade Center Employment Information Center

accordance with industry seniority agreements and agency regulations.

Also outlawed by the Compact was the "public loading" racket. This scam forced truckers to pay groups of individuals of questionable integrity to load and unload trucks at the waterfront, in spite of the fact that these services may not have been desired. Presently, trucks are loaded at the piers under the auspices of licensed stevedore companies and by Commission registered workers.

In short, the lot of the average pier worker has vastly improved since 1953. He or she earns a decent living. Employment opportunities are not subject to the whim of criminals or to a glutted market caused by an oversupply of casual "moonlighting" labor. Through its "decasualization" program, the Commission twice a year removes from the labor force those workers who do not work or apply for work regularly in accordance with established standards. An encompassing screening and licensing program has greatly diminished the criminal threat on the waterfront. Continued vigilance by the Commission ensures that it does not re-emerge.

The Compact authorizes the agency to:

- register longshorepersons, checkers and telecommunications system controllers;
- license pier guards, pier superintendents, hiring agents and stevedore companies;
- register temporary pier workers to meet special or emergency situations arising in the Port;
- investigate criminal and nefarious activity in the Port and compile data concerning waterfront practices generally;
- regularize the dock labor force by periodically removing from the register those pier workers who fail to work or seek work on a regular basis and by balancing the number of eligible longshorepersons and checkers with the needs of stevedores and steamship companies for their services;
- maintain and supervise the operation of information centers to monitor the hiring of longshorepersons, checkers and pier guards and to provide them information concerning employment opportunities;
- bar persons from holding posts in unions representing registered or licensed dock labor and in trusts or welfare funds administered by such waterfront unions upon the conviction of such persons of a felony or other serious criminal offense.

* * *

Two Commissioners head the agency which was created as a body corporate and politic of New York and New Jersey. Each Commissioner is appointed by the Governor of the respective State, with the consent of that State's Senate, for a three year term. The Compact requires the agreement of both Commissioners for the agency to act.

Among its general powers, the Commission is granted authority by the Compact to: sue and be sued; appoint officers, agents and employees and police officers who have police powers in both States; make and enforce rules and regulations; administer oaths and issue subpoenas throughout both States to compel the attendance of witnesses, the giving of testimony and the production of other evidence; confer immunity from criminal prosecution; have for its members and staff, full and free access, ingress and egress to and from all vessels, piers and other waterfront terminals in the Port of New York-New Jersey District, for the purposes of making inspection or enforcing the provisions of the Compact; make investigations, collect and compile information concerning waterfront practices generally within the Port; advise and consult with representatives of labor and industry and with public officials and agencies concerned with the effectuation of the purposes of the Compact; make annual and other reports to the Governors and Legislatures of both States; cooperate with and receive from any public body or political subdivision of either or both States such assistance and data as will enable the Commission to carry out properly its powers and duties; and to request any such public body or political subdivision, with its consent, to execute such of its functions and powers as the public interest may require.

Representing New Jersey on the Commission since 1994 is James H. Wallwork, a resident of Far Hills. A graduate of the United States Military Academy at West Point, Wallwork also graduated from the Engineer School, Ft. Belvoir, Virginia, and from the Command and General Staff College, Ft. Leavenworth, Kansas. While on active duty, Wallwork was a Company Commander of a Combat Engineer Company with the Army of Occupation in Germany; he also served in various staff and command positions as a Major in the New Jersey National Guard. Wallwork served 14 years in the New Jersey Senate and 2 years in the

New Jersey General Assembly. A businessman, he has been an owner/partner of Wallwork Bros., Inc., a refrigeration, heating and air conditioning wholesale distributor. While involved in charitable and civic concerns, Wallwork writes "The People's Business" column for a chain of weekly newspapers.

Michael C. Axelrod was appointed as the New York Commissioner by Governor George Pataki. A resident of Roslyn, New York since his youth, he is a member of the New York and Florida Bars since 1973. He is a graduate of the University of Miami, New England School of Law in Boston, Massachusetts and received a Masters in Labor Law from New York University Law School. Active in civic and religious organizations, he has spent his legal career representing public-safety labor organizations throughout the New York metropolitan area.

Newly appointed as Executive Director, Carmine A. Cardone is responsible for the daily operation of the Commission. Mr. Cardone, a member of the New York Bar, began his career with the agency as an Assistant Counsel in 1961. He rose through the ranks and had previously served as the Director of the Division of Licensing, the Director of the Division of Licensing and Employment Information Centers and Deputy Executive Director prior to attaining his present position.

* * *

The *Executive Director* carries out policies established by the Commissioners and oversees the agency's six divisions.

Within the *Executive Division*, the office of the General Counsel conducts litigation in State and Federal courts in New York and New Jersey and performs necessary legal research. The General Counsel's office is also responsible for collective bargaining with the clerical and police units of the Commission; public relations; the preparation of annual and other reports to the Governors and Legislatures; the preparation of proposed legislation for the legislatures of the respective States; the review of proposed legislation affecting the operations, functions or interest of the agency under the Compact; and the preparation and review of leases and contracts.

Under the auspices of the Comptroller's Office, the Executive Division prepares the agency's budget for the Commissioners' approval which, by statute, is then presented to the

Governors of New York and New Jersey for their final approval. The Commission does not receive tax dollars from either State but is primarily funded by the industry it regulates. The Commission's budgeted expenses are then met by assessments upon the employers of registered or licensed dockworkers. Payable each calendar quarter year, the assessment has a maximum legal rate of two percent of gross payroll payments made by these employers (e.g. steamship companies, stevedore concerns or waterfront warehouses) to longshorepersons, checkers, pier guards, pier superintendents and hiring agents. This assessment, by law, is imposed in place of any other charge or fee for the issuance of registrations or licenses or for the use of the agency's Employment Information Centers. These employers are required to keep accurate records of their employment of licensees or registrants, including the amount of wages paid and such other data required by the Commission.

