
Public Hearing

before

SENATE ECONOMIC GROWTH COMMITTEE

"Testimony concerning the Waterfront Commission of New York Harbor's proposal to require stevedoring companies to retain Independent Private Sector Inspectors General, pursuant to a responsibility agreement or stipulation with the Commission, in order for stevedoring companies to continue to operate in the Port of New York and New Jersey; its legislative authority, its need, and its impact on the competitiveness of the Port"

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: September 23, 2010
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond J. Lesniak, Chair
Senator Sandra B. Cunningham, Vice Chair
Senator Richard J. Codey
Senator Joseph M. Kyrillos Jr.
Senator Steven V. Oroho



ALSO PRESENT:

Kevin J. Donahue
*Office of Legislative Services
Committee Aide*

Eugene Lepore
*Senate Majority
Committee Aide*

Laurine Purola
*Senate Republican
Committee Aide*

Hearing Recorded and Transcribed by
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SENATOR RAYMOND J. LESNIAK (Chair): All right, we're going to start.

Do we need to announce something?

MR. DONAHUE (Committee Aide): Just to do the roll call.

SENATOR LESNIAK: Do the roll call? Okay, do the roll call.

MR. DONAHUE: Senator Oroho.

SENATOR OROHO: Here.

MR. DONAHUE: Vice Chairwoman Cunningham.

SENATOR CUNNINGHAM: Here.

MR. DONAHUE: Chairman Lesniak.

SENATOR LESNIAK: Here.

All right, our first witness will be Joseph Curto, New Jersey (*sic*) Shipping Association.

He's not here? Here he is.

Please, by the way, turn all your cell phones off or on quiet.

Go ahead, Mr. Curto.

J O S E P H C. C U R T O: Good morning, Mr. Chairman, Senators.

Senator, I'd like to apologize in advance for the length of my statement. It's a little long.

SENATOR LESNIAK: Oh, please, no need to apologize.

MR. CURTO: Thank you.

May I begin?

SENATOR LESNIAK: Please.

MR. CURTO: My name is Joseph Curto, and I am the President of the New York Shipping Association, or NYSA, an Association of marine terminal operators, stevedoring companies, and ocean carriers

engaged in trade and commerce in the Port of New York and New Jersey. NYSA negotiates and administers collective bargaining agreements, establishing the terms and conditions of employment of longshore workers represented by the International Longshoremen's Association, AFL-CIO, and port security officers represented by the Port Police and Guards Union, Local 1456. NYSA administers labor contracts on behalf of marine terminal operators and stevedoring companies that employ these 4,000 workers who are required to be licensed by the Waterfront Commission in order to engage in their chosen profession.

NYSA's members are engaged in the operation of an important economic engine that, in 2008, supported 165 (*sic*) jobs, and accounted for 270,000 total jobs in the region; and was responsible for generating more than \$11.2 billion in personal income; nearly \$36.1 billion in business income; and over \$5 billion in Federal, State, and local tax revenues.

I appear before you today to alert the Committee to the unauthorized attempt by the Waterfront Commission of New York Harbor to impose an Independent Private Sector Inspector General, or IPSIG program, on these marine terminal operators and stevedoring companies. My testimony is based upon my 40 years of experience in the marine cargo handling industry; and my extensive knowledge of marine terminal operations, labor relations, and the regulatory issues affecting port facilities not only in the Port of New York and New Jersey, but also in ports throughout the nation.

As President of the New York Shipping Association, I regularly meet with the Waterfront Commission to discuss issues relating to the Commission's role in regulating the employment of workers employed by

NYSA members. While the Waterfront Commission's enabling statute, the Waterfront Commission Act, requires the Commission to 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, the Commission did not consult with NYSA prior to announcing its IPSIG program. Had the Commission done so, it would have learned that NYSA members oppose the imposition of such a program and believe that it is an impermissible exercise of agency power that is not authorized by the Waterfront Commission Act.

My first point: NYSA members are not criminals but are legitimate business entities that are already overregulated. The companies responsible for delivering the prosperity that the Port of New York and New Jersey provides to the states of New Jersey and New York are legitimate business concerns which, in recent years, have invested billions of dollars in this Port. Within the past five years, four of the six container terminal operations in the Port were sold in financial transactions with price tags in the billions of dollars. Five of these terminals are now owned by huge, multinational corporations. The purchasers of these operations are sophisticated concerns. At least two of them were subject to a review of their purchases by the Committee on Foreign Investment in the United States, or CFIUS, which is the interagency committee of the United States government that reviews national security implications of foreign investments in U.S. companies or operations. The Committee is chaired by the Secretary of the Treasury and includes representatives from 16 United States departments and agencies, including the Department of Defense,

Department of State, Department of Commerce, and the Department of Homeland Security.

NYSA members are highly regulated entities. In addition to the Waterfront Commission and the Coast Guard, Customs and Border Protection Agency, marine terminal operators and stevedoring companies in the Port of New York are also subject to the jurisdiction of a myriad of Federal, State, and local agencies. The Federal agencies alone include the National Labor Relations Board, Occupational Safety and Health Administration, Department of Labor, Federal Maritime Commission, Equal Employment Opportunity Commission, the Environmental Protection Agency, Department of Transportation, and the Food and Drug Administration.

Moreover, marine terminals are subject to the law enforcement jurisdiction of the Federal Bureau of Investigation; the Waterfront Commission Police; the Port Authority Police; the New Jersey State Police; the New York State Police; and, depending on the particular location of the facility, the Police Departments of the City of New York, Newark, Elizabeth, Bayonne, and Jersey City.

My second point is that the Commission's IPSIG program will add to the costs of doing business in the Port. NYSA and its members bear the costs of the telecommunications hiring system that permits the Waterfront Commission to carry out its statutory mandate to monitor the employment of waterfront workers.

In addition, NYSA and its members fund the operating budget of the Waterfront Commission through an assessment on gross wages paid to employees licensed by the Commission. By statute, this assessment

cannot be in excess of 2 percent of the gross wages paid. This assessment raises approximately \$11 million per year to support the operations of the Commission, a cost that adds an additional \$4 to the cost of handling a container in the Port of New York and New Jersey. Thus, in a very competitive business environment, the costs of the terminal operators and stevedoring companies in the Port of New York and New Jersey are, at a minimum, \$4 higher per container than the costs borne by their competitors in other ports.

The reason I say *at a minimum* is because the 2 percent assessment is not the only cost attributable to compliance with Commission mandates. The individual companies subject to the Commission's jurisdiction collectively incur millions of dollars in professional service fees to handle licensing and Commission compliance.

SENATOR LESNIAK: Excuse me, if I may, for a second.

For the Senators on the panel, I just want you to know I have likened this a lot to COAH, where it's not just, for instance, the fee that's an imposition of costs on the taxpayers, but also the regulatory burden and all the expense -- unnecessary expense on the businesses that are not attributable to any other port in the world except right here.

SENATOR CODEY: Ray.

SENATOR LESNIAK: Yes, Senator.

SENATOR CODEY: I don't know about comparing it to COAH, but I will tell you this: You just can't get rid of it, I think. (laughter)

But let me say one thing: I agree with you. I'm against this. All I want to know is: How can we make it better? How can we put more

people to work, and keep people working who are working, and make it better? That's what we should be focused on.

SENATOR LESNIAK: Senator, I appreciate that. That's my intention as well. As a matter of fact, I'm going to be introducing legislation that I will talk to you about.

SENATOR CODEY: Okay. I will be on it.

SENATOR LESNIAK: Great.

MR. CURTO: Thank you.

My third point: The Commission is regulating beyond its mandate. The Waterfront Commission is a bistate instrumentality created by an interstate compact between the states of New Jersey and New York that was approved by an act of Congress of the United States in 1953. One of the Commission's functions is to investigate and license stevedoring companies that employ longshore workers. In announcing its IPSIG program, and seeking expressions of interest and statements of qualifications from applicants interested in acting as IPSIGs for stevedoring companies, the Commission stated, "The IPSIG will establish and maintain internal controls to deter unethical or illegal conduct, and will report any unethical or illegal conduct observed to the Commission. The IPSIG will examine the operations of stevedoring companies to ensure that they run effectively without fraud, criminal influence, improper accounting and/or hiring practices, or their malfeasance. The Commission may require a stevedoring company to retain an IPSIG, pursuant to a responsibility agreement or stipulation with the Commission, in order for that stevedoring company to continue to operate in the Port. Upon selection by the Commission, the IPSIG will be hired by the stevedoring company but will

report directly to the Commission, with the stevedoring company retaining responsibility for the payment of the IPSIG's services.”

In the announcement of its IPSIG program, the Waterfront Commission has not provided a single citation to a provision in the Waterfront Commission Act that empowers it to implement the program. The reason is clear: Nothing in the Waterfront Commission Act authorizes the Commission to impose an IPSIG program. Indeed, the statute prohibits such a mandate because it would impose an additional charge in excess of the limit of 2 percent of payroll. The Commission's proposed IPSIG program not only exceeds its authority under its enabling statute, but also constitutes impermissible legislative activity in violation of the constitutionally required separation of powers.

The Waterfront Commission compact explicitly provides that any amendments to the compact must be approved -- I'm sorry, adopted by statutory enactments adopted by the legislatures of both states.

In seeking to implement an IPSIG program on its own, without seeking legislative authority, the Waterfront Commission is usurping the role and authority of the legislatures of the states of New Jersey and New York. The people's elected legislators, not appointees in an executive agency, have the right and power to determine whether an IPSIG program is appropriate and, if so, what substantive standards should apply in determining when the imposition of an IPSIG is warranted.

This is how the legislature of the City of New York established an IPSIG program for the City's private carting industry. It enacted a legislative mandated that permitted the Trade Waste Commission of the City of New York to require a private carting company it regulates to hire

an IPSIG if the company is the subject of a pending indictment for a crime that would provide grounds for the denial or revocation of its license.

The Waterfront Commission's proposed IPSIG program has no similar criminal culpability standard. Instead, the Commission bestows upon itself the unfettered discretion to impose an IPSIG as the Commission sees fit.

My fourth point is that the IPSIG is a flawed concept for port employers. The IPSIG concept has its roots in the 1989 New York State Organized Crime Task Force Report on Corruption and Racketeering in the New York City Construction Industry. Current Commissioner Ronald Goldstock was the primary author of that report and has been an active proponent of the IPSIG concept. Commissioner Goldstock has written about the broad powers that could be bestowed on an IPSIG, including the ability to access the books, records, files, accounts, and correspondence of the organization; discipline, dismiss, remove, and replace officers, employees, and members of the organization; review and veto certain business operations of the organization; and approve major contracts entered into by the organization.

These are certainly broad authorities that the Commission would give to monitors who, in all likelihood, have never been inside a marine terminal. Commission-appointed IPSIGs should not be permitted to replace the expertise of industry management running these companies. We are talking about billions of dollars in corporate investment in these companies that are dependent on the skill and discretion of their management to navigate an ever-changing business environment.

Such an imposition would render the Waterfront Commission as overseer of all the business operations and decisions of the stevedoring companies in the Port. We do not believe the Commission has the legal authority or competence to undertake this role. The Commission's IPSIG program impermissibly interferes with the ability of stevedoring companies to manage their business and fulfill their obligations to their customers, investors, and the public.

The agency's actions will also have a chilling effect on private-sector investment in the Port if it is known that, on a whim, the Commission can displace a company's management team. Investors are likely to shy away from investment in a company when it is known the company's management team can be removed or second-guessed by an auditor or monitor accountable only to the Commission.

And my final point: The Commission requires legislative oversight. The entire concept reeks of unbridled power asserted not in conformance with a statutory mandate, but by administrative fiat. Simply put, the IPSIG program is the wrong program, imposed for the wrong reasons by the wrong party. If the Commission believes an IPSIG program is right, it should present its proposal to the legislatures of New Jersey and New York. Only then can these legislative bodies examine the wisdom of this program in the light of appropriate legislative proceedings in which all interested parties would have the right to express their views as to the necessity for the program, and the appropriate substantive criteria that should control.

We urge this Committee to contact the Governor to express its displeasure with the acts of the Waterfront Commission in seeking to

impose an IPSIG program on stevedoring companies without legislative authority, and to recommend the Commission abandon this course.

Thank you for your attention.

SENATOR LESNIAK: Thank you.

I think I have a better analogy than COAH.

SENATOR CUNNINGHAM: Good. (laughter)

SENATOR LESNIAK: In the early '80s, I introduced and sponsored into law a bill that's referred to as A-901. It was in reference to-- It was for licensing of the garbage industry because, quite frankly, that industry was, to use the expression, *mobbed-up*. And it was a very, very comprehensive system that wound up basically driving the mob out of that industry. And now it is a multi-international, big corporate industry. And we had to change 901 just recently. We amended it to allow for the fact that the intrusive licensing power that was needed back in the '80s is no longer needed now and, in fact, it is infringing on commerce, it's making the cost of business higher, and it's giving us a competitive disadvantage with reference to other areas.

And what you're saying now, if I hear you, is that the authority that was given to the Waterfront Commission in the '50s, which obviously was necessary when Marlon Brando was on the scene (laughter)--

SENATOR CODEY: Tony Galento. (laughter)

SENATOR LESNIAK: --certainly is not necessary now. And even worse, the Waterfront Commission is currently trying to expand their authority beyond what they even had in the '50s. Is that an accurate statement?

MR. CURTO: Yes, our primary objection is--

SENATOR CODEY: He gave you the softball. Hit it out of the park. (laughter)

MR. CURTO: The Commission was established with certain legislative abilities and foresight to carry out a mission. We believe today that the Commission is trying to expand the mission without the proper legislative authority. Also, we firmly believe that this program, if enacted, could lead to higher costs. And that's something we're very, very concerned about in the Port of New York. We're very concerned about the competitiveness of the Port, our ability to compete, the regulation that the employers are currently faced with. We want to make it simpler to do business in the Port, cheaper to do business in the Port, and with a lot less red tape.

SENATOR LESNIAK: One other question, because I referenced the fact that no other port in the world -- certainly in the United States -- has a similar type of commission. Is that accurate?

MR. CURTO: Yes, that's correct, Senator.

SENATOR LESNIAK: Do you know of any other industry -- the construction industry, service industry -- where we have seen corruption now and in the past, have a similar type of commission with the enforcement authority and taxing ability that the Waterfront Commission has?

MR. CURTO: I don't know of another circumstance where there is a similar arrangement where the commission -- overseeing activity. Certainly on waterfront facilities, I don't know of any others.

SENATOR LESNIAK: Okay. Any questions from the Committee members?

