

## **MINUTES OF THE MEETING**

**BOARD OF PILOT COMMISSIONERS  
INTERCONTINENTAL HOTEL  
100 CHOPIN PLAZA  
MIAMI, FL  
APRIL 25, 2003 9:00 A.M.**

### **CALL TO ORDER:**

Commissioner Robas, Chair of the Board, called the meeting to order at 9:05 A.M.

### **MEMBERS PRESENT:**

Victoria Robas, Chair  
J. Michael Buffington  
Richard Frudaker  
John Hiers  
David Leech  
Eugene Sweeney  
James P. Winegeart

### **MEMBERS NOT PRESENT:**

Manual Alonso, Vice-Chair  
Cheryl Phipps

### **OTHERS PRESENT:**

Anthony Spivey, Executive Director  
Greg Spence, Government Analyst  
Rivers Buford, Board Counsel  
Galen Dunton, Board Consultant

Commissioner Robas stated that Commissioner Alonso and Commissioner Phipps were both excused from this meeting.

Commissioner Robas thanked the Miami Pilot Association for the excellent reception last night.

Commissioner Robas stated at this time the Board would amend the order of the agenda.

### **OPERATIONAL GUIDELINES**

#### **Key West Bar Pilots Association:**

Captain Mike McGraw was present to answer any questions the Board had regarding their operational guidelines. The Association made the corrections the Board requested at the last meeting.

MOTION: Commissioner Buffington made a motion that the Board approve the operational guidelines as submitted by the Key West Bar Pilots Association.

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

**PORT SECURITY COMMITTEE REPORT/PRESENTATION:**

Commissioner Robas informed the Board that Captain Jim Watson was present to give the Board a port security report.

Captain Watson informed the Board that he would provide them with information they might see or expect to see in the coast guard and inter-agency security. He stated the most significant of operations for everyone was the high interest vessel boarding. These boardings take the longest time and have the highest amount of scrutiny. Captain Watson stated that they are now notified 96 hours in advance of a vessel arriving and are provided more detailed information. The information is used to screen all arriving vessels and based on the screening they target certain vessels where there is a potential for the vessel to be used by terrorists. The model is based on the one that the Navy and Coast Guard have used for years in areas around the world. Captain Watson explained the procedures that are followed.

Captain Watson stated they appreciated all of the cooperation they have received from all of the ports. He responded to the Boards questions and discussed the procedures that are followed.

Commissioner Robas thanked Captain Watson for the presentation and his taking the time to meet with the Board.

**APPROVAL OF THE MINUTES OF THE MEETING**

**January 10, 2003**

Commissioner Buffington stated that on page 39 at the bottom of the page "5-7ear" should be "5-year." On page 40 the motion should read "be adopted as amended."

Commissioner Frudaker stated that on page 36 the last paragraph should be changed to "...Panama City and thought the Pensacola port authority requested..."

MOTION: Commissioner Buffington made a motion that the Board approve the minutes as amended.

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

## **DISCUSSION REGARDING THE PORTS OF FT. PIERCE AND PALM BEACH:**

Commissioner Robas introduced Captain Bill Roden. Captain Roden provided the Board with a history of what has happened in Ft. Pierce. Palm Beach was approached about 10 or 12 years ago to assist Ft. Pierce to cover during illness or short periods. This was done at the expense of the pilots in Palm Beach, Captain Messer and Captain Roden. Captain Ergle was injured in May of 2002 and notified Captain Roden that he had a bad shoulder and did not know if he could work. In November Captain Ergle notified Captain Roden that they would be starting a weekly service and asked if the Palm Beach pilots could do the piloting. They have started the weekly service, which has caused some problems. Captain Roden stated that Indian River Terminal was buying another ship and that ship would be running up to four times a week. The Palm Beach Pilots stated that this was taking up a lot of their time away from their port.