The Secretary's Office keeps the official records and seal of the Commission; certifies copies of records when required; acts as Records Access Officer; assigns Administrative Judges to conduct hearings and assists in the administration of labor relations policies and procedures of the agency.

The *Police Division* is comprised of detectives, detective-investigators and supervisory personnel who have plenary police powers in New Jersey and New York and who work closely with the Commission's other Divisions. Responsibilities of this Division include the investigation of criminal activity in the Port and violations of the Compact; background checks of applicant individuals and companies for registrations or licenses; the collection and evaluation of organized crime information; the checking of security measures and cargo protection arrangements at piers and waterfront terminals and the safekeeping of the agency's licensing and investigative files.

The Police Division works closely in joint investigations with federal, state and local law enforcement agencies in the Port District.

The *Division of Licensing and Employment Information Centers* processes the applications of individuals and firms required to be registered or licensed by the agency; monitors the hiring of longshorepersons, checkers and pier guards; and administers the "decasualization program" which, in accordance with the law, removes from the waterfront labor force those dockworkers



Commission License Examiner Assisting an Applicant for Registration

who, without good cause, fail to work or be available for work on a regular basis.

Under the direction of the General Counsel, Assistant Counsel, comprising the *Division of Law* and working with members of the Police Division and investigative accountants, conduct investigations to determine if applicants for registration or licensing meet the requirements of law. These attorneys also conduct probes to ascertain if individuals and firms already registered or licensed have violated criminal or other laws affecting the Port, or have otherwise violated the Compact. Counsel try administrative hearings to determine whether applications for licensing or registration should be granted or denied. Similarly, these attorneys conduct hearings to decide whether individuals and



Commission Accountant Auditing Books and Records

companies registered or licensed by the agency have committed illegal or improper activities, which, if established, may result in the revocation or suspension of their registrations or licenses.

As will be discussed later in this Report, the Division of Law, with the assistance of the other Divisions, conducts public hearings to determine the need for remedial legislation or regulations.

The *Division of Audit and Control* is staffed by investigative accountants who audit the books and records of persons and companies under Commission scrutiny. The financial and business records of entities applying for stevedore licenses are examined by these accountants. Moreover, the records of licensed stevedores are audited to verify that they are in compliance with state and federal laws, the Commission's recordkeeping requirements and the accuracy of assessment reports.

The *Division of Administration* provides the other divisions with stenographic, clerical, personnel, court reporting, messenger and library services. This Division maintains personnel and other Commission records.

* * *

The Commission operated with a staff of 94 employees during the fiscal year ending June 30, 1995. This represents a reduction of 58 employees, or 38%, over the past ten years. The Commission's fiscal 1995 budget, as approved by the Governors, was \$6,566,944. Through prudent management, the agency expended \$6,162,615 or \$404,329 under the budget.

* * *

THE PORT

Often considered the region's economic engine, the Port in 1994 handled 46.6 million long tons* of oceanborne cargo valued at \$62.9 billion. This is a 14% increase in tonnage and a 12% increase in value over 1993.

Also in 1994, the equivalent of 2,033,879 twenty-foot containers moved through the Port, an increase of 61,187 containers over the prior year. A total of 409,400 vehicles were exported

*A long ton is 2,240 pounds.

or imported in 1994, an increase of 6.0%, or 23,000 vehicles, over 1993. Ship arrivals during 1994 totaled 4,537, an increase of 294 over the prior year. Vessel passengers and passenger voyages increased 7.9% and 5.6% respectively over 1993.

As in 1993, in 1994, the Port's five leading waterborne general cargo exports (as calculated in millions of dollars) included road motor vehicles and parts, general machinery, plastic materials, office machinery and military cargo. Similarly, the five main imports were road motor vehicles and parts, clothing, general machinery, alcoholic beverages and footwear.

For the industry's fiscal year ending September 30, 1994, Commission registered "deep-sea" longshorepersons and checkers were paid \$235,885,112 in regular and overtime salaries, vacation and holiday pay, and guaranteed annual income payments.

Average annual earnings for the 3720 registered "deep-sea" dockworkers during that contract year totalled \$63,410. In the prior collective bargaining year, ending on September 30, 1993; 3844 such employees were paid a total of \$233,299,902, a yearly average income of \$60,692.

"Deep-sea" longshorepersons generally are those dockworkers who are employed to move waterborne freight and "deep-sea" checkers are employed to perform the custodial accounting of cargo and necessary clerical duties on the docks. Excluded from these groups are dockworkers, registered pursuant to the 1969 amendments to the Compact, who perform services incidental to the movement of waterborne freight such as cargo storage, lashing of cargo and container repair work.

* * *

On June 30, 1995, the conclusion of the agency's fiscal year, registered and licensed pier workers included:

- 2,621 "deep-sea" longshorepersons, including 126 emergency temporary dockworkers;
- 979 checkers, including 85 emergency temporary checkers;
- 2,067 individuals registered pursuant to amendatory legislation to the Compact enacted in 1969 to perform waterfront maintenance and repair duties, warehousing and other services incidental to the movement of waterborne freight;

- 184 hiring agents (persons who, on behalf of steamship carriers or stevedores, select dockworkers for employment);
- 359 pier superintendents (management employees of shipping lines or stevedore companies who directly or indirectly oversee the work of registrants);
- 429 pier guards
- 12 telecommunications system controllers (individuals employed by a joint management-labor board who operate the telephone and computer system for hiring "deep-sea" registrants).