SENATOR CUNNINGHAM: Just one.

SENATOR LESNIAK: Senator Cunningham.

SENATOR CUNNINGHAM: I just want to ask: The Waterfront Commission was started to investigate and work on all the crime that was taking place. Have you seen an improvement in that, or do you think they've been totally unsuccessful in that endeavor?

MR. CURTO: No, I think if you look back in history, in 1953 there was certainly a need for a police agency like the Waterfront Commission. And great progress has been made over the past 50 years because of some of the Commission's efforts. They have cleaned up the hiring. That's very true. And we do have a pretty clean workforce these days.

But the Commission was established as a temporary agency back in 1953. Fifty years later, we have systems and procedures in place that were initiated to correct certain evils, and I believe many of those evils have been corrected.

SENATOR CUNNINGHAM: So if the Commission is not there, things will not go back to the way it was? There are enough regulations and systems in place to prevent that from happening again?

MR. CURTO: Well, I believe there is a certain requirement for a law enforcement element in the Port. And also there is a requirement for certain credentialing and background checks. Now, whether that's the Waterfront Commission or some other agency, I don't know. But there is a need for some of those things.

SENATOR CUNNINGHAM: Thank you.

SENATOR LESNIAK: Senator Codey.

SENATOR CODEY: Let me say I agree with you -- what you just said.

By the way, when Senator Cunningham asked you about the '50s, you should have said to her, "Senator, I was in grammar school."
(laughter)

SENATOR LESNIAK: "I wasn't around."

Senator Oroho.

SENATOR OROHO: Yes. Thank you, Chair.

Just a question: In the testimony it says that the \$11.2 million now equates to \$4 for the cost of containers. And I guess it's an increase in the cost. How does that relate to the total cost of processing a container? And how does our current cost of processing a container compare to our competitors to the South?

SENATOR LESNIAK: Or to the North.

SENATOR OROHO: Or to the North, exactly.

MR. CURTO: There are a number of elements that add cost -- that create cost to handling containers in the Port of New York. What's unique about this particular case is, no other port has a waterfront commission. No other port has an assessment on payroll to pay for an agency like this, which adds cost.

Now, the \$4 comes about through a simple calculation. There are about 2.7 million containers, \$11 million, it comes out to \$3.90-some-odd a container. This is one of a number of elements of cost. And our mission at New York Shipping is to try to eliminate as many of those elements of cost as possible to make our Port competitive with some other ports. Our Port is more expensive. There's no dispute.

SENATOR OROHO: Understood. So this obviously just makes it worse.

Maybe through the Chair--

SENATOR LESNIAK: Senator, it's a lot more than the \$4 per container, because it's the cost of compliance, that you're very well aware of with the regulation, that far, I believe, exceeds that amount.

I have a question for you with regard to the hiring practices. Because if I remember the movie, it was like the labor leaders -- who you had to hire their brother-in-law and these guys who didn't show up.

SENATOR CODEY: It sounds like politics. (laughter)

SENATOR LESNIAK: Well, maybe we need a Waterfront Commission over our (laughter)--

But isn't there a technology now in place to ensure that that doesn't happen? Can you talk about that?

MR. CURTO: Yes, today there is a fairly sophisticated system -- telephonic system that provides oversight of the hiring of the Port. That system actually is overseen by employees of the Waterfront Commission to ensure compliance with the rules that have been worked out between the parties either during collective bargaining or between the Association and the Commission, having to do with various administrative matters. There is very little chance, today, of the type of hiring abuses that occurred back in the 1950s, when Marlon Brando was on the waterfront.

SENATOR LESNIAK: Any other questions from the Committee?

Senator Kyrillos? (negative response)

Thank you.

MR. CURTO: Thank you.

SENATOR LESNIAK: Harold Daggett, from the ILA.

H A R O L D J. D A G G E T T: Good morning.

SENATOR LESNIAK: Good morning. Top of the morning to you.

MR. DAGGETT: Top of the morning to you. (laughter)

SENATOR CODEY: All right, lay off the Irish. (laughter)

SENATOR LESNIAK: The accent.

MR. DAGGETT: Members of the Senate Economic Growth Committee, my name is Harold J. Daggett. And I serve as the Executive Vice President of the International Longshoremen's Association, AFL-CIO.

The ILA is the largest union of maritime workers in North America. We represent 65,000 members working at ports on the Atlantic and Gulf Coast, Great Lakes, Eastern Canada, Puerto Rico, and major U.S. rivers.

When I returned home from service in Vietnam with the U.S. Navy in the late 1960s, I went right to work on the waterfront. There I was among one of some 30,000 ILA members employed in the Port of New York and New Jersey. Our international membership at that time topped 125,000 members.

Containerization was only in its infant stages. Automation and other factors would result in the amazing erosion of ILA jobs over the next four decades to where we are: about 4,000 today in the Port of New York and New Jersey. While our membership numbers have been reduced, the amount of cargo handled in this Port has more than tripled over that same

period. The region continues to enjoy valuable economic prosperity generated by the Port of New York and New Jersey.

I am proud to note that the ILA has continued to negotiate contracts with our employers that buffered the loss of man-hours by our members while providing generous wages, health benefits, and pension plans for our present ILA members. The ILA fringe benefit packages for its members are funded through the assessments on cargo. And here we see the delicate balance that our employers must strike between paying our ILA members decent wages and benefits, and keeping New York and New Jersey competitive with other ports.

My union felt it was important we appear today and join with the New York Shipping Association to alert you to a challenge to our Port's competitiveness: the unauthorized attempt by the Waterfront Commission of New York Harbor to impose an Independent Private Sector Inspector General program on marine terminal operators and stevedoring companies. The proposal being discussed today is a perfect example of that kind of over-regulation that chokes economic growth and kills jobs.

ILA employers in New Jersey and New York have been challenged for decades by their having to fund the Waterfront Commission. No other port area on the East Coast, Gulf Coast, or even the West Coast is burdened with this extra cost, funded by an assessment on wages paid to our members. Plain and simple, this is tax on jobs.

The Inspector General program proposed by the Waterfront Commission adds another unnecessary layer of bureaucracy and, more importantly, further jeopardizes the competitive balance of this Port region

against others. It will also lead to higher costs of doing business in this Port without providing any benefits.

Citizens of New Jersey already pay -- through local, State, and Federal taxes -- to fund our U.S. Department of Homeland Security, Justice Department, U.S. Coast Guard, Port Authority Police, New Jersey State Troopers, the United States Department of Labor, the United States Department of Transportation, Occupational Safety and Health Administration, the Federal Maritime Commission, and local police. All of these agencies have the authority to monitor and police our ILA members and employers. Do our citizens need another tax on doing business at New Jersey ports?

The powers of the Waterfront Commission flow from the legislatures of both New Jersey and New York. We believe this proposal exceeds the authority granted to the Commission, and we ask you to take action to eliminate it before more damage is done to our maritime commerce.

Thank you.

SENATOR LESNIAK: Thank you for your testimony.

Any questions? (no response)

MR. DAGGETT: Thank you.

SENATOR CODEY: Thank you, sir.

SENATOR LESNIAK: Carol Katz, Maritime Association of the Port of New York and New Jersey. At least say something.

C A R O L R. K A T Z: Thank you very much, Mr. Chairman, members of the Committee.

The Maritime Association of the Port of New York and New Jersey is an Association of varied groups, businesses, and other interests doing business in the Port of New York and New Jersey. Our mission is to support the healthy economy and environment in the Port. And we are here today to support the position of Mr. Curto and the New York Shipping Association in expressing our concerns, as well, about the proposal by the Waterfront Commission regarding the Inspector General.

SENATOR LESNIAK: Thank you.

I just have one question for you. Your membership is made up of who?

MS. KATZ: All different groups doing business and active in the Port. So some of our membership overlaps the Shipping Association. We have terminals, and shipping companies, and operators like that. We also have chandlers, and maritime attorneys, pilots -- the pilotage groups -- Sandy Hook pilots -- tug companies, barge operators, you name it. The collective-- We're a collective group of folks whose interest is promoting the health and also -- all kinds of health of our Port in New York and New Jersey.

SENATOR LESNIAK: Thank you.

Any questions from the Committee? (no response)

Thank you, Carol.

MS. KATZ: Thank you.

SENATOR LESNIAK: J. Randolph Brown, Metropolitan Marine Contractors Association.

J. R A N D O L P H B R O W N: Thank you, Chairman, Committee members.

My name is J. Randolph Brown. I am President of Metropolitan Marine Maintenance Contractors' Association -- Metropolitan Marine -- a nonprofit organization of employers who have provided maritime services to the Port of New York and New Jersey since 1947. Today, Metropolitan Marine consists of 27 companies that perform maintenance and repair of containers, chassis, container handling equipment, facilities, plus the securing of containers aboard vessels.

In 2009, Metropolitan Marine employers employed approximately 900 members and generated 2.1 million man-hours of work with related wages of \$78 million and \$44 million in benefit funds. It also manages, in connection with ILA locals 1814 and 1804-1, the related benefit funds.

Historically, the Waterfront Commission has exercised authority over Metro-ILA jobs only to the extent that it involves the licensing of employers and the ILA members who wish to work in the maritime terminals, but not at Metropolitan Marine facilities outside of the Port. Unlike the NYSA, the Commission does not exercise oversight over the daily hiring of individuals nor the balancing of its labor supply and demand.

Personally, I have worked in various capacities in the Port for over 40 years with terminal operators, ocean carriers, and as an independent consultant to the Port with ILA labor, the NYSA, and now Metropolitan Marine. I believe this experience gives me considerable insight into the matters being addressed by these hearings.

Now, the next three pages of my written testimony -- which will be submitted to you -- pretty much echo the positions of Joe Curto in terms

of what Metropolitan Marine does and its opposition to IPSIG, basically founded on the fact that they have no statutory authority to impose that type of organization on the industry.

However, I would like to expand on one aspect that has not been touched here. Metropolitan Marine, as the designated representative of 27 members in collective bargaining, represents the employers as to labor relations and other Port matters. The desire to promote harmonious industrial relations serves the goal of providing dependable service to the public at large.

When one examines the Commission's request for IPSIG -- the expression of interest and the statement of qualifications -- the Commission has identified the following duty: provide monitoring services, oversee the operations of stevedoring companies, ensure compliance with relevant laws and regulations, establish and maintain internal controls, examine the operations of stevedoring companies regarding hiring practices or other malfeasance. The identification of these duties, together with the identified expertise sought in an IPSIG, evinces a plan and design to invade the collective bargaining relationship.

In establishing the Commission, the state legislatures recognized and clearly intended to preserve what had become the national policy of promoting collective bargaining. Accordingly, the Commission-enabling legislation included Article V (*sic*), which does not limit collective bargaining; and provides, in essence, that, wherever possible, the compact is to be interpreted to protect the sanctity of the bargaining relationship of the parties and their authority to bargain collectively. It has also been construed to include a proviso that, wherever possible, the compact should

be construed or applied as consistent with the effective collective bargaining agreement.

Plainly, in establishing the Commission, there was no intent by the Legislature for the Commission to impose, in a manner that was incompatible -- excuse me, to operate in a manner that was incompatible with established national labor policy. What the Legislature ordained is now being sought to be undone by the unilateral and unauthorized action of the Commission. This attempted unauthorized action will, in my opinion, destabilize the Port, disrupt productivity, increase stress on the labor/management relationship, and retard morale at a critical time in the development of Port. Thus, the existence of such an intrusion into the collective bargaining relationship will have a chilling effect on the rights inherent in the essence of collective bargaining.

The collective bargaining agreements may certainly regulate and restrict, in some measure, the exercise of managerial functions, but the employers have the obligation of hiring and firing, paying and promoting, supervising and planning -- all within the confines of the law and the collective bargaining agreement. If one purpose of Metro is to represent the members, and a second purpose is to promote a harmonious relationship between the employers and employees, Metropolitan Marine bears a heavy responsibility to assure that all unlawful intrusion that adversely affects the collective bargaining are legally prevented.

If Metropolitan Marine is to be successful in representing its members and in achieving the identified goals, it must be firm in the planning, functioning, and executing of its policies and promises, whether they are policies of Metropolitan Marine or the promises agreed to by

Metropolitan Marine through collective bargaining. The intrusion of a third party, such as the Waterfront Commission, into the collective bargaining relationship and environment contaminates the process, in direct contravention of the legislative mandate. The creation of the IPSIG process is a direct attempt to control and change the terms and conditions of employment in the Port, and nullify the negotiated rights and responsibilities contained in the collective bargaining agreement. The bargaining process cannot be subject to the discretion of an imposed stranger to the operations of the Port.

In conclusion, the essence of the issue before us is really quite simple. On the one hand, the Commission seeks to initiate unauthorized, unilateral actions to expand its authority without checks or balances; and impose additional, virtually unlimited administrative costs on the Port. Yet, the Inspector General's report of 2009 and the Commission's Annual Report recites, chapter and verse, the ineffectiveness of the prior Commission staff for much of the past decade in fulfilling its mandate; and chronicles how the Commission has squandered significant portions of up to \$100 million in Port employee funding. The Commission's annual report claims sweeping changes have been made in one year, but one year of restructuring hardly constitutes sufficient evidence of enduring effectiveness in its mission.

After this violation of the public trust and waste of money, the public and Port are owed more than self-serving proclamations of success, and calls for more authority and another layer of government cost via an IPSIG. Let the Commission first demonstrate that its restructuring has achieved successes that are real and durable.

We urge this Committee to contact the Governor to express its disapproval with the acts of the Waterfront Commission in seeking to impose an IPSIG program on stevedoring companies without legislative authority, and to recommend that the Commission abandon this course.

SENATOR LESNIAK: You reminded me of something. This Legislature, I believe, unanimously passed legislation -- we're waiting on New York to approve it as well -- which restricted the authority of the Waterfront Commission in terms of hiring practices. Despite that clear intent of the New Jersey Legislature to do that, they are now attempting to expand their authority. Is that accurate?

MR. BROWN: That's correct.

SENATOR LESNIAK: Senator Codey.

SENATOR CODEY: I want to make it clear that -- and I think my colleagues would agree -- that we want to make sure there is no corruption there either. Nobody wants that.

MR. BROWN: So do we.

SENATOR CODEY: So there is a role there for them, because it needs it. It's as simple as that. You read some of the recent reports -- they're being true -- they have to do their job. Have they gone a little too far? Yes. But there is a happy medium here somewhere, certainly. And that has to be reached so we can make sure that the corruption that everybody thinks is on the waterfront, from the image, is not there. That's they're job. But at the same time, we have to make sure the Port thrives. And that's what's important.

