

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS

Crowne Plaza La Concha

430 Duval Street

Key West, FL

October 10, 2003

CALL TO ORDER

Commissioner Robas, Chair of the Board, called the meeting to order at 9:00 a.m.

MEMBERS PRESENT

Victoria Robas, Chair

Manuel Alonso

Michael Buffington

Rivers Buford

Richard Frudaker

John Hiers

David Leech

Cheryl Phipps

Eugene Sweeney

Members Appointed but not Qualified

Earl McMillin

Donald Molitor

MEMBER NOT PRESENT

James Winegeart

OTHERS PRESENT

Anthony Spivey, Executive Director

Elise Rice, Government Analyst

Ed Tellechea, Board Counsel

Charles Tunnicliff, Prosecuting Attorney

Drew Winters, Prosecuting Attorney

Gretchen Rayborn, FSPA

David delaParte, FSPA

Jorge Viso, FSPA

Michael McGraw, Key West Pilots

Margaret Mathews, Port Everglades Pilots

Michael Cunningham, Port Everglades Pilots

C. Efthimiadis, Miami

James Frudaker, FL Docking Masters

Mr. Tellechea explained that new members had been appointed to the Board however they were not qualified to vote since their papers had not been received by the

Secretary of State's office. He stated that Commissioner Alonso was still a voting member at this time.

Commissioner Robas thanked Captain Mike McGraw and the Key West pilots for the reception last night.

APPROVAL OF THE MINUTES OF THE MEETING

July 25, 2003

MOTION: Commissioner Buffington made a motion that the minutes be approved as submitted.

SECOND: Commissioner Phipps seconded the motion and it passed unanimously.

Commissioner Leech stated that he did not receive the minutes from the last Rate Review Hearing and requested they be resent to him.

INFORMAL HEARING

George Laven, Case No, 2003-001850 SP

Mr. Tunncliff informed the Board that a Settlement Stipulation has been agreed to in the amount of \$200 & Captain Laven's license suspended for 3 months. However the suspension would be stayed and he would be placed on probation for three (3) months and if no additional violations were reported, the suspension would be lifted.

Commissioner Buford stated that he would have to be recused because he was present at the probable cause meeting when he served as counsel for the Board.

Commissioner Leech stated that he was one of Captain Laven's partners and he must be recused because he has prior knowledge.

Commissioner Phipps, Commissioner Winegeart & Commissioner Robas were the probable cause panel members.

Following discussion, Margaret Mathews representing George Laven waived the requirement for a quorum.

MOTION: Commissioner Frudaker made a motion that the Board accept the stipulation as presented.

SECOND: Commissioner Buffington seconded the motion and it passed unanimously.

DISCUSSION REGARDING FT. PIERCE

Mr. Tunncliff asked that this item be removed from the agenda due to the actions taken at a recent conference call.

MOTION: Commissioner Buford made a motion that the Discussion Regarding Ft. Pierce be removed from the agenda.

SECOND: Commissioner Buffington seconded the motion and it passed unanimously.

PROSECUTING ATTORNEY'S REPORT

Mr. Tunncliff provided the Board with a copy of his report regarding the status of cases.

RENEWAL OF TEMPORARY CERTIFICATE

Mark Schmitt – Biscayne Bay Pilots

Commissioner Buffington stated that the wording was incorrect and that it was for a permanent certificate, not renewal of a temporary.

Commander Dunton explained that a temporary certificate is issued for a period of 1 year. The purpose of the temporary certificate is to enable the training pilots to discharge the deputy from the program if the deputy's work is not satisfactory. He stated that Captain Schmitts' temporary certificate will expire prior to the next meeting therefore it is on this agenda.

MOTION: Commissioner Buffington made a motion that the Board issue a permanent certificate for deputy Mark Schmitt.

SECOND: Commissioner Buford seconded the motion and it passed unanimously.

REVIEW OF DEPUTY PILOT OPENING REQUESTS

Palm Beach

Commissioner Robas stated that Palm Beach was requesting at least one deputy to replace an existing pilot.

MOTION: Commissioner Buffington made a motion that the Board declare at least one opening for Palm Beach.

SECOND: Commissioner Phipps seconded the motion and it passed unanimously.

Port Everglades

Commissioner Robas stated that Port Everglades was requesting at least one deputy due to an increase in business.

MOTION: Commissioner Frudaker made a motion that the Board declare at least one opening for Port Everglades.

SECOND: Commissioner Sweeney seconded the motion.

Captain Mike Cunningham, Port Everglades, informed the Board that there had been an increase in business of about 25% from one ship and that they anticipate asking for 2 deputies instead of 1.

Commissioner Sweeney commented that the letter submitted was lacking in detail regarding their need and thought there would have been more in the request. He stated that they need more substance in the request.