Additionally, 75 firms were licensed as stevedores to move waterborne cargo or to perform services incidental to such movement.

THIS YEAR

Public Hearings Held

In last year's Annual Report, the Commission referred to its holding of public hearings to verify spot shortages in certain classes of pier labor, their effect upon the Port's economy and the measures to be undertaken to deal with such shortages. The hearings were based upon the Commission's statutory mandate to determine whether to close and open the "deep-sea" Register of longshorepersons to new workers. In 1966 the Commission closed the Register to new waterfront workers. The Register was opened briefly in late 1966 and again in 1968 and 1969; otherwise, the Register has remained closed. The Commission did accept applications for temporary registration to meet special needs from longshorepersons in 1979 and from checkers in 1985. Legislation was later enacted to include those temporary registrants who remained active in the industry in the "deep-sea" Register.

In recent years, spot labor shortages had been repeatedly anticipated during holiday and summer vacation periods in the checker, car driver and container equipment operator (CEO) categories. Checkers are longshorepersons who are responsible for, among other things, the custodial accounting of waterborne freight. Car drivers unload and load vessels transporting motor vehicles. CEOs operate hustlers (tractor-like vehicles that move containers mounted upon a chassis), other container moving equipment and cranes.



Commissioners and Staff Presiding Over the Public Hearing

At the request of the industry, these anticipated spot labor shortages were addressed through the exercise of the agency's special and emergency powers by the enactment of Commission Resolutions authorizing the temporary registration of personnel. The public hearings were ordered because these shortages were continuing beyond the vacation and holiday periods.

The hearings were held on January 31 and February 1, 1995. Approximately 280 invitations were sent to representatives of management, labor, concerned governmental agencies, trade organizations and other persons affected by the movement of cargo in the bi-state Port. These representatives were asked to testify and present their views at the hearings.

Officials of management associations representing steamship and stevedore companies, officials from labor organizations representing dockworkers in the Port, company executives, representatives of government agencies, individual longshorepersons and other interested parties uniformly testified that those persons issued temporary registrations

pursuant to Commission Resolutions were urgently needed and should be included in the permanent Register. They further testified that there should be no change in the "Closed-Register" statute and that there should not now be a general opening of the Register.

In opposing an "unrestricted opening" of the Register, the President of the New York Shipping Association, Inc. (NYSA) testified that such an occurrence would "derail" the resolution of an existing surplus of dockworkers receiving guaranteed annual income (GAI) payments.

As an historical note, with the advent in the early 1960's of the new mode of transporting cargo by containers, people realized that the need for labor in the Port would be drastically reduced. The shipping industry was anxious to promote and expand this new technology, and labor was insistent on preserving the jobs of its members. Thus, in 1964, the International Longshoremen's Association (ILA) entered into an agreement with the NYSA which provided that, commencing April 1, 1966, employers were allowed to reduce the size of longshore

gangs and longshorepersons were required to accept work anywhere in the Port. In return, the NYSA agreed to make GAI payments to qualified longshorepersons who were available for employment and unable to obtain dock work. It is noteworthy that "deep-sea" registrants reached a maximum of 38,693 in May 1955, stood at 23,332 on April 1, 1966 and numbered 3,660 as of June 30, 1995. Although the cost of GAI has dropped steadily in recent years, it remains a substantial burden to the industry. The basic cost of GAI, excluding fringe benefits, peaked at \$60 million in 1986; it was reduced to \$18.4 million during 1994-1995. GAI is funded by a tonnage assessment on ocean carriers calling in the Port. In 1995, the assessment was \$1.00 per ton for goods moving to or from points more than 260 miles from the Port, \$3.50 per ton, plus \$65 per container, for goods moving within a 260 mile radius of the Port and \$3.50 per weight ton for unboxed automobiles.

The President of the NYSA testified at the hearing that a general opening of the Register would increase the work force, thereby increasing the number of workers receiving GAI. He asserted that as GAI costs escalate, steamship companies would be charged additional sums to fund the program and they would, in all likelihood, seek more competitive ports. This, in turn, would result in a further decrease in cargo volume, expanded unemployment and increased GAI costs. Testimony also disclosed that approximately 500 individuals remain in the GAI program and that most of these recipients lack the ability to perform skilled tasks and are either incapable or unwilling to undertake the needed jobs.

Testimony at the public hearing indicated that those persons issued temporary registration under the Commission's special and emergency powers are not only necessary but are experienced, skilled and most willing to work. Accordingly, the Commission is seeking legislation in both states to afford permanent registration status to the temporary personnel and continues to monitor the labor situation in the Port.

Litigation

Carson v. Waterfront Commission, et al
United States Court of Appeals for the
Third Circuit

The Commission is vested with authority by Section 8 of the Waterfront Commission Act to remove any officer, agent, or employee of a waterfront labor organization or of a welfare fund or trust administered partially or entirely by such labor organization, if that person has been convicted of any felony, high misdemeanor or misdemeanor involving moral turpitude, or of certain crimes or offenses enumerated in the Act.

This extraordinary statute prohibits the collection of dues by a waterfront labor union as long as the convicted union officer, agent or employee remains in office. It also contains a direct prohibition against the convicted person assuming or holding any office, agency or employment in waterfront unions. State courts in New York and New Jersey, and Federal courts in New York, have ruled that, under Section 8, an individual is convicted at the time a jury verdict of guilty is returned against an individual or when that individual enters a plea of guilty. At such times, Section 8 requires the removal of the convicted waterfront official from union office.