SENATOR LESNIAK: Senator, I'm not going to disagree with that. I do want to point out the fact that I believe-- And I know you didn't

intend to say that, nor did you likely say that. The waterfront now, and the businesses operating on the waterfront now, are no different than any other business. They're no different than a pharmaceutical company, they're no different than a construction company. They're a legitimate business that is carrying a burden of the '50s with them that no longer exists. And we do have law enforcement capabilities to oversee this industry, just like any other industry; and as I know, you want to make sure happens.

Thank you.

MR. BROWN: I would like to add that Metropolitan Marine sees definite value in the Waterfront Commission to eliminate corrupt practices, organized crime influences. We totally support that. Our point is that we think the new Commission, after all of its reorganization, demonstrates that it can effectively accomplish its mission within its existing budget of \$11 million. At that point, if more is needed, I think the industry would be willing to sit down and retain them.

SENATOR LESNIAK: Thank you.

Any questions from the members? (no response)

Thank you.

MR. BROWN: Thank you.

SENATOR LESNIAK: Tom Leonardis, ILA Local 1235.

No?

T H O M A S A . L E O N A R D I S J R .: I'm here.

SENATOR LESNIAK: You have to move faster than that.
(laughter)

MR. LEONARDIS: Good morning, Mr. Chairman, Madam Vice Chairwoman, members of the Committee.

SENATOR LESNIAK: Good morning.

MR. LEONARDIS: Thank you for having us here today.

I'm going to kind of hesitate a little bit because I'm waiting for something to come inside. It will be here any second.

Several days ago we all stood in the shadow of the Bayonne Bridge. Members of this very Committee were there along with the members of the industry. And the Governor recognized the Bayonne Bridge as the largest obstacle to economic growth in the Port and North Jersey. That was the first problem.

The second obstacle--

(State Trooper approaches witness with a hook)

SENATOR LESNIAK: I was worried. (laughter)

MR. LEONARDIS: I'll get to that in a second.

SENATOR CODEY: I thought he was going to walk you out.

SENATOR KYRILLOS: Mr. Chairman, I didn't realize things were that rough on the waterfront.

MR. LEONARDIS: I tested your security in the building, and it works very well. (laughter)

The next biggest obstacle to growth, and economic growth, and growth in the Port business itself is probably the Waterfront Commission.

In 1953 -- and this is where the hook comes in -- in 1953, this was the tool of the trade. If you came to work and you didn't have your hook, you didn't go to work. And this was a necessary tool to do the business.

Well, in 1953, the Waterfront Commission may have been a necessary tool to get the job done that it needed to do. But the same as this hook, it has outdone its usefulness.

SENATOR KYRILLOS: What did the hook do?

Could there be an explanation, Mr. Chairman.

SENATOR CODEY: He's a Republican. He wouldn't understand that. (laughter)

SENATOR KYRILLOS: I've used it for bails of hay.

SENATOR CODEY: On the estate. (laughter)

MR. LEONARDIS: And, Senator, that's what it would have been used for: to handle bails in the hull of the ship and other cargo -- rubber and such cargo.

And over the years, the dynamics of the Port and the dynamics of society itself have changed. And yet the Waterfront Commission still seems to live in 1953. The rules and regulations in which they're allowed to even function are somewhat archaic in that, at one time, all the cargo that passed through the Port-- And remember, in 1953 and in the '60s there were finger piers up and down the East Side or West Side of Manhattan, all up and down the Hudson River. All cargo was handled right on the pier. Today, all we do is handle the containers. That cargo passes through our hands and goes out of the gate. That cargo is handled miles and miles away from the Port itself.

The rules that govern -- or the rules that the Waterfront works under, as I said, are archaic. And I can give you a couple of examples where there are companies who have an operation within the Port Authority's port boundaries, and they have to be under a Waterfront license. That same

company can do the same type of work two miles away in the City of Newark, and they don't have to be under the Waterfront rules and regulations.

So there are a number of problems. I would believe that you have to either expand the authority of the Waterfront Commission so that it covers all the cargo and where it's handled, into all communities and all areas, or you would have to maybe take some of the -- to agree with some of what Joe Curto said: Take some of the mechanisms that are in place and that were put in place by the Waterfront over the years, turn them over maybe to another agency or just redefine them within that agency. And then we can move on.

But basically, as we have changed, society has changed, and the Port has changed -- and we're into containerization and globalization, which you can thank longshoremen here in the Port of Newark. The first container ship which sailed out of the Port of Newark in 1956 -- it has been credited with creating globalization. So we've come a long way, but I don't think the Waterfront has. I think the Waterfront is still living in 1953. And as this hook has outlived its usefulness, I think so has the Waterfront Commission.

Thank you very much.

SENATOR LESNIAK: I have one question. Do you know what city handles the most containers of any other city in the world?

MR. LEONARDIS: I believe it would be Rotterdam.

SENATOR LESNIAK: It's not Elizabeth? (laughter)

MR. LEONARDIS: No. It should be.

SENATOR CODEY: Don't ask a question you don't want the answer to.

SENATOR LESNIAK: We're close, aren't we?

MR. LEONARDIS: Actually, in the United States, Long Beach and L.A. are number one. We are the largest and busiest port on the East Coast.

SENATOR LESNIAK: Okay. On the East Coast, what city would be? (laughter)

MR. LEONARDIS: On the East Coast?

SENATOR CODEY: In Union County.

MR. LEONARDIS: Not just the East Coast of the United States, but the East Coast of both Americas, actually. And I believe that we can be the number one port. We are the number one port by our own virtue. But I think in volume we could be the number one port in this country, without a doubt.

SENATOR LESNIAK: Any questions from the Committee members? (no response)

Thank you very much for your testimony.

MR. LEONARDIS: Thank you. Have a great day.

SENATOR LESNIAK: You can give the Trooper back the hook.

Thank you, Trooper.

Now we have a panel from the Waterfront Commission. We have a whole bunch of names. However you guys want to present your testimony, please feel free.

SENATOR CODEY: Bring up chairs.

SENATOR LESNIAK: If you want to all come up at once, whatever you want.

B A R R Y E V E N C H I C K: Good morning, Mr. Chairman and members of the Committee.

SENATOR CODEY: Move it over a little bit, Barry. (referring to PA microphone)

MR. EVENCHICK: Thank you for extending this opportunity to us to be here today and to hopefully respond meaningfully to what Mr. Curto, Mr. Daggett, and others have had to say today about IPSIGs.

Before we endeavor to do that, I have the pleasure of introducing formally my colleagues on the Waterfront Commission. First, my friend and colleague from New York -- the New York Waterfront Commission, Mr. Ronald Goldstock, to my left. To my immediate left is our Executive Director, Mr. Walter Arsenault. And seated in the first row behind us -- our General Counsel, Ms. Phoebe Sorial; and the Director of our Division of Law, Mr. Jeffrey Schoen.

We have determined among ourselves, with your permission, that we would ask Mr. Arsenault first to respond to what has been said here this morning.

W A L T E R M. A R S E N A U L T: Good morning, Senators.

I appreciate the opportunity to testify before you.

First of all, there's a fundamental misunderstanding here by the Committee. We are not requiring all stevedores to take IPSIGs. Among the--

SENATOR LESNIAK: Excuse me, there's no misunderstanding. This Committee, you're talking about?

MR. ARSENAULT: That's what the-- The Committee says that we are requiring to take IPSIGs -- stevedores to take IPSIGs. We are not.

SENATOR CODEY: What paper -- what document do you have?

MR. ARSENAULT: The notice that I received reads, "Proposal to require stevedoring companies to retain Independent Private Sector Inspector Generals.

SENATOR LESNIAK: It doesn't say *all*.

MR. ARSENAULT: All right, fine. But to *require*. We're not requiring stevedoring companies to take IPSIGs.

Let me explain to you: In the Inspector General's report last year, among the many justified criticisms that they had of the Waterfront Commission is that it failed to permanently license any stevedoring company. Under the compact, the Waterfront Commission is to determine the good character and integrity of any stevedore company operating in the Port of New York. The old Waterfront Commission was unable or unwilling to do that, and so everyone in the Port of New York operated under a temporary permit.

We are statutorily required to examine the good character and integrity of companies operating in the Port, and we are seeking to do that now. We have revamped our stevedoring application, modeling it after the questionnaires used by the New Jersey Division of Gaming Enforcement; the New York City Trade Waste Commission, which is now the Business Integrity Commission; the New York City Department of Investigation; and

other regulatory government agencies, in order to determine the good character and integrity of the companies operating in the Port of New York.

The process from there is as follows: It's reviewed by the members of the Commission. If we believe that the company does not possess the requisite good character and integrity, we then issue a notice of hearing. The company, at that point, has the ability to determine whether they want to go to a hearing. We have administrative law judges and conduct full-blown hearings with witnesses. They often last for days. If there is an adverse finding by the judge, it doesn't end there. The judge will make a recommendation to the two Commissioners. The stevedoring company then has the ability to appeal, in person, to the Commissioners and to present whatever evidence they want. Then, under the statutory framework -- again assuming there is an adverse ruling by the Commissioners -- they have the opportunity to go, by Article 78, to the Supreme Court in the state of New York or to take an appeal directly to the Appellate Division in the State of New Jersey. If they lose that, then the company then loses the ability to operate in the Port of New York.

The IPSIG program is an attempt to prevent companies from being shut down. If there is a company that has problems, rather than go through that procedure and have that company close because it will not have a valid license, they can accept an IPSIG of their choosing from our list of qualified people in order that they meet the standards of good character and integrity.

The other alternative is to shut them down, and you lose them completely. This is a way of keeping that company functioning and keeping those jobs in place. And they have the opportunity, when we make our

initial finding -- if we do make such a finding that they lack good character and integrity -- they can go and have the hearing, or they can request and accept an IPSIG. If they lose the hearing, they have the opportunity to appeal it to the Commissioners, or they can accept an IPSIG. If they lose with the Commissioners, they have the opportunity to accept an IPSIG or to appeal it to the courts in the states of New York and New Jersey. And even after they lose that hearing -- rather than close down the company, we want to give those companies an opportunity to continue to employ people in the Port of New York, and we're willing to offer them an IPSIG program.

I was the First Deputy Commissioner in the New York City Department of Investigation. I oversaw New York City's IPSIG program. Thousands, and thousands, and thousands of companies do business with the City of New York. At our highest point, we had 12 companies under IPSIG monitoring. That's out of thousands, maybe even hundreds of thousands of companies that do business with the City. This is not something that is imposed lightly.

The Port Authority requires companies to take IPSIGs when they have problems about their good character and integrity. The U.S. Attorney's Office in Newark has required companies to take IPSIGs when they have questions about the company's good character and integrity. The Attorney General's Office has required companies to take IPSIGs when they have questions about good character and integrity. It's a standard law enforcement practice.

And when you get down to it, the basic rationale for it is to save jobs. It would be very easy to say, "You're not getting licensed. We're closing you down." And then what do we have, 600 people out of work,

1,000 people out of work? This is a way to keep companies working while everyone can be assured that they are, in fact, working up to the standards required by our statutory mandate.

SENATOR LESNIAK: So you believe that you and the Commission know more about saving jobs and creating jobs than the employers and employees themselves? You know better?

MR. ARSENAULT: Senator, I am trying to save jobs. It is our statutory mandate to decide whether or not a company has good character and integrity. It's reviewed by an administrative judge, it's reviewed by the Commissioners, and then it's ruled by either -- it's reviewed by either the Appellate Division or the Supreme Court in the state of New York. Rather than have that company close and lose those jobs--

SENATOR LESNIAK: I heard what you said.

Go ahead.

MR. ARSENAULT: And just to address a couple of other points--

SENATOR LESNIAK: You didn't answer my question. You do feel that you have -- are in a better position to save jobs than the employers and employees themselves.

MR. ARSENAULT: If it's the choice between closing a company with 600 people because we're not granting them the license or getting an IPSIG, absolutely. I have no hesitation in saying that.

SENATOR LESNIAK: That's what I thought you would say.

R O N A L D G O L D S T O C K: Well, I think, also, in fairness, Joe Curto -- who I thought testified very reasonably and rationally except with the point that it seemed like he was saying we were going to require IPSIGs

rather than giving companies the alternatives -- testified under oath in New York recently. And he believes that the mission and responsibilities of the Waterfront Commission should be the licensing of longshore industries and workers. And they support that wholeheartedly. And he testified to that again today, as did other members of the industry.

So I think everybody believes that that is needed and necessary. And the IPSIG program is one way-- And I think there is just a general misunderstanding here. And if people understood what we were trying to do, there wouldn't be a problem, and there would probably not be the need for hearings in this case. This just provides a vehicle, I think, for everybody to understand what is occurring.

It is the notion that we have a statutory mandate, we're going to fulfill that mandate for the first time in a decade. What's interesting is, no one was concerned about it when we weren't doing what we were supposed to be doing -- and that is the Waterfront Commission. Now that we are, now that we're taking it seriously, we want to provide a mechanism so that companies that have problems can continue to operate. This is a program that has worked successfully, is working successfully, is used in New York and New Jersey, other states, other countries. This shouldn't really be a problem.

SENATOR LESNIAK: Anyone else have anything to say?

Senator Oroho.

SENATOR OROHO: Just one quick question: With the IPSIG program -- with the 2 percent that gets assessed to everybody -- is it expected that that 2 percent would be able to go down?

MR. ARSENAULT: One of the things that we have been doing-- There are a number of companies that operate in the Port. In fact, one of the warehousemen here today was telling me about it. That should be under the jurisdiction of the Waterfront Commission. For whatever reason, the old Commission never did it. And we are in the process of examining those companies, of licensing. We had one appear before the Commission at a meeting a month ago. We have another one coming this coming Tuesday. We hope by truly assessing the people who should be assessed and who, in the past, have not been assessed, that we would be able to lower the 2 percent.

SENATOR OROHO: I'd be interested to know if there's an analysis that says, "With a successful program, the 2 percent goes to 1 percent, or it goes away," or whatever.

SENATOR LESNIAK: Senator, you make a good point. I would respectfully disagree with your categorization of his testimony. I don't think the testimony was that they should be assessed. The testimony, in my opinion, the way I interpreted it was, why are these people paying when right down the road they're not paying. So the bureaucratic reaction would be, "Make everybody pay," as opposed to, "These other guys shouldn't have to pay."

MR. GOLDSTOCK: I think the notion is that we have to put together a budget. That budget, even though it's not public moneys, is reviewed by the governors of New York and New Jersey. Either one has line item veto. When we get our final budget, the way we do it is to determine how many people are out there, what is the total amount of money

constituting the gross payroll in the Port, and then we divide it up. We take a percentage. The highest we can go is 2 percent.