Captain Roden stated that one ship left and has not been back in a month and the ship that was supposed to be running three times a week is actually running twice a week. He stated that twice a week was ok, but still causes problems at times.

Commissioner Robas questioned the prognosis for Captain Ergle. Captain Roden informed the Board that Captain Ergle had a MRI done recently and understands that it will be another three weeks before a final determination if he will be able to come back or not. He has pinched nerve damage in his neck and his arm cannot be raised high.

Commissioner Robas stated there were a couple of issues the Board needed to address. The condition of Captain Ergle and is he considered an active pilot now.

Commander Dunton stated that because of his injury Captain Ergle was not able to pass the physical. He advised him to submit something on file to inform the Board and the Board office as to what he was doing and why. Commander Dunton stated there was also the issue of where Captain Ergle falls in the definition of active service by the rules.

Commissioner Robas asked for the recommendation from the Palm Beach Pilots Association.

Captain Roden stated in the short term they would like to see someone else from another port cross-licensed as soon as possible. The closet port is Canaveral; they are approximately the same distance as Palm Beach. Captain Roden stated that in the long term another deputy should be assigned in Ft. Pierce. He stated that if business stays steady and the rate increase is approved, the port could support the pilots.

Commissioner Robas questioned how Captain Ergle felt about a deputy pilot in the port.

Captain Roden responded that when he told Captain Ergle what he was going to tell the Board, he did not say too much. Commissioner Sweeney questioned why Captain Ergle was not present at the meeting. Captain Roden stated that he was probably in therapy, he did not know why because he told him about the meeting.

Commissioner Winegeart stated that the Board needed to be careful in appointing a deputy. Commissioner Frudaker stated that he was concerned about advertising a position and having someone appointed and then the port does not do anything. He stated that you have to have infrastructure to support the port.

Commissioner Buffington asked Commander Dunton how long it would take to process a new cross-licensed pilot for the port. Commander Dunton stated Ft. Pierce was a non-designated port so the individual would not have to take the Coast Guard license exam for that port. We require the pilot to take 12 round trips and if the schedule stays as advertised it would take 2 – 3 weeks to get the 12 trips. Commander Dunton stated that he could have an examination ready within a week or two once he has been given the word to proceed.

Commissioner Buffington stated that if Captain Ergle is incapacitated on a permanent basis, then an opening should be declared. He stated that it had been an active port in the past.

Captain Viso, with the Florida State Pilots Association, stated that if they could get 1 or 2 pilots from Canaveral that were cross-licensed, he felt they could handle the situation. He stated that he understood there might be a pilot or two that would be willing to assist Palm Beach.

Mr. Buford stated that the Board needed to keep in mind that Captain Ergle has the right to take advantage of Section 310.102, which is the Treatment Program for Impaired Pilots. Mr. Buford informed the Board that probably the best solution at this time would be to have the cross-licensed pilots and not declare an opening.

Commissioner Sweeney questioned what triggered the need for a pilot in a particular port. Commissioner Robas responded that the Legislature designates deep-water seaports. Commissioner Buffington responded that Ft. Pierce is still designated a port because it does have traffic in and out of the port.

Ken Roberts from the Indian River Terminal with Ft. Pierce spoke to the Board. He stated that Captain Roden gave a good overview of the situation right now and he is a part of the group that bought the facilities about 18 months ago. He stated that they had spent \$10 million on the facility. He stated that they were

looking at additional vessels and they intend to put the port to work on a steady basis.

Commissioner Robas stated that the Board was concerned with moving forward with a deputy pilot and questioned if there would be the infrastructure to support the pilots. The Board discussed the infrastructure with Mr. Roberts.

Commissioner Winegeart asked Captain Roden how many additional cross-licensed pilots were necessary. Captain Roden responded at least two additional pilots. Commissioner Winegeart stated that he felt the requirements for cross-licensed pilots was there, however there were still questions that needed to be answered before a decision could be made on the deputy pilot. Discussion followed regarding the possibility of a deputy pilot and cross-licensed pilots.