One particular individual held high ranking office in an international and a local waterfront union. A federal jury in New Jersey returned a verdict against him of the felonies of racketeering conspiracy and of extortion conspiracy. Thereupon, the Commission, through its General Counsel, advised the individual and the international's president, of the violation of Section 8. The individual's removal was effected. Thereafter, the conviction was vacated by the United States Court of Appeals for the Third Circuit on technical grounds.

The former officer then brought suit against the Commission, its General Counsel, the President of the waterfront international union and several union entities, claiming that his removal from office under Section 8 at the time the jury found him guilty was preempted by a federal statute which also required the removal of convicted union officials from office and which would have permitted him to reap the benefits of a wage escrow provision contained in that statute. Upon motion, the individual's case against the Commission and its General Counsel was summarily dismissed by the United States District Court for the District of New Jersey. (The matter was placed on administrative suspension by the Court with respect to the union party defendants.)

An appeal from that determination was prosecuted by the individual as against the Commission only, to the United States Court of Appeals for the Third Circuit in Philadelphia. In unanimously affirming the lower court, the Third Circuit stated in part:

This case presents a Supremacy Clause challenge to New Jersey's implementation of the Waterfront Commission Act of 1953, an interstate compact between New York and New Jersey aimed at eliminating racketeering and other pernicious activities in the Port of New York District. Appellant Donald Carson contends that § 8 of that Act conflicts with a 1984 amendment to the Labor-Management Reporting and Disclosure Act of 1959. 29 U.S.C. § 504(d). Finding that the 1984 amendment effected no change in Carson's rights whatsoever, we hold that his preemption claim is barred by the Supreme Court's decision in *De Veau v. Braisted*, 363 U.S. 144, 80 S. Ct. 1146 (1960) (plurality opinion), which rejected a claim that § 8 conflicted with the pre-1984 version of § 504. We therefore will affirm that district court's order dismissing Carson's claims against the Waterfront Commission pursuant to Fed. R. Civ. P. 12(b)(6).

The individual's subsequent petition for certiorari was denied by the United States Supreme Court.

Waterfront Commission of New York Harbor v. John Giannotta
Superior Court of New Jersey, Appellate Division

In last year's Annual Report, the Commission noted that a registered power shop foreman and a maintenance foreman were administratively charged by the agency with the theft of newly recapped tires valued at over \$33,000 from their employer at a Jersey City waterfront terminal. After seven days of hearings, the Commission sustained the charges against both individuals and revoked their registrations.

The power shop foreman appealed the Commission's determination to the Appellate Division of New Jersey's Superior Court. In

affirming the Commission's decision, the Court stated in part:

Defendant John Giannotta appeals from the final determination of the Waterfront Commission of New York Harbor ("Commission") revoking his longshoreman's registration. On appeal, Giannotta contends that there was insufficient evidence in the record to support the Commission's decision and that the penalty imposed was excessive. We disagree and affirm.

The charges against Giannotta stemmed from an incident that occurred on September 5, 1991 at Giannotta's place of employment, Global Terminal ("Global") in Jersey City. Based on information received from an anonymous caller, Commission detectives intercepted a truck leaving the terminal containing 80 new recapped tires and 72 used tire casings, as well as scrap tires. According to Global, only the scrap tires were supposed to leave the terminal. Don Nichol, the driver of the truck who was an employee of Ringing Rocks Farms ("Ringing Rocks"), was arrested. He claims that John (sic) Grosso, an employee of Global and Giannotta's co-defendant, directed him to place the recapped tires and used tire casings on the truck first, followed by the scrap tires. When confronted, Grosso maintained that he had not authorized the removal of the recapped tires and casings, and that Nichol was mistaken in doing so.

The investigation led to Giannotta who had earlier been authorized to find someone willing to remove approximately 300-600 fire damaged tires from Global's premises. Giannotta had contracted Ringing Rocks in that regard and spoke with Dick James, Ringing Rocks' manager. However, the investigators learned that the agreement between Giannotta and James was for more than the scrap tires, and further learned that payments were made to Giannotta in cash in furtherance of the agreement.

* * *

An administrative hearing took place before Administrative Judge Patrick W. McGinley. Judge McGinley made a report and recommendations to the Commission after having had an opportunity to hear the witnesses and determine their credibility. In short, he found that Giannotta and Grosso acted in concert and willfully misappropriated the value of tires beyond that which they were authorized to dispose of for scrap.

* * *

On appeal, Giannotta contends that "[t]he evidence, in its best light, simply shows that one person may or may not have profited from items of waste which were intended for and which were in fact disposed of by Global." Thus, he reasons, because the tires in question "were of no value to Global" he cannot be guilty of their theft.

* * *

It is clear to us from reading the opinion of Judge McGinley that he believed the testimony of the Ringing Rocks employees and the representatives of Global. Thus, a reasonable fact finder could conclude from the testimony that Giannotta made an agreement with Dick James to sell tires of value to Ringing Rocks, *i.e.*, new recapped tires and tire casings that were capable of being recapped. Ringing Rocks agreed to pay for those tires, and also accept the scrap tires damaged in the fire that had no value. The charge for accepting the scrap tires was to be deducted from the amount of money Ringing Rocks agreed to pay for the tires that had value. Those payments were made to Giannotta in cash. No one from Global authorized Giannotta to make such an arrangement with Ringing Rocks, and Global received none of the proceeds from Giannotta's agreement with James. Indeed, Grosso's instruction to the Ringing Rocks drivers to put the valuable tires in the truck first, and the scrap tires last, creates an inference that Grosso knew that the valuable tires were not supposed to leave the terminal, and that he was concealing that fact from

anyone who might make a casual inspection of the Ringing Rocks trucks.