To the extent that our budget can be reduced because we're more efficient, more effective; and to the extent that there is a greater number of people working at higher salaries, better salaries, the percentage goes down. And so you're right. It is conceivable that as we do our work better and we become more efficient in a way that is dramatically different than the past decade, we can reduce the percentage from 2 down.

SENATOR LESNIAK: How long has the Commission been in operation?

MR. GOLDSTOCK: Since 1953.

SENATOR LESNIAK: How often has the percentage been reduced?

MR. GOLDSTOCK: A number of times.

SENATOR LESNIAK: It has?

MR. GOLDSTOCK: Yes.

SENATOR LESNIAK: When was the last time?

MR. GOLDSTOCK: Well, during the mid--
Jeff, do you know?

J E F F R E Y R. S C H O E N: (speaking from audience) It was at 1.97, 1.92. Over the course of 2000 to 2010, it varied between 1.9 and 2.

SENATOR LESNIAK: By a tenth of a point.

MR. GOLDSTOCK: Yes, 10 percent.

But what I'm saying is, I think it can go down much lower. I mean, this Commission is different than previous Commissions. We really are-- I mean, next month, October--

MR. ARSENAULT: Fourteenth.

MR. GOLDSTOCK: October 14 we're going to be having hearings on no-show and no-work jobs in the Port. I invite any one of you, all of you to attend those hearings. I think you will see there where the money is being spent in this Port. It is not on \$4 per container for the Waterfront Commission. I think you will be stunned by who is earning what for doing virtually no work, or no work.

SENATOR LESNIAK: And is that part of the collective bargaining process?

MR. GOLDSTOCK: We're going to be discussing that at the hearings.

SENATOR LESNIAK: Senator Cunningham.

SENATOR CUNNINGHAM: In that vein, in your report you talk about the disparity in salaries and ethnicity at the Port. And you said that you're going to investigate. And I'm wondering why there is such a disparity, and how long this has been going on, and when you plan to investigate. It says that only 5 percent of licensed peer superintendents are African-American, and only 12 percent are other minorities. Female deep-sea longshoremen earn an average of 35 percent less than their male counterparts. African-American deep-sea longshoremen earn an average of 20 percent less than their white cohorts. And other minorities earn 8.5 percent less than their white cohorts. Why is this?

MR. GOLDSTOCK: This has been a historical issue in the Port. When I came-- I was nominated and then confirmed about two years ago. Shortly thereafter, Walter Arsenault was hired as Executive Director.

And then thereafter, Barry Evenchick was appointed by the New Jersey Governor.

We began, as a group, to start looking at these issues. They had never been looked at before. There were no statistics on it before. It is not in any of the reports.

SENATOR CUNNINGHAM: When did you start getting the statistics.

MR. GOLDSTOCK: We started looking at this two years ago.

When the issue of the revocation of 5P came up in New York -- 5P was the critical feature and is the critical feature in the compact that allows us to regulate the hiring. It had never been used to do so in terms of diversity, in terms of fairness, in terms of equity among race, religion, and ethnicity.

We immediately spoke to people in the New York State Legislature, told them why we believed that 5P was necessary. They agreed with us. We immediately began a process that has begun now to prequalify individuals to determine that they are -- that they represent the communities from which the labor force is from. The hiring, in the future, will come from those communities.

We went over last year and took a look at the people who were being hired and the order in which they were being hired. And we found that a number of people were not going to have enough time in order to reach 700 hours, which would have given them the benefits that they needed. We readjusted, working with the Shipping Association to do that. They have -- and I'm being laudatory here -- continued that this year to make sure that those people who were in range would get the benefits.

We are-- Senator Perkins from New York was very interested in this issue. He came down to the docks. He was taken on a tour by Walter Arsenault. He spoke to the individuals who were working there, asking them what they made, whether they were white or black. We were going to address that issue in the hearings as well. We'll have salary ranges, and you'll see who is earning the salaries they are and who is not earning the salaries they should be earning, and we intend to make a difference in that regard.

I think that if the question was, before, we want to see what the Waterfront Commission does, I think you will be very happy with what the Waterfront Commission is going to do.

SENATOR CUNNINGHAM: I'm sorry. When are you going to start these hearings?

MR. ARSENAULT: October 14.

SENATOR CUNNINGHAM: October 14.

SENATOR LESNIAK: Senator Codey, before you ask your question, I just wanted to mention that this Commission has been in existence since 1953. They're acting as if this is a new commission. These statistics haven't been around since 1953. There are rules and regulations in place that do not recognize reentry programs, training programs that disqualify so many of our--

MR. ARSENAULT: Senator, that's not true.

SENATOR LESNIAK: Don't interrupt me, please. You'll have an opportunity to talk.

MR. ARSENAULT: Thank you.

SENATOR LESNIAK: Senator Codey.

SENATOR CODEY: One of the things that I read was that minorities were 10 times more likely to be turned down for a license than their counterparts. And I would like to know what is the criteria that is used. Is it a simple misdemeanor or something that would be considered somewhat frivolous? Nobody wants somebody working on the ports who has a long rap record, and so forth and so on -- assault and burglary, or whatever. But I'd like to see you gentlemen and ladies find out what the problem is.

MR. ARSENAULT: We had these discussions with Mayor Booker last year. He was under the same misimpression. We went back and looked. Sixty-four percent of the people that we license have criminal records. We are statutorily prohibited from hiring -- or from licensing anyone who has been convicted of certain felonies within five years; forgetting those particular issues, we license -- of the people who we license, 64 percent have criminal records. And I can tell you that both of these Commissioners are both very committed toward reentry programs, and both Commissioners have really changed the policy of the Commission to where we've had longshoremen, or pier superintendents, or whoever who have had their licenses revoked for drug problems, and then who go through rehabilitation programs. And they have restored their licenses, which is very different from the Commission in the past. So this Commission is very committed toward reentry. We license-- Sixty-four percent of the people that we've licensed in the past year have had criminal records. And we look very closely, and it's not an automatic knee-jerk reaction. Absolutely not.

MR. GOLDSTOCK: I am past president of the ABA Criminal Justice Section and still an officer there. The major focus of what we are

doing -- in fact, we're having a CLE next week on it -- is reentry. I am totally committed to it. I know Barry Evenchick, the New Jersey Commissioner, is totally committed to it. This is not an issue.

SENATOR LESNIAK: Well, it's nice to see after 55 years it's not.

Any questions?

SENATOR KYRILLOS: Chair.

I perhaps should ask this question of one of the industry folks, but you can answer this. In other jurisdictions, who fulfills the role that you perform: the licensing role -- perhaps not the investigatory side.

MR. ARSENAULT: The short answer is: no one.

SENATOR KYRILLOS: No one handles licensing or enabling of business and industry anywhere?

MR. GOLDSTOCK: Are you talking about the waterfront industry, or are you talking about in general?

SENATOR CODEY: Other ports.

SENATOR KYRILLOS: Other ports.

MR. GOLDSTOCK: Ports.

SENATOR KYRILLOS: Other ports in the country or the world. I mean, what kinds of entities-- Do you ever communicate with colleagues who handle similar chores that you do?

MR. ARSENAULT: We talk with--

SENATOR KYRILLOS: We're now melting, Mr. Chairman, into a more general question and discussion, with your permission.

But since you're here, it's timely and efficient that I ask that question.

MR. ARSENAULT: We've spoken with a number of other ports. A number of ports have designated port police. And they're, quite frankly, envious of the statutory powers that the Waterfront Commission has and wish that they had those similar powers. They find themselves hamstrung in fighting organized crime on the waterfront because they don't have subpoena power like we do. They don't have the power to have hearings like we do. They don't have the power to revoke people's licenses like we do.

SENATOR KYRILLOS: And those police agencies are associated with what kinds of bodies, for example, in Long Beach, California? Is it the state police, attorney general?

MR. ARSENAULT: In Baltimore, they have a Port Police Department. I guess it would be akin to the Port Authority Police. It's established by the Port of Baltimore, and it's their own police department.

SENATOR KYRILLOS: You said they were envious of you.

MR. ARSENAULT: Correct.

SENATOR LESNIAK: Obviously the body politic is not, because they would have instituted it if they were.

SENATOR KYRILLOS: They're envious because they see wrongdoing that they can't get to that you can get to?

MR. ARSENAULT: For instance, we have the ability, which we've used four times this year -- and we just charged another hiring agent -- with removing people from the waterfront who associate with members of organized crime. They don't have that ability. They can have someone who has an open and notorious relationship with a member of organized crime, and there isn't anything they can do about it.

SENATOR KYRILLOS: So how would you characterize the level of so-called *organized crime* at the waterfront today? That's why you exist, right?

MR. ARSENAULT: I think the best way to characterize it--

SENATOR KYRILLOS: Is it higher, lower than people think? Is it disproportionate to other parts of the economy or society?

MR. ARSENAULT: Well, let me put it to you this way, Senator. Number one, there is a civil RICO still pending, filed by the Federal government, that alleges the ILA, in partnership with the Genovese and the Gambino family, run the Port of New York. That's still pending.

This past year, Michael Coppola, who is a capo in the Genovese family, was convicted of 35 years of control of Local 1235. Todo Anastasio, a soldier in the Genovese family, was convicted for extortion of the locals in New York. Local 1855 is still on a Federal monitorship because that union has been corrupt for decades. We testified in front of Senator Perkin's committee about a year ago -- a little less than a year ago. And when I said there was still organized crime in the Port, there were members of the ILA who were yelling (expletive deleted). Well, one of those people is now under arrest for extortion. The Vice President of 1478, the Atlantic Coast District Vice President of the ILA, Nunzio LaGrasso, was arrested by Waterfront Police and by the New Jersey Attorney General's Office, Organized Crime Squad, and has been charged with extortion.

There are investigations underway that we are participating in with the New York Attorney General, the New Jersey Attorney General, the Eastern District U.S. Attorney's Office, the Southern District U.S. Attorney's Office, the Newark U.S. Attorney's Office, the FBI, and the

Department of Labor, among others. And I will tell you, I will represent to you before a year has gone by, you will see further indictments in this court of organized crime influence.

SENATOR LESNIAK: But there's no organized crime in the Port of Baltimore?

MR. ARSENAULT: Oh, there absolutely is. And, again, this is a perfect example.

John Shade, who was the ILA Executive Vice President for the Atlantic Coast district-- He was an official in the Port of Baltimore for years, and years, and years in the ILA. He has multiple Federal and state convictions for racketeering and gambling.

SENATOR LESNIAK: That's in Baltimore.

MR. ARSENAULT: That's in Baltimore.

SENATOR LESNIAK: Without a Waterfront Commission?

MR. ARSENAULT: Without a Waterfront Commission.

SENATOR LESNIAK: So they had no problem doing that investigation.

MR. ARSENAULT: And he was still-- But, Senator, the important part was, he was still an ILA Executive Vice President for the Atlantic Coast Division, still making decisions in the Port of New York, in the Port of Baltimore, from Florida to Nova Scotia. That's the Atlantic Coast Division. Because we have Section 8 powers, we were able to force the ILA to take him off their Executive Board. The Port of Baltimore can't remove him from an ILA local, despite his convictions. We can, because we have Section 8 powers. I don't want someone who is a multiple-convicted racketeering (*sic*) -- making decisions for the Port of New York. And that's

why the Waterfront Commission is valuable. We were able to do that. And that's a perfect example. I'm glad you reminded me of it. That's a perfect example of why we need the Waterfront Commission.

SENATOR LESNIAK: So Baltimore needs a Waterfront Commission.

MR. ARSENAULT: I would recommend it heartedly.

MR. GOLDSTOCK: Although, let's be fair on this. I mean, New York and New Jersey can be proud of lots of things, but it's also got the biggest *this*, the biggest *this*. We have the most organized crime, the most number of families, the most activity in New York. We have special problems.

You raised before the question of: Does any other industry have regulation? And you pointed out yourself that there is regulation in the carding industry historically controlled by organized crime. There is in casino gambling.

SENATOR LESNIAK: And regulation that we have lessened, as the need for that regulation has lessened. So are you suggesting that the influence of organized crime is now worse or as bad as it was in the '50s in the industry?

MR. GOLDSTOCK: Well, organized crime itself--

SENATOR LESNIAK: In this industry now compared to the '50s.

MR. GOLDSTOCK: In this industry, the La Cosa Nostra is -- La Cosa Nostra as a whole has less influence. They've been dramatically hurt by law enforcement and by sociological changes.

If there is one industry in which they are still powerful, it is the waterfront as opposed to, for example, their control of the carding industry, their influence in the construction industry, their influence in the fish market.

SENATOR LESNIAK: So you guys have had little impact over the last 50 years on organized crime influence.

MR. GOLDSTOCK: There has been, over time, in the history of the Waterfront Commission, periods in which they have had influence. Unfortunately, in the last decade -- has been a period of inertia, it has been a period of lethargy, of inaction, and that was the subject of the New York State Inspector General's report. It was well-deserved. We were brought in to fix it. We are fixing it. It is dramatically different now. And as Walter represented one thing to you before, I will represent something else today: You will be very happy with what we are doing and how we are going to help the Port, not hinder it.

SENATOR LESNIAK: You're there to help us.

Anything else? Any other questions? (no response)

Thank you.

MR. EVENCHICK: Thank you.

SENATOR LESNIAK: Anyone else willing to testify? (no response)

Meeting is adjourned.

(HEARING CONCLUDED)

APPENDIX

**BEFORE THE
NEW JERSEY STATE SENATE
COMMERCE AND ECONOMIC GROWTH COMMITTEES**

**TESTIMONY OF
JOSEPH CURTO, PRESIDENT, NEW YORK SHIPPING ASSOCIATION,
INC.**

STATE HOUSE, TRENTON, NEW JERSEY

SEPTEMBER 23, 2010

MY NAME IS JOSEPH CURTO. I AM THE PRESIDENT OF THE NEW YORK SHIPPING ASSOCIATION, INC. (NYSA), AN ASSOCIATION OF MARINE TERMINAL OPERATORS, STEVEDORING COMPANIES, AND OCEAN CARRIERS ENGAGED IN INTERNATIONAL TRADE AND COMMERCE IN THE PORT OF NEW YORK AND NEW JERSEY. NYSA NEGOTIATES AND ADMINISTERS COLLECTIVE BARGAINING AGREEMENTS ESTABLISHING THE TERMS AND CONDITIONS OF

EMPLOYMENT OF LONGSHORE WORKERS REPRESENTED BY THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, AND PORT SECURITY OFFICERS REPRESENTED BY THE PORT POLICE AND GUARDS UNION LOCAL 1456. NYSA ADMINISTERS THESE LABOR CONTRACTS ON BEHALF OF MARINE TERMINAL OPERATORS AND STEVEDORING COMPANIES THAT EMPLOY THESE 4,000 WORKERS WHO ARE REQUIRED TO BE LICENSED BY THE WATERFRONT COMMISSION IN ORDER TO ENGAGE IN THEIR CHOSEN OCCUPATION.