**MOTION:** Commissioner Buffington made a motion that the Board declare an opening for cross-licensed pilots for Ft. Pierce from any port without a limitation as to the number of pilots.

**SECOND:** Commissioner Leech seconded the motion and it passed unanimously.

Commissioner Buffington clarified that although the motion had been made without a limitation to the number of openings, the Board was still meeting its obligation of addressing the supply and demand for pilotage. As the licensed pilot of the port controls the use of the cross-licensed pilot, there would not be more pilots than necessary for the port.

Commissioner Sweeney stated that he felt the operating guidelines for Ft. Pierce should be updated and presented to the Board for review.

Commissioner Robas stated that the Board needs to be kept informed as to the status of Captain Ergle. Commissioner Buffington recommended that the Chair and the Board office be kept informed as to Captain Ergle's condition so if action needs to be taken.

Commissioner Robas requested that this be on the next agenda as an update issue on Captain Ergle.

Commissioner Robas expressed the appreciation of the Board to the Palm Beach Pilots for their assistance with Ft. Pierce.

### **BREAKDOWN OF CANDIDATES FOR MARCH 2003 EXAMINATION**

Commissioner Sweeney requested this information be received each time there is an examination and stated he appreciated it being included.

## **REPORTS**

### **Chair's Report – Commissioner Robas**

Commissioner Robas stated that the \$3.00 maid charge on the hotel would be paid according to Mr. Spivey.

Commissioner Robas stated that this would be Rivers Buford's last meeting with the Board. She stated that he had been her guiding light, great advisor, and great counselor to her as well as other members of the Board. She stated that they had appreciated his service for all the years and wanted to thank him for all of his years of service and stated that the Board would certainly miss him. The Board and attendees of the meeting then gave Mr. Buford a standing ovation.

Mr. Buford stated that he had never had a more enjoyable experience than he has had representing the Board.

### **Board Counsel's Report – Rivers Buford**

Mr. Buford did not have a report to give.

### **Finance Committee Report – Commissioner Buffington**

Commissioner Buffington reported that the Committee met yesterday. The Committee reviewed and discussed the final figures for FY 2001-2002. The Committee discussed the financial reports for the present fiscal year and concluded that the Board was in good financial shape but basically they had an increase in the cash balance of over \$70,000. The Committee expressed their general dissatisfaction with the Department's response to their request for financial information. Commissioner Buffington reported they discussed the Departments obligations and the Boards powers as contained in Chapter 455.219 and 215.37. There was also discussion as to the rights to the information provided under Chapter 119. The results of this discussion was the following motion: Being aware of legislative rights under chapter 455.219 and 215.37, Florida Statutes, the Board of Pilot Commissioners request a workshop with the Secretary of the Department and her representatives to discuss outstanding budgetary issues in Tallahassee at a date to be announced and an agenda of items to be discussed will be formulated and submitted by the Finance Committee in advance of the workshop. The motion passed.

Commissioner Buffington reported that a discussion took place as to the problem that occurred with regard to the contract between the Division of Professions and the consultant investigator. The Committee members expressed frustration and displeasure with the way the Division of Professions has handled the contract and the amendments over the past several years. A concern was expressed with the proposed change from the contract with the consultant as an expert witness to an OPS employee. As a result the following motion was made: The Finance Committee recommends the Department retain the services of Galen Dunton as consultant/investigator and the Committee further recommends he be

retained under the current contractual basis for a period of one year. The motion passed.

Commissioner Buffington reported the Committee addressed the gross pilotage assessment and the desire to reduce the current cash surplus the following motion was made and passed: Reduce the gross pilotage assessment to 0.6% effective July 1, 2003.

Commissioner Buffington reported that the meeting concluded with a discussion on the quarterly summary of staff percentages the Committee had requested the Executive Director provide.