* * *

The Commission also concluded that the \$660.00 in wages paid to Giannotta when he was off Global's premises making the unauthorized agreement with James and collecting the proceeds of his nefarious endeavor constituted a fraud on Global and a misappropriation of its funds. Our review of the record satisfies us that the conclusion is amply supported by the evidence and is not arbitrary.

In view of our conclusion that the Commission's findings are amply supported by the record, we also conclude that its decision to revoke Giannotta's license is sustainable. In arriving at that conclusion, we are guided by the words of our Supreme Court:

We must recognize the Commission's longstanding experience with waterfront problems and ordinarily defer to its judgment as to the appropriate penalty or discipline to be imposed in a given situation.

Knoble v. Waterfront Comm. of N.Y. Harbor, 67 N.J. 427, 432 (1975). In *Knoble*, the employee's license was revoked for an infraction far less severe than Giannotta's.

Fateful Fingerprints

The Commission fingerprints all applicants for registration or licensing. These fingerprints are processed by the appropriate State and Federal identification bureaus and the Commission is notified of an applicant's criminal record. Additionally, the Commission is apprised of any subsequent arrests of the person fingerprinted.

In one particular case, the Commission was notified by the New York State Division of Criminal Justice Services that a registered checker was arrested by the Nassau County Police Department on two charges of criminal possession of a weapon in the third degree and criminal possession of stolen property in

the fourth degree. Further investigation also indicated that the dockworker was previously arrested in Orlando, Florida, on a charge of possession of a stolen credit card.

Investigation by Commission counsel disclosed that the checker was arrested with a loaded pistol with serial numbers removed in the parking lot of a Nassau County bar by the police. A search of the individual revealed a stolen American Express credit card. Ultimately the subject pled guilty in Nassau County Court to attempted criminal possession of a weapon in the third degree, a "Class E" felony. The Commission also determined that this person has been convicted of fraudulent use of a credit card in Florida, a misdemeanor of the first degree.

While conducting the inquiry into the registrant's criminal record, a Commission detective received information that the dockworker had been charged with possession of stolen government property. Further investigation disclosed that he sold three night vision image intensifiers, which were the property of the United States government, to an undercover police officer. The checker was employed at the Government's Military Ocean Terminal in Bayonne, New Jersey. The individual subsequently pled guilty in the United States District Court, District of New Jersey to theft of government property, a misdemeanor.

The above-described criminal activity resulted in the institution of Commission charges against the checker. After a hearing before the Administrative Law Judge wherein the allegations were established, the Commission revoked his registration.

* * *

Commission regulations require that a registrant or licensee notify the Commission when he has been arrested for any crime or offense other than a motor vehicle or traffic offense. In another case, an individual applied for registration as a warehouseman, disclosing no criminal record. He was issued a temporary registration pending the completion of the usual investigation to determine whether he qualified for permanent registration. Two weeks later, he appeared at the Commission's Port Newark field office and informed Commission detectives that one week prior thereto, he had been arrested in Hillside, New Jersey, on a

charge of possession of a loaded handgun. While this arrest was being investigated, the Commission was notified by the New Jersey State Police, State Bureau of Identification, that the fingerprints submitted in connection with his application did not appear to belong to the applicant. Further inquiry revealed that the fingerprints on file with the State Police were of a person with a different name who had been arrested in 1989 in Millburn, New Jersey, on theft and drug charges. Commission detectives then matched fingerprints taken in connection with the applicant's Hillside, New Jersey, arrest with the 1989 Millburn fingerprints and ascertained that both sets of fingerprints belonged to the applicant. Because a bench warrant had been issued in the 1989 arrest, Commission detectives, joined by detectives from the Millburn Police Department, executed the bench warrant upon the applicant. Several days later, the applicant pled guilty to the charges emanating from the 1989 arrest.

When confronted by Commission counsel, the applicant admitted that he had used his brother's identification at the time of his 1989 arrest. The Commission then instituted charges against the applicant, alleging fraud in not revealing his alias and his 1989 arrest on his application for registration. Also alleged were the underlying facts resulting in his Millburn convictions and his subsequent Superior Court conviction for unlawful possession of a weapon. After a hearing, the Commission denied his application for registration.

Licensing Proceedings

During fiscal 1995, the Commission's licensing employees examined and processed 1,076 applications and reapplications for registration and licensing. Included in this total were applications for registration of temporary emergency dockworkers such as container equipment operators and checkers and for registration of persons performing maintenance and warehouse functions (services incidental to the movement of waterborne freight), 57 for licensing as pier superintendents, 18 for hiring agent's licenses, 268 for licensing as pier guards and 8 to perform business as stevedores in the bi-state Port. Since the Commission's inception in 1953, its staff has processed in excess of 154,000 applications and reapplications.

The registrations of longshorepersons, checkers and telecommunication system controllers are issued without termination dates. A pier guard license is also of indefinite duration so long as the licensed individual, in accordance with Commission regulations, periodically submits updated personal history information, fulfills a training refresher course and meets mental and physical criteria. Pier superintendent and hiring agent licenses continue as long as the sponsoring carrier or stevedore company employs the licensee. A stevedore license must be renewed every three years.

* * *

The Compact provides that no application for licensing or registration can be denied without prior notice and an opportunity for the applicant to be heard at an administrative hearing. Similarly, the law mandates that no issued registration or license may be revoked, cancelled or suspended without such prior notice and a hearing. A proceeding to revoke may be instituted by the agency on its own initiative or in response to a complaint of any person, public official or agency. Any registrant or licensee charged with a felony or a crime equivalent thereto may be temporarily suspended by the Commission pending the outcome of the administrative proceeding.