NYSA'S MEMBERS ARE ENGAGED IN THE OPERATION OF AN ECONOMIC ENGINE THAT IN 2008 SUPPORTED 165,000 DIRECT JOBS AND ACCOUNTED FOR 270,000 TOTAL JOBS IN THE REGION AND WAS RESPONSIBLE FOR GENERATING MORE THAN \$11.2 BILLION IN PERSONAL INCOME, NEARLY \$36.1 BILLION IN BUSINESS INCOME, AND OVER \$5 BILLION IN FEDERAL, STATE, AND LOCAL TAX REVENUES.

I APPEAR BEFORE YOU TODAY TO ALERT THIS COMMITTEE TO THE UNAUTHORIZED ATTEMPT BY THE WATERFRONT COMMISSION OF NEW YORK HARBOR TO IMPOSE AN INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL (IPSIG) PROGRAM ON THESE MARINE TERMINAL OPERATORS AND STEVEDORING COMPANIES. MY

TESTIMONY IS BASED UPON MY 40 YEARS OF EXPERIENCE IN THE MARINE-CARGO-HANDLING INDUSTRY AND MY EXTENSIVE KNOWLEDGE OF MARINE-TERMINAL OPERATIONS, LABOR RELATIONS, AND THE REGULATORY ISSUES AFFECTING PORT FACILITIES NOT ONLY IN THE PORT OF NEW YORK AND NEW JERSEY BUT ALSO IN PORTS THROUGHOUT THE NATION. COPIES OF MY BIOGRAPHY AND BACKGROUND INFORMATION ON THE NYSA ARE ATTACHED TO THIS WRITTEN TESTIMONY FOR YOUR CONSIDERATION.

AS PRESIDENT OF NYSA, I REGULARLY MEET WITH THE WATERFRONT COMMISSION TO DISCUSS ISSUES RELATING TO THE COMMISSION'S ROLE IN REGULATING THE EMPLOYMENT OF WORKERS EMPLOYED BY NYSA MEMBERS. WHILE THE WATERFRONT COMMISSION'S ENABLING STATUTE, THE WATERFRONT COMMISSION ACT, REQUIRES THE COMMISSION "TO ADVISE AND CONSULT WITH REPRESENTATIVES OF LABOR AND INDUSTRY AND WITH THE PUBLIC OFFICIALS AND AGENCIES CONCERNED WITH THE EFFECTUATION OF THE PURPOSES OF [THE] COMPACT,"¹ THE COMMISSION DID NOT CONSULT WITH NYSA PRIOR TO ANNOUNCING

¹ See N.J. STAT. ANN. § 32:23-10 (12).

ITS IPSIG PROGRAM. HAD THE COMMISSION DONE SO, IT WOULD HAVE LEARNED THAT NYSA'S MEMBERS OPPOSE THE IMPOSITION OF SUCH A PROGRAM AND BELIEVE IT IS AN IMPERMISSIBLE EXERCISE OF AGENCY POWER THAT IS NOT AUTHORIZED BY THE WATERFRONT COMMISSION ACT.

NYSA'S MEMBERS ARE NOT CRIMINALS BUT ARE LEGITIMATE BUSINESS ENTITIES THAT ARE ALREADY OVERLY REGULATED

THE COMPANIES RESPONSIBLE FOR DELIVERING THE PROSPERITY THAT THE PORT OF NEW YORK AND NEW JERSEY PROVIDES TO THE STATES OF NEW JERSEY AND NEW YORK ARE LEGITIMATE BUSINESS CONCERNS WHICH IN RECENT YEARS HAVE INVESTED BILLIONS OF DOLLARS IN THIS PORT. WITHIN THE PAST FIVE YEARS, FOUR OF THE SIX CONTAINER TERMINAL OPERATIONS IN THE PORT WERE SOLD IN FINANCIAL TRANSACTIONS WITH PRICE TAGS IN THE BILLIONS OF DOLLARS. FIVE OF THESE TERMINALS ARE NOW OWNED BY HUGE MULTI-NATIONAL CORPORATIONS. THE PURCHASERS OF THESE OPERATIONS ARE SOPHISTICATED FINANCIAL CONCERNS. AT LEAST TWO OF THEM WERE SUBJECT TO A REVIEW OF THEIR PURCHASES

BY THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS), WHICH IS THE INTER-AGENCY COMMITTEE OF THE UNITED STATES GOVERNMENT THAT REVIEWS THE NATIONAL SECURITY IMPLICATIONS OF FOREIGN INVESTMENTS OF UNITED STATES COMPANIES OR OPERATIONS. THE COMMITTEE IS CHAIRED BY THE SECRETARY OF THE TREASURY AND INCLUDES REPRESENTATIVES FROM SIXTEEN UNITED STATES DEPARTMENTS AND AGENCIES, INCLUDING THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF STATE, THE DEPARTMENT OF COMMERCE, AND THE DEPARTMENT OF HOMELAND SECURITY.

NYSA'S MEMBERS ARE HIGHLY REGULATED ENTITIES. IN ADDITION TO THE WATERFRONT COMMISSION AND THE COAST GUARD, CUSTOMS AND BORDER PROTECTION AGENCY, MARINE TERMINAL OPERATORS AND STEVEDORING COMPANIES IN THE PORT OF NEW YORK AND NEW JERSEY ARE ALSO SUBJECT TO THE JURISDICTION OF A MYRIAD OF OTHER FEDERAL, STATE, AND LOCAL AGENCIES. THE FEDERAL AGENCIES ALONE INCLUDE THE NATIONAL LABOR RELATIONS BOARD, THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, THE DEPARTMENT OF LABOR, THE FEDERAL MARITIME COMMISSION, THE EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION, THE ENVIRONMENTAL PROTECTION AGENCY, THE DEPARTMENT OF TRANSPORTATION, AND THE FOOD AND DRUG ADMINISTRATION. MOREOVER, MARINE TERMINALS ARE SUBJECT TO THE LAW ENFORCEMENT JURISDICTION OF THE FEDERAL BUREAU OF INVESTIGATION, THE WATERFRONT COMMISSION POLICE, THE PORT AUTHORITY POLICE, THE NEW JERSEY STATE POLICE, THE NEW YORK STATE POLICE, AND DEPENDING ON THE PARTICULAR LOCATION OF THE FACILITY, THE POLICE DEPARTMENTS OF THE CITIES OF NEW YORK, NEWARK, ELIZABETH, BAYONNE, AND JERSEY CITY.

IF EVERY ONE OF THESE GOVERNMENT BODIES WERE TO PUT INTO EFFECT AN IPSIG PROGRAM, NYSA'S MEMBERS WOULD HAVE MORE IPSIGS THAN EMPLOYEES.

THE COMMISSION'S IPSIG PROGRAM WILL ADD TO THE COSTS OF DOING BUSINESS IN THE PORT

NYSA AND ITS MEMBERS BEAR THE COSTS OF THE TELECOMMUNICATIONS HIRING SYSTEM THAT PERMITS THE WATERFRONT COMMISSION TO CARRY OUT ITS STATUTORY MANDATE TO MONITOR THE EMPLOYMENT OF WATERFRONT

WORKERS. IN ADDITION, NYSA AND ITS MEMBERS FUND THE OPERATING BUDGET OF THE WATERFRONT COMMISSION THROUGH AN ASSESSMENT ON THE GROSS WAGES PAID TO EMPLOYEES LICENSED BY THE COMMISSION. BY STATUTE THIS ASSESSMENT CANNOT BE IN EXCESS OF 2% OF THE GROSS WAGES PAID. THIS ASSESSMENT RAISES APPROXIMATELY \$11 MILLION PER YEAR TO SUPPORT THE OPERATIONS OF THE COMMISSION — A COST THAT ADDS AN ADDITIONAL \$4.00 TO THE COST OF HANDLING A CONTAINER IN THE PORT OF NEW YORK AND NEW JERSEY. THUS, IN A VERY COMPETITIVE BUSINESS ENVIRONMENT THE COSTS OF THE TERMINAL OPERATORS AND STEVEDORING COMPANIES IN THE PORT OF NEW YORK AND NEW JERSEY ARE AT A MINIMUM \$4.00 HIGHER PER CONTAINER THAN THE COSTS BORNE BY THEIR COMPETITORS IN OTHER PORTS. THE REASON I SAY “AT A MINIMUM” IS BECAUSE THE 2% ASSESSMENT IS NOT THE ONLY COSTS ATTRIBUTABLE TO COMPLIANCE WITH COMMISSION MANDATES. THE INDIVIDUAL COMPANIES SUBJECT TO THE COMMISSION’S JURISDICTION COLLECTIVELY INCUR MILLIONS OF DOLLARS IN PROFESSIONAL-SERVICE FEES TO HANDLE LICENSING AND COMMISSION COMPLIANCE. NOW THESE COMPANIES WILL BE FACED WITH

ADDITIONAL COSTS ATTENDANT WITH THE COMMISSION'S CONTEMPLATED IPSIG PROGRAM THAT THEIR COMPETITORS IN OTHER PORTS WILL NOT INCUR IF THIS PROGRAM IS NOT ABANDONED. THESE ADDITIONAL ASSESSMENTS ARE FISCALLY IMPRUDENT AS THEY WILL INCREASE THE COSTS OF DOING BUSINESS IN THE PORT AND LEGALLY IMPERMISSIBLE AS THEY ARE NOT AUTHORIZED UNDER THE WATERFRONT COMMISSION ACT.

THE COMMISSION IS REGULATING BEYOND ITS MANDATE

THE WATERFRONT COMMISSION IS A BI-STATE INSTRUMENTALITY CREATED BY AN INTERSTATE COMPACT BETWEEN THE STATES OF NEW JERSEY AND NEW YORK THAT WAS APPROVED BY AN ACT OF THE CONGRESS OF THE UNITED STATES IN 1953. ONE OF THE COMMISSION'S FUNCTIONS IS TO INVESTIGATE AND LICENSE STEVEDORING COMPANIES THAT EMPLOY LONGSHORE WORKERS. IN ANNOUNCING ITS IPSIG PROGRAM AND SEEKING EXPRESSIONS OF INTEREST AND STATEMENTS OF QUALIFICATIONS FROM APPLICANTS INTERESTED IN ACTING AS IPSIGS FOR STEVEDORING COMPANIES, THE COMMISSION STATED:

THE IPSIG WILL ESTABLISH AND MAINTAIN
INTERNAL CONTROLS DESIGNED TO DETER

UNETHICAL OR ILLEGAL CONDUCT, AND WILL REPORT ANY UNETHICAL OR ILLEGAL CONDUCT OBSERVED BY THE COMMISSION. THE IPSIG WILL EXAMINE THE OPERATIONS OF STEVEDORING COMPANIES TO ENSURE THAT THEY RUN EFFECTIVELY WITHOUT FRAUD, CRIMINAL INFLUENCE, IMPROPER ACCOUNTING AND/OR HIRING PRACTICES, OR THEIR MALFEASANCE. THE COMMISSION MAY REQUIRE A STEVEDORING COMPANY TO RETAIN AN IPSIG PURSUANT TO A RESPONSIBILITY AGREEMENT OR STIPULATION WITH THE COMMISSION, IN ORDER FOR THAT STEVEDORING COMPANY TO CONTINUE TO OPERATE IN THE PORT. UPON SELECTION BY THE COMMISSION, THE IPSIG WILL BE HIRED BY THE STEVEDORING COMPANY BUT WILL REPORT DIRECTLY TO THE COMMISSION, WITH THE STEVEDORING COMPANY RETAINING

RESPONSIBILITY FOR PAYMENT OF IPSIG'S
SERVICES.

IN THE ANNOUNCEMENT OF ITS IPSIG PROGRAM, THE WATERFRONT COMMISSION HAS NOT PROVIDED A SINGLE CITATION TO A PROVISION IN THE WATERFRONT COMMISSION ACT THAT EMPOWERS IT TO IMPLEMENT THE PROGRAM. THE REASON IS CLEAR: NOTHING IN THE WATERFRONT COMMISSION ACT AUTHORIZES THE COMMISSION TO IMPOSE AN IPSIG PROGRAM. INDEED, THE STATUTE PROHIBITS SUCH A MANDATE BECAUSE IT WOULD IMPOSE AN ADDITIONAL CHARGE IN EXCESS OF THE LIMIT OF 2% OF PAYROLL. THE COMMISSION'S PROPOSED IPSIG PROGRAM NOT ONLY EXCEEDS ITS AUTHORITY UNDER ITS ENABLING STATUTE BUT ALSO CONSTITUTES IMPERMISSIBLE LEGISLATIVE ACTIVITY IN VIOLATION OF THE CONSTITUTIONALLY-REQUIRED SEPARATION OF POWERS.

THE WATERFRONT COMMISSION COMPACT EXPLICITLY PROVIDES THAT ANY AMENDMENTS TO THE COMPACT MUST BE ADOPTED BY SUPPLEMENTARY ENACTMENTS ADOPTED BY THE LEGISLATURES OF BOTH STATES. IN SEEKING TO IMPLEMENT AN

IPSIG PROGRAM ON ITS OWN WITHOUT SEEKING LEGISLATIVE AUTHORITY, THE WATERFRONT COMMISSION IS USURPING THE ROLE AND AUTHORITY OF THE LEGISLATURES OF THE STATES OF NEW JERSEY AND NEW YORK. THE PEOPLE'S ELECTED LEGISLATORS, NOT APPOINTEES IN AN EXECUTIVE AGENCY, HAVE THE RIGHT AND POWER TO DETERMINE WHETHER AN IPSIG PROGRAM IS APPROPRIATE AND, IF SO, WHAT SUBSTANTIVE STANDARDS SHOULD APPLY IN DETERMINING WHEN THE IMPOSITION OF AN IPSIG IS WARRANTED. THIS IS HOW THE LEGISLATURE OF THE CITY OF NEW YORK ESTABLISHED AN IPSIG PROGRAM FOR THE CITY'S PRIVATE CARTING INDUSTRY. IT ENACTED A LEGISLATIVE MANDATE THAT PERMITTED THE TRADE WASTE COMMISSION OF THE CITY OF NEW YORK TO REQUIRE A PRIVATE CARTING COMPANY IT REGULATES TO HIRE AN IPSIG IF THE COMPANY IS THE SUBJECT OF A PENDING INDICTMENT FOR A CRIME THAT WOULD PROVIDE GROUNDS FOR THE DENIAL OR REVOCATION OF ITS LICENSE.² THE WATERFRONT COMMISSION'S PROPOSED IPSIG PROGRAM HAS NO SIMILAR CRIMINAL CULPABILITY STANDARD. INSTEAD, THE COMMISSION

² See N.Y. CITY ADMIN. CODE § 16-511(b).