**MOTION:** Commissioner Buffington made a motion that being aware of the legislative rights as provided under Chapter 455.219 and 215.37, Florida Statutes, the Board of Pilot Commissioners request a workshop with the Secretary of the Department and her representatives to discuss outstanding budgetary issues in Tallahassee at a date to be announced and an agenda of items to be discussed will be formulated and submitted by the Finance Committee in advance of the workshop.

**SECOND:** Commissioner Winegeart seconded the motion and it passed unanimously.

**MOTION:** Commissioner Buffington made a motion that the Board recommend the Department retain the services of Galen Dunton as consultant/investigator and the Committee further recommends he be retained under the current contractual basis for a period of one year.

**SECOND:** Commissioner Sweeney seconded the motion and it passed unanimously.

**Rules Committee Report – Commissioner Frudaker:**

Commissioner Frudaker reported the Rules Committee met yesterday and voted to recommend to allow counsel to proceed with rule making process to lower the percentage of pilotage assessment from 1% to 0.6% effective July 1, 2003. They also voted to recommend counsel to proceed with a notice of change to remove the words “latest revision” from Rule 61G14-20.001(2)(c)2 and remove (5)(a) and (b) from Rule 61G14-17.004.

**MOTION:** Commissioner Frudaker made a motion that the Board lower the pilotage assessment from 1% to 0.6% effective July 1, 2003.

**SECOND:** Commissioner Leech seconded the motion and it passed unanimously.

MOTION: Commissioner Frudaker made a motion that the Board remove the words "latest revision" from Rule 61G14-20.001(2)(c)2 and remove (5)(a) and (b) from Rule 61G14-17.004.

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

### **Probable Cause Committee Report – Commissioner Robas**

Commissioner Robas stated that the Committee did not meet.

### **Prosecuting Attorney's Report**

Commissioner Robas stated there was no report since they were not present. Mr. Spivey provided the Board with the Prosecuting Attorney's Report. Mr. Spivey informed the Board that Tiffany Short was no longer with the Department and Mr. Tunnicliff was going to attend; however he had a conflict.

Commissioner Robas stated that in the July meeting she would expect Mr. Tunnicliff and the new prosecutor, if in place, to attend the meeting. There are 2 cases, from 1999 and 2000 that she has concern over and would like to hear the status of them at the meeting.

MOTION: Commissioner Buffington made a motion that the Board recommend the Prosecuting Attorney in Case 2000-06695 and Case 99-08442 by the next meeting of the Board that they either have a stipulated agreement to present to the Board or a hearing date that the case will be heard before DOAH.

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

### **Executive Director's Report – Anthony Spivey**

Mr. Spivey informed the Board that the staff percentages were provided. The Department requested that the sweep information be provided for the Boards' information.

Mr. Spivey stated earlier he had addressed the Board regarding the background checks for the Pilots that were taking the examination. The Department wanted him to address this with them, information was received from a law firm and it shows that the background checks the Department was having done are already being done by the Coast Guard.

Commissioner Robas questioned what the Department wanted the Board to do. Mr. Spivey stated that the Department wanted to know if the Board wanted them to do the background checks.

Commissioner Robas commented that she did not think that the Department needed to do the background checks since they are already done through another agency.

Following discussion the following action was taken.

- MOTION:** Commissioner Leech made a motion that the Board recommend to the Department that additional fingerprinting and background checks of deputies is not needed since they have gone through the Coast Guard licensure process as well as prior to access to any Florida port facilities they will go through the Chapter 311.12 background checks.
- SECOND:** Commissioner Sweeney seconded the motion and it passed unanimously.

### **CORRESPONDENCE**

Commissioner Sweeney stated there was not a copy of the letter Mr. Spivey was to write to Mr. Porter and asked if the letter had been done. Mr. Spivey responded that the letter was done. Commissioner Sweeney requested a copy of the letter be included in the next agenda.