Hearings are presided over by a rotating panel of administrative law judges who are New York or New Jersey attorneys. At these public hearings, the applicant or respondent may be represented by counsel, may elicit testimony or present other evidence on his or her behalf, may cross-examine witnesses and may request the administrative judge to issue subpoenas to compel the attendance and testimony of witnesses.

The administrative judges are not bound by the common law, statutory rules of evidence or technical procedural rules. At the conclusion of a matter, the administrative judge submits a written report to the Commissioners containing findings and a recommended disposition. The report is provided to each party in interest, who is then given the opportunity to file written exceptions and arguments for the Commissioners' consideration.

After the Commissioners review the entire record of the proceedings, they make a final determination which is embodied in an order.

This order is subject to judicial review in either New Jersey or New York, according to the law in such state for review of final administrative determinations. Moreover, the involved party may petition the Commission for rehearing, reconsideration of the final determination, leave to reapply for the denied registration or license, or restoration of the revoked license or registration.

* * *

This year determinations were reached in 65 administrative proceedings. Applications for registration were denied to 21 applicants: four for "deep-sea" registration as a longshoreperson, three for cargo checkers and fourteen seeking warehouse or maintenance registrations. Also, two applications for licenses as a pier guard were denied. One application for registration as a "deep-sea" longshoreperson was granted, as was one application for registration in the maintenance/warehouse category and one application for a pier guard's license.

The registrations of 12 persons were revoked by the agency, seven unconditionally and five with permission to reapply after set periods of time. Two pier guards' licenses were revoked with leave to reapply. The Commission suspended, for various periods, the registrations of three "deep-sea" longshorepersons, three checkers, one maintenance/warehouse worker as well as the licenses of three hiring agents, five pier guards and one pier superintendent. Fifteen of the suspensions emanated from summary proceedings during which the individuals waived formal hearings and admitted the violations charged. Temporarily suspended pending a hearing were the registrations of four "deep-sea" longshorepersons, one checker, three maintenance/warehouse workers and the license of one pier guard. The Commission considered 23 petitions, denying 14 and granting 9. Additionally, there were 38 determinations made in miscellaneous proceedings.

* * *

In accordance with its statutory duty to balance the dock labor force with the employee needs of harbor employers, the Commission removed from the "deep-sea" Register 139 registrants who, without good cause, failed to

work or seek work in accordance with the standards established by the agency.

Personnel

The Commissioners, Executive Director and staff note with sorrow the deaths of the following persons:

Robert A. Pin served as an Assistant Counsel and retired after 31 years of service. A graduate of Fordham College and Fordham University Law School, he served in the United States Army Air Force as a Staff Sergeant in the Intelligence Section. Mr. Pin saw duty in the China-Burma-India theatre from 1943 to 1945.

Marion A. Meyer was one of the Commission's original employees. Assigned to a Brooklyn Employment Information Center as a Validating Clerk in 1953, she served the Commission for 13 years until her resignation as a Senior Clerk.

Alice E. Weil served as one of the Commission's Administrative Law Judges. A graduate of Smith College and a recipient of a Doctor of Laws degree from Yale Law School, Mrs. Weil was the first American woman to hold the rank of Assistant Secretary General at the United Nations. She had also served the United Nations as director of that body's General Legal Division.

* * *

The Commission congratulates Nicholas Scoppetta, who was recently appointed by New York City Mayor Rudolph Guiliani to head the City's Administration for Children's Services. Mr. Scoppetta served as Waterfront Commissioner from New York since 1979. He continues an impressive history of public service in that he was a New York County Assistant District Attorney; an Associate Counsel to the Knapp Commission during the investigation of police corruption in the City; a Special Assistant United States Attorney in the Southern District of New York; the Commissioner of Investigation under two New York City mayors; and Deputy Mayor of New York City for Criminal Justice. He was also a Professor of Law at New York University School of Law and Director of the Institute

of Judicial Administration. From 1987 to 1993, Mr. Scoppetta was President of the Board of Trustees of the Children's Aid Society and was elected its Chairman.

The Commission extends its best wishes to Leonard Newman, who retired after serving the agency as its Executive Director for over 19 years. Mr. Newman's tenure with the agency continued a distinguished career in public service. He had been an Assistant District Attorney in New York County for 32 years, including eight years as Chief of the Fraud Bureau. He also served as First Deputy Commissioner of New York State's Division of Criminal Justice Services with direct oversight of the Office of Special Services, including the Bureau of Municipal Police, Prosecution and Technical Assistance Unit and Juvenile Justice Institute.

CONCLUSION

To continue and preserve the accomplishments of the Commission and the gains realized in the Port of New York-New Jersey under the enforcement of the Waterfront Commission Act, the Waterfront Commission finds and determines that public necessity still exists for the continued registration of longshorepersons, the continued licensing of those occupations and types of employment required to be licensed under the Waterfront Commission Act and the amendments thereto, and the continued public operation of the employment information centers provided in Article XII of the Compact.