BESTOWS UPON ITSELF THE UNFETTERED DISCRETION TO IMPOSE AN IPSIG AS THE COMMISSION SEES FIT.

THE IPSIG IS A FLAWED CONCEPT FOR PORT EMPLOYERS

THE IPSIG CONCEPT HAS ITS ROOTS IN THE 1989 *NEW YORK STATE ORGANIZED CRIME TASK FORCE REPORT ON CORRUPTION AND RACKETEERING IN THE NEW YORK CITY CONSTRUCTION INDUSTRY*. CURRENT WATERFRONT COMMISSIONER RONALD GOLDSTOCK WAS THE PRIMARY AUTHOR OF THAT REPORT AND HAS BEEN AN ACTIVE PROPONENT OF THE IPSIG CONCEPT. COMMISSIONER GOLDSTOCK HAS WRITTEN ABOUT THE BROAD POWERS THAT COULD BE BESTOWED ON AN IPSIG, INCLUDING THE ABILITY TO:

- ACCESS THE BOOKS, RECORDS, FILES, ACCOUNTS, AND CORRESPONDENCE OF THE ORGANIZATION;
- DISCIPLINE, DISMISS, REMOVE, AND REPLACE OFFICERS, EMPLOYEES AND MEMBERS OF THE ORGANIZATION;
- REVIEW AND VETO CERTAIN BUSINESS OPERATIONS OF THE ORGANIZATION; AND
- APPROVE MAJOR CONTRACTS ENTERED INTO BY THE ORGANIZATION.

THESE ARE CERTAINLY BROAD AUTHORITIES THAT THE COMMISSION WOULD GIVE TO MONITORS WHO IN ALL LIKELIHOOD HAVE NEVER EVEN BEEN INSIDE A MARINE TERMINAL. COMMISSION-APPOINTED IPSIGS SHOULD NOT BE PERMITTED TO REPLACE THE EXPERTISE OF INDUSTRY MANAGEMENT IN RUNNING THESE COMPANIES. WE ARE TALKING ABOUT BILLIONS OF DOLLARS IN CORPORATE INVESTMENT IN THESE COMPANIES THAT ARE DEPENDENT ON THE SKILL AND DISCRETION OF THEIR MANAGEMENT TO NAVIGATE AN EVER-CHANGING BUSINESS ENVIRONMENT. SUCH AN IMPOSITION WOULD RENDER THE WATERFRONT COMMISSION AS OVERSEER OF ALL THE BUSINESS OPERATIONS AND DECISIONS OF THE STEVEDORING COMPANIES IN THE PORT. WE DO NOT BELIEVE THE COMMISSION HAS THE LEGAL AUTHORITY OR COMPETENCE TO UNDERTAKE THIS ROLE. THE WATERFRONT COMMISSION'S IPSIG PROGRAM IMPERMISSIBLY INTERFERES WITH THE ABILITY OF STEVEDORING COMPANIES TO MANAGE THEIR BUSINESSES AND FULFILL THEIR OBLIGATIONS TO THEIR CUSTOMERS, INVESTORS, AND THE PUBLIC.

THE AGENCY'S ACTIONS WILL ALSO HAVE A CHILLING EFFECT ON PRIVATE SECTOR INVESTMENT IN THE PORT IF IT IS KNOWN THAT ON A WHIM THE COMMISSION CAN DISPLACE A COMPANY'S MANAGEMENT TEAM.

INVESTORS ARE LIKELY TO SHY AWAY FROM INVESTMENT IN A COMPANY, WHEN IT IS KNOWN THE COMPANY'S MANAGEMENT TEAM CAN BE REMOVED OR SECOND-GUESSED BY AN AUDITOR OR MONITOR ACCOUNTABLE ONLY TO THE COMMISSION.

THE COMMISSION REQUIRES LEGISLATIVE OVERSIGHT

THE ENTIRE CONCEPT REEKS OF UNBRIDLED POWER ASSERTED NOT IN CONFORMANCE WITH A STATUTORY MANDATE BUT BY ADMINISTRATIVE FIAT. SIMPLY PUT, THE IPSIG CONCEPT IS THE WRONG PROGRAM, IMPOSED FOR THE WRONG REASONS, BY THE WRONG PARTY. IF THE COMMISSION BELIEVES AN IPSIG PROGRAM IS RIGHT, IT SHOULD PRESENT ITS PROPOSAL TO THE LEGISLATURES OF NEW JERSEY AND NEW YORK. ONLY THEN CAN THESE LEGISLATIVE BODIES EXAMINE THE WISDOM OF THIS PROGRAM IN THE LIGHT OF APPROPRIATE LEGISLATIVE PROCEEDINGS IN WHICH ALL INTERESTED PARTIES WOULD HAVE THE RIGHT TO EXPRESS THEIR VIEWS AS TO THE NECESSITY FOR THE PROGRAM AND THE APPROPRIATE SUBSTANTIVE CRITERIA THAT SHOULD CONTROL.

WE URGE THIS COMMITTEE TO CONTACT THE GOVERNOR TO EXPRESS ITS DISPLEASURE WITH THE ACTS OF THE WATERFRONT COMMISSION IN SEEKING TO IMPOSE AN IPSIG PROGRAM ON STEVEDORING COMPANIES WITHOUT LEGISLATIVE AUTHORITY AND TO RECOMMEND THAT THE COMMISSION ABANDON THIS COURSE.

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**September 23, 2010 [HAROLD J. DAGGETT, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, TESTIMONY TO NEW JERSEY SENATE
ECONOMIC GROWTH COMMITTEE]**

Members of the Senate Economic Growth Committee, my name is Harold J. Daggett and I serve as Executive Vice President of the International Longshoremen's Association, AFL-CIO.

The ILA is the largest union of maritime workers in North America. We represent 65,000 members working at ports on the Atlantic and Gulf Coast, Great Lakes, Eastern Canada, Puerto Rico and major U.S. rivers.

When I returned home from service in Vietnam with the U.S. Navy the late 1960s, I went right to work on the waterfront. There I was among one of some 30,000 ILA members employed in the Port of New York and New Jersey. Our International membership at that time topped 125,000.

Containerization was only in its infant stages then but that automation and other factors would result in the amazing erosion of ILA jobs over the next four decades to where we are around 4,000 today in the Port of New York and New Jersey.

While our membership numbers have been reduced, the amount of cargo handled in this port has more than tripled over that same period.

The region continues to enjoy valuable economic prosperity generated by the Port of New York and New Jersey.

I am proud to note that the ILA has continued to negotiate contracts with our employers that buffered the loss of man-hours by our members while providing generous wage, health benefits and pension plans for our present ILA members.

ILA fringe benefit packages for its members are funded through assessments on cargo and here we see the delicate balance that our employers must strike between paying our ILA members decent wages and benefits and keeping New York and New Jersey competitive with other ports.

My union felt it was important that we appear today and join with New York Shipping Association to alert you to a challenge to our port's competitiveness: the unauthorized attempt by the Waterfront Commission of New York Harbor to impose an Independent Private Sector Inspector General program on marine terminal operators and stevedoring companies.

The proposal being discussed today is a perfect example of that kind of over regulation that chokes economic growth and kills jobs.

**September 23, 2010 [HAROLD J. DAGGETT, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, TESTIMONY TO NEW JERSEY SENATE
ECONOMIC GROWTH COMMITTEE]**

ILA employers in New Jersey and New York have been challenged for decades by their having to fund the Waterfront Commission. No other port area on the East Coast, Gulf Coast and even the West Coast is burdened with this extra cost, funded by an assessment on wages paid to our members.

Plain and simple, this is a tax on jobs.

The Inspector General program proposed by the Waterfront Commission adds another unnecessary layer of bureaucracy, and more importantly, further jeopardizes the competitive balance of this port region against others. It will also lead to higher costs of doing business in this port without providing any benefit.

Citizens of New Jersey already pay through local, state and federal taxes, to fund our U.S. Department of Homeland Security, U.S. Justice Department, U.S. Coast Guard, Port Authority Police, New Jersey State Troopers, the U.S. Department of Labor, the U.S. Department of Transportation, Occupational Safety and Health Administration, the Federal Maritime Commission and local police.

All of these agencies have authority to monitor and police our ILA members and employers.

Do our citizens need another tax on doing business at New Jersey ports?

The powers of the Waterfront Commission flow from the Legislatures of both New Jersey and New York.

We believe this proposal exceeds the authority granted to the Commission and we ask you to take action to eliminate it before more damage is done to our maritime commerce.

Thank you.

Harold J. Daggett
Executive Vice President
International Longshoremen's Association, AFL-CIO

Harold J. Daggett was unanimously elected Executive Vice President of the International Longshoremen's Association, AFL-CIO in at the union's quadrennial convention in July 2007. For the previous seven years, Daggett held the position of Assistant General Organizer with the ILA. Daggett also is President of ILA Local 1804-1, the General Maintenance local covering ILA members in the Port of New York and New Jersey.

Previously, Mr. Daggett served as Secretary-Treasurer of the Atlantic Coast District, ILA, a position to which he was first elected in 1991, with subsequent reelections in 1995 and 1999.

A third generation ILA member, Mr. Daggett followed in the footsteps of his father and namesake, Harold Daggett, Sr., who worked in the ILA industry for 57 years. Mr. Daggett himself is now a veteran of 43 years with the ILA. He first joined ILA Local 1804-1 following an honorable discharge from the U.S. Navy in 1967, where he saw combat duty in Vietnam in the mid-1960s.

Mr. Daggett was born in West Greenwich Village in Lower Manhattan, New York and spent his boyhood years in Woodside, Queens. He distinguished himself in scouting, first as a Cub Scout and later as a Boy Scout with Troop 127 in Queens. In his adult life, Mr. Daggett was honored by the Greater New York City Council, Boy Scouts of America with their prestigious *Good Scout Award*.

Mr. Daggett later studied at Cardinal Farley Military Academy in upstate New York, from which he graduated from prior to joining the U.S. Navy.

He began his ILA career as a mechanic with Local 1804-1 and eventually worked his way up to foreman. For 11 years, he was with Sea-Land Services until his appointment in 1980 as Secretary-Treasurer and Business Agent of that local. He was later re-elected six times to that post, while also serving terms as Secretary-Treasurer of the New York-New Jersey District Council. In 1998, he was elected President of ILA Local 1804-1.

Mr. Daggett has been a member of numerous labor and maritime committees. He has served as a Wage Scale delegate for his local since 1981.

For Master Contract negotiations, Mr. Daggett served on the Jurisdiction sub-committee.

Through his leadership, Mr. Daggett and the members of Local 1804-1 have raised more money for the ILA Children's Fund – which benefits The Hole In the Wall Gang Camp – than any other local in ILA. His local is also actively involved in other charities, including Toys for Tots and St. Jude's Children's Hospital.

The father of three children – Lisa, Dennis and John – Harold Daggett and his wife Patricia reside in Sparta, New Jersey.

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Spring 2010

**Testimony of J. Randolph Brown, President
Metropolitan Marine Maintenance Contractors' Association, Inc.**

Before the New Jersey State Senate Commerce and Economic Growth Committee

On the Matter of

The Waterfront Commission's Intended Use of Independent Inspector Generals

State House, Trenton New Jersey, September 23, 2010

Introduction to Metropolitan Marine Maintenance Contractors' Association, Inc.

My name is J. Randolph Brown. I am President of Metropolitan Marine Maintenance Contractors' Association (Metropolitan Marine), a non-profit organization of Employers who have provided maritime services to the Port of New York/New Jersey (the Port) since 1947. Today, Metropolitan Marine consists of 27 companies that perform maintenance and repair of containers, chassis, container handling equipment, facilities, plus the securing of containers aboard vessels.

In 2009, Metropolitan Marine employers generated 2.1 million hours of Metro-ILA work, approximately 20% of the Port's total ILA hours, and paid \$78 million in wages and \$44 million in benefits to funds jointly managed with the International Longshoremen's Association affiliated locals 1814 and 1804-1. The latter is a New Jersey-based local and typically accounts for about 85% of the Metro-ILA hours. The two locals combined have approximately 900 members.

Historically, the Waterfront Commission (the Commission) has exercised authority over Metro-ILA jobs only to the extent that it involves the licensing of employers and the ILA

members who wish to work in the marine terminals, but not at Metropolitan Marine facilities outside of the Port proper. Unlike the NYSA, the Commission does not exercise oversight of the daily hiring of individuals, nor the balancing of its labor supply and demand.

Personally, I have worked in various capacities in the Port for over 40 years—with terminal operators, ocean carriers, as an independent consultant to the Port—with ILA labor, the NYSA, and, now, Metropolitan Marine. I believe this experience gives me considerable insight into the matters being addressed by these hearings.

IPSIG

We are here today because the Commission now proposes the institutionalization of Independent Private Sector Inspector Generals, or IPSIGs, within the Port. Metropolitan Marine sees value in the Commission's objective of ridding the Port of organized crime influences and other acts of wrong doing to the extent they can be adequately demonstrated to exist. Nonetheless, we believe that implementation of this proposal with all of its associated costs is well beyond the authority of the Commission. We are equally concerned about the corollary issues of the attendant protection of individual and property rights and the potential economic harm such a misguided effort might needlessly inflict on the Port.

The Commission has failed to cite any legislative authority permitting IPSIGs. The Commission is authorized to issue a license to an individual or a business unless an exclusion is applicable. It cannot, however, impose the financial burdens that will be generated by agency actions and which are targeted at enhancing oversight in an

Intrusive manner specifically when the process will be conducted as part of a burdensome and oppressive procedure. The Commission—again, on its own and without legislative authorization—proposes to institute what is in effect a new licensing requirement since the implication of the scheme is that if a Employer objects to the imposition of an IPSIG, the Commission will deny them their license. We submit this not only contradicts the Waterfront Commission Act, but amounts to a denial of due process and an unlawful taking of property.