Commissioner Robas requested FSPA to inform the Ports that the Board would like to see more detail as it relates to their request for deputies.

Commissioner Sweeney asked for a letter detailing the information that Captain Cunningham stated. Captain Cunningham said he would provide the letter.

There being no further discussion, Commissioner Robas called for a vote on the motion and it passed unanimously.

Tampa

Commissioner Robas stated that Tampa was requesting at least one deputy.

Captain George Viso informed the Board that Tampa Bay Pilots Association was withdrawing their request.

ST. ANDREWS BAY PILOTS ASSOCIATION REQUEST TO INCREASE DRAFT LIMITS

Commissioner Frudaker informed the Board that the timeframe referenced in his letter has been moved to the end of the year. He stated that the draft would be 36 feet when completed.

MOTION: Commissioner Buford made a motion that the request from St. Andrews Bay Pilots Association be approved.

SECOND: Commissioner Alonso seconded the motion and it passed unanimously.

DISCUSSION OF CHAPTER 455.02(2) REGARDING MEMBERS OF THE ARMED FORCES

Mr. Tellechea stated that there was a provision in Chapter 455 for spouses in armed forces. He stated that the department has asked that the Board adopt a rule regarding this issue and it will be discussed at the next meeting.

REVIEW OF CONTINUING EDUCATION COURSE FROM FSPA

Captain Viso informed the Board that at the upcoming convention there would be a seminar and FSPA was asking the Board to give approval.

MOTION: Commissioner Buford made a motion that the Board approve the continuing education course from FSPA.

SECOND: Commissioner Phipps seconded the motion and it passed unanimously.

CORRESPONDENCE FROM PORT EVERGLADES PILOTS' ASSOCIATION

Commissioner Robas stated this was provided for informational purposes.

Mr. Tellechea informed the Board that they could not address one of the issues and it would not be appropriate for the Board to enter into discussion.

Ms. Margaret Mathews stated that Port Everglades has a deputy whose certificate will expire in January and is not being recommended for a permanent certificate. She stated that they would like for the Board to request the Department to assign a deputy from the past test to replace the deputy that will not be approved.

Mr. Tellechea informed the Board they should not discuss this and it would be premature to discuss at this time.

Commissioner Alonso stated that the Board has an obligation to address the needs of the ports.

Commissioner Buffington expressed concern if a selection for a deputy was taken from the original pool it would appear that more deputies were selected than the Board originally declared openings for. He stated that the negative in this situation would be that the pilots have a control over who is being selected, the one thing that he did not want to happen.

Commissioner Buford agreed with Commissioner Buffington. He stated that if the deputy selected died or dropped out for some reason then that vacancy could be filled from the prior pool because that vacancy would be one that had been previously approved. If however the deputy remained on duty at the port then to add another deputy would create another vacancy and you can't go back to the previous pool to fill a new vacancy.

Commissioner McMillin stated that he was present at a meeting about a year ago where this had been discussed and he questioned the legal basis for going back to the pool as he did not like this at all.

Mr. Tellechea responded that he did not know if there was a legal basis.

Following discussion, the following motion was made.

MOTION: Commissioner Buford made a motion that the Board move on to the next agenda item.

SECOND: Commissioner Buffington seconded the motion which failed with all members voting against the motion with the exception of Commissioner Buford.

Following discussion, the following motion was made.

MOTION: Commissioner Buford made a motion that the Board request the Secretary of DBPR that in the event there is a vacancy that was previously filled and it become vacant that the Secretary fill the vacancy from the pre-existing pool.

SECOND: Commissioner Frudaker seconded the motion.

Discussion followed. Mr. Tellechea recommend that the Board approve the motion.

Commissioner Alonso asked for clarification on the meaning of vacancy and as to whether a vacancy will be created in January? Commissioner Buford commented that it was up to the Secretary. Commissioner Alonso commented that the Board was there to protect the public interest and they needed to do that.

Commissioner Molitor commented that they were required to look out for the public as well as for the pilots. He stated that they need to find some action that they can take to be assured that Port Everglades has the number of pilots they need.

Following discussion Commissioner Buford recommended that the Chair contact the Secretary if the motion passes and discuss this with her.

Following discussion Commissioner Buford withdrew his original motion and Commissioner Frudaker withdrew his second.

MOTION: Commissioner Buford made a motion that the Board notify the Secretary of DBPR that in the event a vacancy occurs for a deputy pilot for any vacancy that has previously been filled that the Secretary is requested to fill the vacancy from the pool from which the selection was made and that it be done with dispatch.

SECOND: Commissioner Frudaker seconded the motion and it passed with Commissioner Alonso and Commissioner Sweeney voting against the motion.

STAFF PERCENTAGES

This was provided for informational purposes.

REPORT ON COMPLAINTS

This was provided for informational purposes.