Respectfully submitted,

JAMES H. WALLWORK
Commissioner for New Jersey

MICHAEL C. AXELROD
Commissioner for New York



Vehicle export operations at Port Newark, New Jersey

WATERFRONT COMMISSION OF NEW YORK HARBOR
Statement of Cash Receipts and Disbursements
Year ended June 30, 1995

Balance of funds at beginning of year:			
Cash in checking accounts and on hand	\$	252,326	
Cash in money market accounts		249,303	
Cash in savings accounts		8,634	
Time certificates of deposit		655,000	
		<u>1,165,263</u>	
Less taxes and other withholdings from employees		66	\$ 1,165,197
Receipts:			
Assessments on employers of persons registered or licensed by the Commission		6,149,989	
Penalties, fines and miscellaneous income		149,441	
Interest:			
Time certificates		62,569	
Money market accounts		9,534	
Savings accounts		207	
		<u>6,371,740</u>	6,371,740
			<u>7,536,937</u>
Disbursements:			
Salaries		3,941,945	
Retirement, group insurance and Social Security taxes		1,137,245	
Rentals		529,965	
General insurance		168,151	
Light, heat and power		99,327	
Repairs and maintenance		27,615	
Furniture and equipment		63,598	
Carfare, auto and travel		44,874	
Communications		45,432	
Special services and supplies		56,391	
General office		35,358	
Printing		12,714	
		<u>6,162,615</u>	6,162,615
Excess of receipts and balance of funds at beginning of year over disbursements—balance of funds at end of year consisting of:			
Cash in checking accounts and on hand		29,446	
Cash in money market accounts		433,470	
Cash in savings accounts		8,818	
Time certificates of deposit		908,000	
		<u>1,379,734</u>	
Less taxes and other withholdings from employees		5,412	\$ 1,374,322

See accompanying notes to statement of cash receipts and disbursements.

KPMG Peat Marwick LLP

New Jersey Headquarters
 150 John F. Kennedy Parkway
 Short Hills, NJ 07078

Independent Auditors' Report

The Commissioners
 Waterfront Commission of New York Harbor:

We have audited the statement of cash receipts and disbursements of the Waterfront Commission of New York Harbor for the year ended June 30, 1995. This financial statement is the responsibility of the Commission's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1(b), this financial statement was prepared on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the statement of cash receipts and disbursements referred to above presents fairly, in all material respects, the cash transactions of the Waterfront Commission of New York Harbor for the year ended June 30, 1995 on the basis of accounting described in note 1(b).

KPMG Peat Marwick LLP



(1) Description of Business and Accounting Policy

(a) *Description of Business*

The Waterfront Commission of New York Harbor (the Commission), a bistate instrumentality, was created in 1953 by joint legislative action of the States of New York and New Jersey. It is vested with broad investigative, licensing and regulatory jurisdiction over the piers and terminals in the Port of New York District. It is not subject to income taxes.

(b) *Accounting Policy*

It is the policy of the Commission to prepare its financial statement on the basis of cash receipts and disbursements; consequently, revenue and related assets are recognized when received rather than when earned and expenses are recognized when paid rather than when the obligation is incurred.

(2) Retirement Benefits

The Commission has established a reserve account to fund its liability for eligible retired employees' medical, dental and life insurance benefits. As of June 30, 1995, the balance of this account was \$345,000.

(3) Lease Commitments

Future minimum lease payments under noncancelable operating leases (with initial or remaining lease terms in excess of one year) as of June 30, 1995 are as follows:

Year ending June 30:	
1996	\$ 437,000
1997	460,000
1998	460,000
1999	460,000
2000	483,000
Thereafter	483,000
Total minimum lease payments	<u>\$ 2,783,000</u>

COMMISSION DETERMINATIONS

Year Ended June 30, 1995

APPLICATIONS AND REVOCATIONS

	Denied	Granted	Revoked	Revoked L/R	Suspended	Reprimanded	Suspended P/H	Totals
Longshorepersons	4	1	1	1	3	0	4	14
Checkers	3	0	1	2	3	0	1	10
Hiring Agents	0	0	0	0	3	0	0	3
Pier Guards	2	1	0	2	5	0	1	11
Pier Superintendents	0	0	0	0	1	0	0	1
Stevedores	0	0	0	0	0	0	0	0
Maintenance/Warehouse	14	1	5	2	1	0	3	26
Telecommunications System Controllers	0	0	0	0	0	0	0	0
Totals	23	3	7	7	16*	0	9	65

*Includes 15 summary proceedings

PETITIONS

	Denied	Granted	Totals
Petitions for Reconsideration	1	0	1
Petitions for Leave to Reapply	2	0	2
Petitions for Rehearing	0	0	0
Petitions to Withdraw	0	0	0
Petitions to Remove Ineligibility	0	0	0
Petitions for Restoration of Registration/License	5	1	6
Petitions to Vacate Temporary Suspension	0	6	6
Petitions for Retention or Reinstatement	6	1	7
Petitions for Stay	0	0	0
Petitions to Surrender Registration	0	1	1
Totals	14	9	23

ADDITIONAL COMMISSION DETERMINATIONS

Recommendations for Permanent Registration/License	13
Recommendations to Continue Temporary Permits/Registrations	6
Recommendations to Withdraw Notice of Hearing	4
Recommendations to Issue Notice of Hearing	10
Recommendations to Amend Notice of Hearing	3
Recommendations to Deny Appeal	2
Totals	38

DECASUALIZATION OF LONGSHOREPERSONS AND CHECKERS

		Number Decasualized	Remaining Registrants
1st decasualization	June 3, 1955	7,141	31,574 a
25th decasualization	March 31, 1967	1,142	22,100
30th decasualization	October 3, 1969	1,022	20,627 b
40th decasualization	September 26, 1974	271	14,143 b
50th decasualization	September 28, 1979	124	10,956 b,c
60th decasualization	October 4, 1984	88	8,026 b
65th decasualization	April 9, 1987	100	7,159 b,c
70th decasualization	October 5, 1989	126	5,846 b
75th decasualization	April 3, 1992	33	3,941 b
78th decasualization	October 7, 1993	35	3,706 b,c
79th decasualization	April 1, 1994	83	3,531 b,c
80th decasualization	October 6, 1994	79	3,518 b,c
81st decasualization	April 1, 1995	60	3,493 b,c

(a) Does not include craftsmen whose registrations were required on or after May 27, 1957.