Further evidence that the Waterfront Commission proposal to institutionalize IPSIGs is unauthorized by the States derives from the fact that the cost of the IPSIGs will not be covered through the Waterfront Commission budget. The Commission operates on a two percent tax on the wages paid by the Employers, which amounts to approximately \$11 million annually. The statute plainly expects the Commission to operate within that budget and the law requires public accountability. The Commission, however, would introduce another revenue source for its intrusive activities by requiring Employers to pay for the IPSIG in addition to the 2% statutory levy. This amounts to an added illegal tax on the right to conduct business.

There are other profound reasons for stopping this unauthorized intrusion by the Commission. The expertise and techniques of those individuals who make this marine terminal system work have evolved over numerous decades. In addition, private businesses and the Port Authority have invested billions of dollars in marine terminals and supporting infrastructure that could be placed at risk by the IPSIG. An interloper should not be overseeing management decisions, questioning managerial prerogatives

and approving contracts in this highly skilled and technologically advanced Port. This would endanger the services, operating economics and infrastructure that make up one of this State's primary economic engines.

The Waterfront Commission, by its proposal, holds itself out to be the sole judge of all facets of this process. It maintains the sole right to impose an IPSIG and has the IPSIG reporting solely to it. Clearly the structure is one of Employer (Waterfront Commission) and employee (IPSIG), but with the cost passed along to stevedoring companies. If the Waterfront Commission believes it needs additional employees, the cost of which exceeds its budget, the Commission needs to find additional funding through the Legislature. Furthermore, there are no checks and balances in the proposed process, which are clearly required under the Federal and State Constitutions and laws. Nor are there any pre-established standards or metrics to guide the Employers, the Commission, or the IPSIG as to what constitutes acceptable "effective operations," in considering such things as "hiring practices" or "compliance with other relevant laws and regulations." The vagueness of the role of the IPSIG bespeaks of its "ultra vires" nature.

One important purpose of legislative evaluation of the IPSIG would be to consider whether the public good was being affected by the proposal. While there is a rightful concern about the possible loss of Port business due to unnecessarily high labor costs, there should be an equal, if not greater, concern about the possible degradation of operations and resulting loss of business due to an overly intrusive and financially burdensome IPSIG process.

Collective Bargaining

Metropolitan Marine, as its designee represents its 27 members in Collective Bargaining, represents the Employers as to labor relations and other Port matters. The desire to promote harmonious industrial relations serves the goal of providing dependable service to the public at large.

When one examines the Commission's Request for Expression of Interest and Statement of Qualifications, the Commission has identified the following duties: (1) provide monitoring services; (2) oversee the operations of stevedoring companies; (3) ensure compliance with relevant laws and regulations; (4) establish and maintain internal controls; (5) examine the operations of stevedoring companies regarding hiring practices or other malfeasance. The identification of these duties together with the identified expertise sought in an IPSIG evinces a plan and design to invade the Collective Bargaining relationship.

In establishing the Commission, the State legislatures recognized and clearly intended to preserve what had become the national labor policy of promoting Collective Bargaining. Accordingly, the Commission-enabling legislation includes Article XV, which does not limit Collective Bargaining and provides, in essence, that wherever possible the Compact is to be interpreted to protect the sanctity of the bargaining relationship of the parties and their authority to bargain collectively. It also has been construed to include a proviso that wherever possible the Compact should be construed or applied as consistent with the effective Collective Bargaining Agreement. Plainly, in establishing the Waterfront Commission there was no intent by the legislature for the

Commission to operate in a manner that was incompatible with established national labor policy. What the Legislature ordained is now being sought to be undone by the unilateral and unauthorized action of the Commission. This attempted unauthorized action will, in my opinion, destabilize the Port, disrupt productivity, increase stress on the labor-management relationship and retard morale at a critical time in the development of the Port. Thus, the existence of such an intrusion into the Collective Bargaining relationship will have a chilling affect on the rights inherent in the essential process of Collective Bargaining.

The Collective Bargaining Agreement may certainly regulate and restrict (in some measure) the exercise of managerial functions, but the Employers have the obligation of hiring and firing, paying and promoting, supervising and planning, all within the confines of the law and the Collective Agreement. If one purpose of Metropolitan Marine is to represent the members and a second purpose is to promote harmonious relations between Employer and employee, Metropolitan Marine bears a heavy responsibility to assure that all unlawful intrusions that adversely impact the Collective Bargaining are legally prevented.

If Metropolitan Marine is to be successful in representing its members and in achieving the identified goals, it must be firm in the planning, funding, and executing of its policies and promises, whether they are the policies of the Metropolitan Marine or the promises agreed to by the Metropolitan Marine through Collective Bargaining. The intrusion of a third-party such as the Waterfront Commission into the Collective Bargaining relationship and environment contaminates the process, in direct contravention of the legislative mandate. The creation of the IPSIG process is a direct attempt to control and

change the terms and conditions of employment in the Port and nullify the negotiated rights and responsibilities contained in the Collective Bargaining agreements. The bargaining process cannot be subject to the discretion of an imposed stranger to the operations of the Port.

Conclusion

The essence of the issue before us is really quite simple. On the one hand, the Commission seeks to initiate unauthorized, unilateral actions to expand its authority, without checks or balances, and impose additional, virtually unlimited administrative costs on the Port. Yet, New York's Inspector General's report of 2009, and the Commission's Annual Report for 2009-2010 recites, chapter and verse, the ineffectiveness of the prior Commission staff for much of the past decade in fulfilling its mandate, and chronicling how the Commission has squandered significant portions of up to \$100 million in Port employer funding. The Commission's annual report claims sweeping changes were made in just one year, but one year of restructuring hardly constitutes sufficient evidence of enduring effectiveness in its mission.

After this violation of the public trust and an obscene waste of money, the public and Port are owed more than the self-serving proclamation of success and calls for more authority and another layer of government cost via an IPSIG. Let the Commission first demonstrate that its restructuring has achieved successes that are real and durable. We urge this Committee to contact the Governor to express its disapproval with the acts of the Waterfront Commission in seeking to impose an IPSIG program on stevedoring companies without legislative authority and to recommend that the Commission abandon this course.



WATERFRONT COMMISSION OF NEW YORK HARBOR
39 BROADWAY
NEW YORK, N.Y. 10006-3003
(212) 742-9280
FAX (212) 742-8965

WALTER M. ARSENAULT
EXECUTIVE DIRECTOR

September 29, 2010

Via Electronic and First Class Mail

Honorable Raymond J. Lesniak
Senate Economic Growth Committee
State House Annex
PO Box 068
Trenton, New Jersey 08625-0068

Dear Senator Lesniak:

The Waterfront Commission of New York Harbor ("Commission"), having had the opportunity to ascertain the nature of the inquiry by the Economic Growth Committee ("Committee"), and having determined the specific issues requiring written testimony, hereby submits the following letter to supplement its testimony before the Senate Economic Growth Committee on September 23, 2010. Further to our correspondence to the Committee dated September 17, 2010, we respectfully request that this letter be incorporated into the record.

Independent Private Sector Inspector General (IPSIG) Program

After a decade of lethargy and misconduct documented by the New York State Inspector General Joseph Fisch in his August 2009 Report, the Commission is now striving to effectuate a dramatic change in the culture of a troubled industry, which has been historically and is currently plagued with organized crime and corruption. An important component of the Commission's mandate, as set forth by the Waterfront Commission Act ("Act"), is to evaluate the good character and integrity of stevedoring companies seeking to operate in the Port of New York-New Jersey, for purposes of issuing permanent licenses to those companies to operate in the Port.

In his Report, the Inspector General found "fundamental problems" with the system established by the Commission to license stevedoring companies and noted that, for at least a decade, the Commission failed in its responsibility to properly license these companies. Specifically, he found that contrary to the Act, all companies doing business in the Port were operating on short-term temporary licenses which were intended to be used only in special circumstances. The Inspector General recommended that the Commission ensure that all eligible stevedoring companies obtain permanent licenses within a reasonable time from the issuance of his Report. He unequivocally directed that, pursuant to the Act, "[c]ompanies that are ineligible for permanent licenses should cease operations at the port."¹ (Emphasis added)

¹ New York State Inspector General's Report on Investigation of the Waterfront Commission of New York Harbor, page 58. A copy of the New York State Inspector General's Report and the Commission's Response can be found on the Commission's website at www.wcnjh.org.

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Following these findings and in light of this directive, the Commission began the process of issuing permanent licenses to stevedoring companies which possess good character and integrity, as opposed to the past practice of issuing only short-term temporary licenses without any determination as to character and fitness of applicant companies. To that end, the Commission has substantially rewritten the background investigation questionnaire for all stevedores to now require comprehensive disclosures by corporate officers and significant shareholders, in order to ensure that the Commission has all the relevant information needed to properly assess the character and integrity of the applicant companies.

As we indicated at the hearing, there is an apparent and critical distinction between the Committee's understanding of the Commission's IPSIG proposal, and the Commission's actual proposal. **To be clear, there is no proposal by the Commission to require stevedoring companies to retain Independent Private Sector Inspectors General (IPSIGs) in order to continue to operate in the Port. Rather, the Commission will permit specified stevedoring companies, at risk of not being licensed, to retain IPSIGs on as-needed basis.**

Specifically, in those instances where the Commission would otherwise deny a stevedoring company its license to operate because of exhibited criminal influence, improper accounting and/or hiring practices, or other malfeasance or misfeasance, the Commission could license that company subject to its retention of an IPSIG, which would monitor the company's operations to ensure compliance with the Act and other relevant laws and regulations. The Commission would utilize the IPSIGs under the General Powers granted to it by Article IV (5)(6)(7) of the Act, codified as N.J.S.A. 32:23-10(5)(6)(7), as well as those delegated to the Commission under Part I §5b(3) of the Act, codified as N.J.S.A. 32:23-86(3). The Commission has proposed this arrangement as a remedy to prevent the denial of a stevedore's license and the concomitant loss of jobs, and as a means to avoid protracted litigation associated with a stevedore's appeal of the Commission's determination.

**Continued Need for the Commission:
Organized Crime Investigations and Prosecutions**

In the early 1950's, public hearings documented the pervasive corruption, extortion, racketeering and organized crime in the Port of New York-New Jersey. The conditions in the Port exposed by articles by Malcolm Johnson in the *New York Sun* and dramatized by Elia Kazan and Budd Schulberg in the 1954 film, *On the Waterfront*, begged for a regulatory body to ameliorate the corruption and racketeering that existed in the industry. In 1953, the Commission was created to investigate, deter, combat and remedy criminal activity and influence in the Port of New York-New Jersey, and to ensure fair hiring and employment practices, so that the Port and region could grow and prosper.

There is no question that when the Commission was created in 1953, it was desperately needed. At its inception and for years thereafter, the Commission was committed to its mission. It reduced surplus labor and the prevalence of criminals on the docks. Further efforts were made to reduce the mob's control and influence on the union and companies that operated within its jurisdiction.

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However, over time, the Commission suffered the fate of other regulatory bodies. Until two years ago, the Commission's hiring policy had been based on favoritism and political patronage, and staff members from New York and New Jersey were openly hostile to each other. There was virtually no communication between the Commission's grossly mismanaged divisions, and employees were afraid of expressing their opinions on pertinent areas of concern for fear of reprimand. Members of the Police and Legal Divisions were hired, for the most part, with no relevant experience and were provided with no training. Administrative hearings were conducted in a perfunctory manner to avoid complex issues, and there were no sophisticated criminal investigations, ongoing or planned. Matters in the Legal, Police and Audit Divisions languished for years, and critical decisions were rarely made. The agency's will to continue its mission declined, and the Commission languished.

Meanwhile, the historical problems that existed on the waterfront proved intractable. A long list of indictments and convictions proved the existence of mob domination but failed to remedy the problem. Clearly, it was time for the Commission to regain its former mission, to remove itself from politics, throw off its sense of lethargy and reinvigorate itself. Beginning in July 2008, the Commission did just that. Not only have the personnel and physical structure of the Commission changed but, more importantly, so did its sense of mission as the Commission re-established itself as a model regulatory and law enforcement agency.

For the first time in over a decade, the Commission's leadership is united and is demonstratively setting the tone of collaboration and cooperation for the Commission's divisions to follow. The Law Division has begun to employ legal approaches that have either never been used or have not been used for years, and is acting in coordination with the Police Division to re-establish the Commission's presence on the waterfront. The Police Division has been instrumental in developing informants and identifying criminal matters that have blossomed into major investigations with other law enforcement agencies. The newly created Intelligence Division has begun the process of collecting and classifying years of evidence for use by the rest of the Commission. It is also actively working with our law enforcement and intelligence partners to establish a legitimate presence within the greater intelligence community. Similarly, the Administrative Division has been working to rectify years of auditing mismanagement, and to strategically oversee pending audits from both an investigative and financial prospective.

Now, more than half a century later, many of the conditions that led to the formation of the Commission still continue to exist on today's waterfront. The continued economic downturn has once again resulted in an oversupply of available longshore labor – the very environment most conducive to racketeering. Over the last year, the Commission and its law enforcement partners have made arrests of organized crime members, union officials and members for demanding and receiving kickbacks in exchange for work, overtime or better assignments on the waterfront. Additional arrests in these investigations are expected in the near future.

No show and no work jobs still exist at virtually every terminal within the Port. These evils, along with union featherbedding practices, continue to rob the Port of its economic competitiveness and vitality. To determine the extent and nature of such practices and to initiate

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change, the Commission is holding public hearings this fall to examine these issues. The hearings will also examine apparent ethnic/race and gender inequalities among registrants and licensees.

Individuals who lost their licenses or registrations through criminal convictions or misconduct still work on the waterfront in “non-covered” positions allowing them to continue to receive payment and exert control. Loansharks and bookmakers, with the approval of organized crime, continue to deplete the workforce of its hard earned money. Cargo theft, often more sophisticated than in the past, is still a real problem. Workers’ compensation fraud, narcotics importation and terrorism concerns have been added to the enforcement picture.

The vitality of the Port is directly affected by organized crime influence. The Commission’s ability to regulate the size and diversity of the longshore labor force is crucial to preventing the very environment – an overabundance of available labor – that history has repeatedly shown to be most conducive to organized crime and racketeering activity.