REPORTS

Chair's Report – Commissioner Robas

Commissioner Robas stated that she did not have a report. She asked Mr. Tunnichliff to introduce the new prosecuting attorney to the Board.

Mr. Tunnichliff introduced Drew Winters to the Board. Mr. Winters stated that he looked forward to working with the Board.

Finance Committee Report – Commissioner Buffington

Commissioner Buffington reported that the Committee met and reviewed the finances. They discussed the pending cash transfer and the Committee tabled the review of the 5 year budget until the amount of the cash transfer had been determined which should be by the next meeting.

Rules Committee Report – Commissioner Phipps

Commissioner Phipps reported that there was a rate review application. Commissioner Frudaker stated that there was a request made that the form be presented to the Rate Review Board prior to it being used.

Mr. Spivey reported that there were no major changes to the application and the instructions were being redone. Mr. Spivey stated that the application would be reviewed by the Rate Review Board.

Mr. Tellechea informed that Board that the Rate Review Board stated that there was a form that had been used. Commissioner Frudaker stated that he wanted to make sure that the Board knew about this.

Commissioner Phipps stated that there were two rules that were discussed at Committee meeting. Changes were discussed to Rule 61G14-12.001 regarding the renewal of licenses of spouses of the Armed Forces, however Mr. Tellechea was directed to do research into the history of the Legislative intent of the change to Chapter 455 for discussion at the next meeting.

MOTION: Commissioner Buford made a motion that the Board authorize Board Counsel to notice a rules workshop at the next Rules Committee meeting.

SECOND: Commissioner Buffington seconded the motion and it passed unanimously.

Commissioner Phipps stated that there were changes to the probable cause panel rule, 61G14-17.002 as follows:

“The panel shall consist of three (3) members not more than one (1) member of the panel shall be a non-pilot board member. Former Board members who hold an active valid license may serve on the Probable Cause Panel but at least two (2) current Board members be members of the Panel at all times.

MOTION: Commissioner Buffington made a motion that the Board accept the changes to 61G14-17.002 as read and it be noticed for rule development. If there are no objections to the rule, then it should be filed for adoption.

SECOND: Commissioner Hiers seconded the motion and it passed unanimously.

Probable Cause Committee Report – Commissioner Robas

Commissioner Robas reported that the Probable Cause Panel heard six (6) cases. Of these three (3) were closed and probable cause was found in one (1).

Board Counsel’s Report – Ed Tellechea

Mr. Tellechea reported that they have two (2) rules to be noticed for development and he will bring a report to the next meeting regarding status of these rules.

Executive Director’s Report – Anthony Spivey

Mr. Spivey provided information for the new members regarding travel.

CORRESPONDENCE

This was for informational purposes only.

OLD BUSINESS

There was no Old Business to be discussed at this time.

NEW BUSINESS

There was no New Business to be discussed at this time.

EVALUATION OF EXECUTIVE DIRECTOR

Commissioner Robas stated that she feels with the new Secretary of the Department that communication is much better and she appreciates the extra effort that Mr. Spivey has made to keep her informed and complimented him on his efforts.

ELECTION OF VICE-CHAIR

Commissioner Robas stated that there was a vacancy for vice-chair since Commissioner Winegeart was no longer on the Board.

MOTION: Commissioner Alonso nominated Commissioner Frudaker.
Commissioner Frudaker declined the nomination.

MOTION: Commissioner Frudaker nominated Commissioner McMillin.
Commissioner Robas stated that at this time Commissioner McMillin was not qualified.

Commissioner Sweeney stated that he thought the Vice-Chair should be a pilot and not a consumer member to balance it out.

MOTION: Commissioner Hiers nominated Commissioner Leech.
Commissioner Leech stated that he will be retiring therefore he would not accept the nomination.

MOTION: Commissioner Alonso nominated Commissioner Phipps.
SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

Commissioner Buford expressed his pleasure to serve with Commissioner Alonso as he was on the Board when he first started working with them.

NEXT MEETING DATE AND LOCATION

January 8 & 9 – Tampa

April 15 & 16 – Canaveral

July 8 & 9 – Panama City

October 7 & 8 – to be determined.

David de la Parte suggested the Board have a joint meeting with the Rate Review Board as was discussed at the last meeting. Commissioner Buffington suggested that the meeting be held at the January meeting in Tampa.

Commissioner Molitor suggested the joint meeting in April might be at Port Canaveral because of its close proximity to the Orlando airport. Commissioner Robas stated that she was not sure if this Board has decided there needed to be a meeting. Commissioner Buffington responded that he thought it was a good idea to have a joint board workshop.

Mr. Spivey stated that they may have new members appointed so they may need to wait.

George Viso thanked Commissioner Alonso for his service on behalf of FSPA.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:30 a.m.