(b) Does not include warehousemen, container repairmen, and other persons required to be registered on or after September 1, 1969.

(c) Includes persons registered on a temporary basis to meet special and emergency needs.

REGISTRATIONS AND LICENSES IN EFFECT DURING FISCAL YEARS

As of June 30th

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Longshorepersons	10,804 _{a&b}	10,289 _{a&b}	9,947 _{a&b}	9,474 _a	8,702 _a	7,955 _a	7,810 _a	6,999 _a	6,520 _a	6,511 _a	5,371 _a	5,129 _a	5,095 _{a&b}	4,822 _{a&b}	4,642 _{a&b}	4,688 _{a&b}
Checkers	2,373	2,231	2,084	2,017	1,806	2,065	1,894 _b	1,686 _b	1,578 _b	1,510	1,175	1,200 _b	1,107 _b	1,053 _b	975 _b	979 _b
Hiring Agents	339	327	304	291	279	242	242	229	233	185	179	173	182	174	170	184
Pier Superintendents	344	353	341	325	304	298	317	304	302	268	279	278	303	309	329	359
Pier Guards	705	655	635	560	525	491	455	404	387	343	356	391	392	394	406	429
Stevedore Companies	113	109	110	104	101	87	83	80	73	71	69	68	71	68	72	75
Telecommunications System Controllers												14 _c	14 _c	14 _c	12 _c	12 _c
TOTALS	14,678	13,964	13,421	12,771	11,717	11,138	10,801	9,702	9,093	8,888	7,429	7,253	7,164	6,834	6,606	6,726

(a) Includes warehousemen, container repairmen, and other persons required to register under amendments to Waterfront Commission Act, effective September 1, 1969.

(b) Includes persons registered on a temporary basis to meet special and emergency needs.

(c) Includes persons required to be registered under amendment to Waterfront Commission Act, effective July 9, 1990.



Red Hook Marine Terminal—Brooklyn, New York

EMPLOYMENT INFORMATION CENTERS

Showing Comparison of Hirings for the years ending June 30th, 1994 and 1995

Piers and Areas	HIRINGS		Increase or Decrease	% Change	% Share in Port Employment	
	1994-1995	1993-1994			1994-1995	1993-1994
Manhattan	20,026	23,095	- 3,069	- 13.29	02.86%	03.23%
Brooklyn & Staten Island	89,680	105,499	- 15,819	- 14.99	12.80%	14.75%
Port Newark & Port Elizabeth	493,705	499,379	- 5,674	- 01.14	70.46%	69.84%
Jersey City & Bayonne	97,245	87,064	+ 10,181	+ 11.69	13.88%	12.18%
TOTAL—NEW JERSEY	590,950	586,443	+ 4,507	+ 00.77	84.34%	82.02%
TOTAL—NEW YORK	109,706	128,594	- 18,888	- 14.69	15.66%	17.98%
PORT WIDE TOTALS	700,656	715,037	- 14,381	- 02.01	100.00%	100.00%

COMPARISON OF AVERAGE EARNINGS OF LONGSHOREPERSONS & CHECKERS

	1954(*)	1992	1993	1994
Over \$100,000	(*)	223	345	439
\$ 75,000 to \$100,000	(*)	499	430	515
\$ 50,000 to \$ 75,000	(*)	1,041	971	810
\$ 25,000 to \$ 50,000	(*)	1,085	945	863
\$ 20,000 to \$ 25,000	(*)	117	115	89
\$ 15,000 to \$ 20,000	(*)	91	104	102
\$ 10,000 to \$ 15,000	(*)	90	115	157
\$ 5,000 to \$ 10,000	3,797	202	185	235
Under \$5,000	37,536	694	634	510
TOTAL REPORTED	41,333	4,042	3,844	3,720
Total Earnings	\$102,061,108	\$183,158,850	\$183,323,322	\$189,179,353
Total Hours Worked	37,813,991	7,410,502	7,029,279	7,149,263
% Hours Overtime	24.3%	37.1%	38.7%	41.9%
AVERAGE ANNUAL WAGES**	\$2,469	\$45,314	\$47,690	\$50,855

* Records Incomplete for 1954.

** Does Not Include Fringe Benefits.

NOTE: This table includes craftsmen such as carpenters, coopers, maintenance personnel and miscellaneous personnel required to be registered as longshoremen effective May 27, 1957, but does not include most persons required to be registered as waterfront warehousemen and in other capacities effective September 1, 1969. Similar tables in annual reports prior to 1957-1958 included earnings of longshoremen and checkers only, as reported by the New York Shipping Association. Guaranteed Annual Wage payments to qualifying persons are not included in the above figures.

SOURCE: New York Shipping Association for its fiscal year ending September 30th.



James H. Wallwork
Commissioner
for
New Jersey



Michael C. Axelrod
Commissioner
for
New York



Carmine A. Cardone
Executive Director

Carmine A. Cardone, *Executive Director*

Gerald P. Lally, *General Counsel*

Curt Masklee, *Secretary*

James J. Challender, *Chief, Division of Police*

Howard M. Zuckerman, *Director of the Division of Licensing and Employment Information Centers*

Gemma T. Macaluso, *Director, Division of Administration*

Frank J. Nastasi, *Director, Division of Audit and Control*

Arthur J. Davoren, *Comptroller*

Photo Credits: The Port Authority of New York and New Jersey
Front and Back Cover, PP. ii, 13, 17

42 Broadway, New York, N.Y. 10004
212-742-9280