Denying the influence of organized crime on the waterfront today is virtually equivalent to denying the existence of organized crime itself, and the need for a strong and active Waterfront Commission has never been more compelling. Indeed, as evidenced by recent arrests and convictions, mob control of the harbor is still a fact of life. The following is a summary of the Commission’s most significant cases from the 2009-2010 fiscal year:

- **Michael “Mikey Cigars” Coppola:** In July 2009, Michael “Mikey Cigars” Coppola, a capo in the Genovese crime family, was convicted of racketeering charges for exercising criminal control of New Jersey ILA Local 1235 for thirty-three years. Coppola was caught on a wire specifically discussing kickbacks with a co-conspirator, who the Commission removed from working on the waterfront for associating with a member of organized crime.
- **Anthony “Todo” Anastasio:** In 2009, former longshoreman, ILA local Vice President and Gambino soldier Anthony “Todo” Anastasio was convicted of RICO violations for extortion, arson and other charges. His trial opened with the playing of a recording from a court-ordered electronic “bug” in which Anastasio bragged about the Gambino family’s illicit grip on the New York waterfront. The Commission played a vital role in both investigations and trials.
- **Thomas Mogielnicki:** In July 2009, longshoreman Thomas Mogielnicki was arrested by Commission detectives for assaulting longshoremen who supported different candidates during union officer nominations and for causing damage to a Manhattan pier following the nominations. Mogielnicki pleaded guilty in criminal court, and is currently awaiting a hearing to determine whether his registration should be revoked.
- **John Shade:** In October 2009, the New York County Supreme Court upheld the action taken by the Commission which prompted the loss of John Shade’s position as General Vice President of the Atlantic Coast District (“ACD”) of the ILA, thereby preventing him

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from holding any ACD office. Shade had been convicted of at least five offenses, including illegal gambling, lotteries and conspiracy related to underlying racketeering charges.

- **Hector Balbuena:** In October 2009, the Commission, with the assistance of Customs and Border Protection, investigated and charged Hector Balbuena with possession of cocaine on the piers. The Richmond County District Attorney's Office is prosecuting the case.
- **Edward Aulisi:** In November 2009, the Commission removed Edward Aulisi, a checker and son of former ILA Local 1235 President Vincent Aulisi, from working on the waterfront for his association with Michael "Mikey Cigars" Coppola, a capo in the Genovese crime family. Electronically intercepted conversations between Aulisi and Coppola (while Coppola was a fugitive from justice) included Aulisi briefing Coppola about the murder investigation that Coppola had fled from, as well as assuring Coppola that Aulisi's father was continuing to kick back to Coppola at a better rate than the past president of ILA Local 1235. In addition to the association charge, Aulisi was charged with being a "phantom" employee, for failing to work hours for which he was paid.
- **Roy Maglori:** In March 2010, the Commission removed maintenance man Roy Maglori from working on the waterfront because of his association with Angelo "the Horn" Prisco, a capo in the Genovese crime family. Maglori communicated and visited Prisco while he was in prison, transferred money to his commissary account and attended his 2009 criminal trial. At the conclusion of this trial, Prisco was convicted of racketeering, extortion, robbery and murder and was sentenced to life in prison. During a telephone conversation, Maglori complained to Prisco about how hard he had to work at his job on the waterfront, and Prisco directed him to see convicted Genovese associate "Nicky" or his son "Anthony," whom he described as good people. The capo told Maglori that both "know you're my friend." "They know I am close to you. They'll take care of you, Roy."
- **Operation Terminal:** In April 2010, Commission detectives, along with investigators from the New Jersey Division of Criminal Justice's Organized Crime Bureau, arrested **Nunzio LaGrasso**, Vice President of the ILA's Atlantic Coast District and Secretary-Treasurer of ILA 1478 and four other current or former ILA members on charges that they extorted money from dock workers by demanding "tribute" for better jobs and pay, or engaged in loansharking. One of the men charged, **Alan Marfia**, was a Newark police officer who had been accessing police databases to obtain information on undercover police vehicles that were conducting surveillance on an ILA office. **Joseph Queli**, a soldier in the Genovese crime family, was also arrested for controlling the loansharking operation. **Rocco Ferrandino**, a timekeeper, was also charged with extortion and commercial bribery. These arrests represent just the beginning of Operation Terminal, a joint investigation into the activities of a criminal enterprise that has exercised control and corrupt influence over ILA locals operating in the Port of New York. Further arrests are expected.

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- **Nicholas Bergamotto:** In April 2010, checker Nicholas Bergamotto was arrested as part of Operation Terminal and charged with loansharking and money laundering. Based on those charges, the Commission has temporarily suspended his license to work in the Port, pending an administrative hearing.
- **Stephen DePiro:** In April 2010, FBI agents working in conjunction with the U.S. Attorney's Office for the Eastern District of New York and the Waterfront Commission arrested Genovese soldier (and former longshoreman) Stephen DePiro and charged him with racketeering including the extortion of ILA Locals and members, loansharking and gambling offenses. DePiro was also charged with conspiracy to aid the unlawful flight to avoid prosecution of Genovese Capo Michael "Mikey Cigars" Coppola by the U.S. Attorney's Office for the District of New Jersey.
- **John Santore:** In April 2010, hiring agent John Santore and his employer were served with a notice of hearing alleging that Santore had associated with Joseph "Joey the Bull" Bilotti, a soldier in the Gambino crime family, in addition to other violations of the Waterfront Commission Act. After a review of the evidence, including photographs and surveillance by Commission detectives, his employer withdrew its sponsorship of Santore as a hiring agent, and he was removed from the waterfront.
- **Joseph Ritornaro:** In April 2010, the Commission revoked the registration of maintenance man, Joseph "Joey Clams" Ritornaro, for his failure to produce material evidence in connection with an investigation into illegal drug use in the Port.
- **John Nicaretta:** In April 2010, the Commission charged longshoreman John Nicaretta with associating with members and associates of the Genovese crime family, including capo Joseph "Pepe" LaScala, convicted associate Nicholas Furina and others. Nicaretta filed for retirement the next day. Nicaretta had been previously expelled from ILA Local 1588 for having furthered the influence of organized crime in the Port, and the Commission had removed him as foreman because of his association with members of organized crime.
- **Stephen Bracco:** In May 2010, foreman Stephen Bracco was arrested by Commission detectives for extorting money from a shipping company to ensure the speedy release of time sensitive shipping containers. Bracco's waterfront registration has been revoked and he has pleaded guilty to a larceny charge.
- **Anthony Furina, Sr. (Son of convicted Genovese associate Nicholas Furina):** In July 2010, the Commission revoked the permit of temporary pier superintendent Anthony Furina, Sr., and denied his application for permanent licensing. Furina was found to have violated the Waterfront Commission Act by moving waterborne freight without being so licensed by the Commission. The administrative law judge concluded that Furina lacked

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the good character and integrity required for a pier superintendent and, further, that he had essentially established his own “fiefdom” on the pier.

- **Ralph M. and Ralph A. Bertelle:** A joint investigation, initiated by the Commission, resulted in the arrest of two longshoremen – father and son – on mail and wire fraud charges in connection with worker’s compensation fraud. The longshoremen both pleaded guilty to conspiracy and mail fraud in August 2009. The father was sentenced to two years in federal custody while his son received probation.
- A United State Justice Department’s civil RICO suit against the ILA and several of its top officers is pending. Allegations include rigging ILA elections, awarding an ILA welfare benefit fund contract to a company with ties to organized crime and defrauding beneficiaries of ILA pension and welfare funds. In light of such allegations, it is clear that the ILA continues to serve the interests of organized crime rather than that of its members. The Commission is working closely with the federal government on this matter.

In addition to the arrests set forth above, the Commission revoked a number of other licenses and registrants after for such offenses as aggravated assault, illegally possessed firearms, possession and distribution of cocaine, unemployment fraud, theft and receiving stolen property. The Commission had 55 open investigations pending as of July 1, 2010 and had completed 338 investigations during the 2010 fiscal year, including 5 involving unregistered workers, and 89 involving violations of Commission rules. The Commission made, or participated in, 66 arrests in fiscal year 2010.

The Commission is diligently working to establish and maintain a database of organized crime figures operating in the Port of New York-New Jersey. This year, the Commission has established a network of analysts representing more than thirty law enforcement and intelligence agencies operating within the Port at the federal, state and local levels, to facilitate inter-agency cooperation and information sharing.

Lack of Diversity in the Port

In addition to the diminished vitality of the Port, the Commission is deeply concerned with the lack of minority employment and participation in the Port. Although the Waterfront Commission Act requires sponsoring employers to certify that selection was made on a non-discriminatory basis, the present composition of ILA locals is not representative of their cities’ demographics. For example, Local 824 in Manhattan is eighty-two percent (82%) white, Local 920 in Brooklyn is eighty-four percent (84%) white and Local 1814 in Brooklyn is eighty-two percent (82%) white.

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This year, the Commission has begun to study ways to overcome apparent ethnic/race and gender inequalities among the various types of registrants and licensees. An analysis of current registrants and licensees reveals the following:

- Only 5% of licensed pier superintendents are African American, and only 12% are of other minorities.
- Only 4% of licensed hiring agents are African American and only 9% are of other minorities.
- Although 42% of the “A”-type longshore register is minorities, only 5% of those minorities are African American.
- “A”-type longshoremen on average earn much less than their “deep-sea” longshore counterparts. The “deep-sea” longshore register is diverse due only in part to a 96% minority (91% African American) local in New Jersey. In New York, only 8% of the “deep-sea” longshoremen are African American and 7% are of other minorities.
- African American “deep-sea” longshoremen earn on average of 20% less than their white cohorts and all other minorities earn 8.5% less than their white cohorts.
- The gender gap is even greater. Women represent only 10% of “deep-sea” longshoremen, 5% of “A”-type longshoremen, 6% of pier superintendents and 9% of hiring agents.
- Female “deep-sea” longshoremen earn on average 35% less than their male counterparts.

Clearly, the ILA and the New York Shipping Association has not been committed to diversity of the workforce in the Port. To remedy this issue, the Commission is presently setting up a “pre-qualification” system for longshoremen, to ensure that there will be sufficient labor reserves when the economy revives and that the labor force reflects the diversity of the Port’s communities.

Conclusion

As set forth above, this Commission suffered, until two years ago, from a complete lack of accountability and failure of leadership that rendered it completely ineffective. There is no question that the vestiges of the former Commission have ended and under the auspices of its new administration, the Commission has undergone a complete transformation. Indeed, after years of inertia, the Commission has evolved from a virtually moribund organization into a model regulatory and law enforcement agency, committed to fulfilling its statutory mission. In the last two years, the Commission has rededicated itself to its core missions – to investigate, deter, combat and remedy criminal activity and influence in the Port of New York, and to ensure fair hiring and employment practices.

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In conclusion, the Commission refers to the testimony of Joseph Curto, President of the New York Shipping Association, Inc., before the New York State Senate on October 19, 2009:

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. That is a mission that the New York Shipping Association supports wholeheartedly.

As set forth above, the need for a strong and active Commission has never been more compelling. While individual prosecutions and administrative and regulatory actions are required and necessary, these alone are insufficient to change a historically and presently corrupt industry. New, innovative approaches must be developed, hopefully, with the continued cooperation of both the Legislature and the industry.

This letter incorporates the testimony of Commissioner Barry H. Evenchick and Commissioner Ronald Goldstock, and is submitted with their authorization and on their behalf.

Respectfully submitted,



Walter Arsenault
Executive Director



Phoebe S. Sorial
General Counsel

cc: Honorable Sandra B. Cunningham
Honorable Richard J. Codey
Honorable Joseph F. Vitale
Honorable Joseph M. Kyrillos, Jr.
Honorable Steven V. Oroho
Honorable Robert W. Singer
Kevin Donahue, OLS Committee Aide

Testimony on Waterfront Commission

I am sorry that I could not testify, because I had a previous appointment, but I am substituting this letter for that testimony about the Waterfront Commission.

We purchased Port Newark Refrigerated Warehouse in 1984 and, therefore, I have been personally familiar with the conduct of the Waterfront Commission for just over 26 years. Without question, it is the most dysfunctional, corrupt, useless, harmful police agency/regulatory body I have ever seen in my life. I am 68 years-old and have been active in business since my early twenties, so that is a considerable amount of time. I have many examples of their dysfunction but, perhaps, one will give you an insight.

Approximately 14 years ago, Port Newark Refrigerated Warehouse had a labor dispute and had to replace our entire workforce. We needed 32 warehousemen. We sent 93 people for licensing to the Waterfront Commission on a Monday morning. Incidentally, the commission was completely aware of the labor dispute. I was on the phone with the commission several times a day, attempting to expedite the licensing of these individuals. The Waterfront Commission, until then, granted temporary licenses, because they needed a significant time interval to do background searches. The commission unilaterally decided not to issue temporary permits and did not have the clerical staff to process the applicants.

On that Tuesday, the Waterfront Commission arrested the General Manager of Port Newark Refrigerated Warehouse and placed him in handcuffs, for using unlicensed employees, because they decided not to issue temporary passes. It regularly takes the commission anywhere from 3-6 months to license an individual. They almost destroyed our business, because we could not hire anyone to do the work. We suspect that the union put political pressure on the commission to engage in this conduct.

It cost PNRW over \$25,000 in legal fees, to expunge our General Manager's background records. We worked management personnel in excess of 100 hours per week for many weeks. This labor dispute was a major event in Port Newark, and the Waterfront Commission was completely aware of what PNRW was doing and why we were doing it, and purposely attempted to hurt our business.

Over the years, Port Newark Refrigerated Warehouse has repeatedly reported major thefts to the Waterfront Commission, and they are simply too busy (overwhelmed) to make the port more

secure. The list of grievances goes on forever. Since Transportation Worker Identification Credentials (TWIC) cards are available from the Department of Transportation, which now holds all the background search information; there is absolutely no need for the Waterfront Commission's regulatory effort.

In my opinion, the Waterfront Commission should have merged into the Port Authority 25 years ago. The commission does not cooperate with the other agencies in the Port, does not attend meetings, does not hire competent people, and the New York State report has understated the extent of the corruption in this agency. The reasons that justify the existence of the Waterfront Commission have long since passed, and, unquestionably, the agency should be dissolved, with its residual functions merged into the Port Authority.

By the way, the 93 men, of whom I wrote earlier that Port Newark Refrigerated Warehouse sent to the Waterfront Commission to be licensed, were all African-Americans. As I stated previously, only 32 were successful. The remainder had, generally, minor criminal records. The Waterfront Commission's policies absolutely discriminate against African-Americans, depriving them of employment, and that behavior has nothing to do with preventing the activities of Organized Crime. It is just stupid, arrogant, socially dysfunctional conduct, symptomatic of the Waterfront Commission.

No other port in the US has a Waterfront Commission, and we must pay them to engage in this conduct, which adds unforgiveable insult, to immeasurable injury.