### **OLD BUSINESS**

There was no old business to come before the Board.

### **NEW BUSINESS**

Commissioner Leech stated that he wanted to present an item to the Board for consideration and perhaps an agenda item for the next meeting. He suggested the Board investigate or consider moving the Board of Pilot Commissioners out of the Department to another Department where they could be better served. He stated that they have had years of frustration dealing with the Department and wondered if there was some place else they could go independent wise or department wise that could better take care of their needs and there financial questions and answers.

Commissioner Robas commented that before the Board looks at alternatives, she would like to have the next Board meeting in Tallahassee in July. She stated that she wanted the Department to feel obligated to come to the meeting and discuss with the Board frankly and openly about the relationship that they are supposed to have. Commissioner Robas did not want the Department to attend the workshop with a perceived threat from the Board that we want to look at alternatives at that time. Commissioner Robas stated that she felt we needed to hear what the Department has to say, particularly about our budget and financial reports. She stated that she felt that after the meeting, we would know what the next step should be.

Mr. Buford commented that to move the Board of Pilot Commissioners out of the Department would be a legislative issue and would open up Chapter 310.

Mr. Spivey commented that with the new administration, the Board will see a change.

Mr. Hiers informed the Board there was legislation to move the Funeral Board to another department.

Commissioner Robas wanted the Board to consider as an agenda item for the next meeting. Since the Board has an annual review for the consultant and attorney, and even though there is no statutory requirement she thought it would be good to have an annual review of the executive director at the next meeting.

Captain Joe Brown informed the Board that the deputy certificate for Captain McGill had not been issued. Mr. Spivey stated that he had been trying to get it issued and understood that it had been done.

Captain Nadeau expressed his frustration with the Department and the amount of time it takes to have anything done.

#### **ELECTION OF OFFICERS**

Commissioner Robas called for nominations for Chair.

MOTION: Commissioner Leech nominated Commissioner Robas to continue as Chair.

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

Commissioner Robas thanked the Board for the nomination and accepted the position.

Commissioner Robas called for nominations for Vice-Chair. Commissioner Sweeney asked Commissioner Robas to updated the Board on the status of Commissioner Alonso, the current Vice-Chair.

Commissioner Robas responded that Commissioner Alonso had served on the Board for the last 10 years. However, his professional workload is such that he is not able to attend our meetings. She stated that he is committed to the Board and will attend a meeting if specifically requested. Commissioner Robas noted that there are some pending disciplinary cases where we may need Commissioner Alonso.

Commissioner Sweeney stated that due to the position of Commissioner Alonso, he would like to put Commissioner Buffington in as Vice-Chair. Commissioner Buffington responded that he would like to withdraw his name due to the expiration date of his term.

MOTION: Commissioner Buffington made a motion to nominate Commissioner Frudaker as Vice-Chair.

Commissioner Frudaker declined the nomination.

MOTION: Commissioner Frudaker nominated Commissioner Winegeart as Vice-Chair.

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

#### **NEXT MEETING DATE AND LOCATION**

Commissioner Robas stated that the next meeting would be held on July 24 & 25, 2003 in Tallahassee. The workshop will be on July 24<sup>th</sup> from 8-12 and then the Committees would begin at 1:00, if the workshop is completed on time. Commissioner Robas asked that Mr. Spivey move the meeting if he finds out that the Secretary has a conflict with the selected dates at this time.

Commissioner Buffington stated that the Board would need ample time to review any material for the workshop. Commissioner Robas stated that Commissioner Buffington would be supplying a list of information that will be needed to Mr. Spivey prior to the meeting.

Commissioner Robas suggested October 23 & 24 in Key West. Captain McGraw stated that he would assist with the reservations. The Board set the meeting in January 8-9, 2004 in Pensacola and the April meeting to be decided at a later date.

#### **ADJOURNMENT**

There being no further business to come before the Board, the meeting was adjourned.