

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS
Department of Business and Professional Regulation
Board Conference Room
1940 North Monroe Street
Tallahassee, FL
July 25, 2003 9:00 A.M.

CALL TO ORDER

Commissioner Robas, Chair of the Board, called the meeting to order at 9:10 a.m.

MEMBERS PRESENT

Victoria Robas, Chair
J. Michael Buffington
Richard Frudaker
John Hiers
David Leech
Cheryl Phipps
Eugene Sweeney
James Winegeart, Vice-Chair

MEMBERS NOT PRESENT

Manual Alonso

OTHERS PRESENT

Anthony Spivey, Executive Director
Elise Rice, Government Analyst
Ed Tellechea, Board Counsel
Charles Tunnicliff, Prosecuting Attorney
Galen Dunton, Board Consultant
Rivers Buford

Commissioner Robas, on behalf of the Board, thanked Cynthia and Charles Tunnicliff for the reception and the Pilots Association for the dinner last night.

PRESENTATION OF PLAQUE TO RIVERS BUFORD

Commissioner Robas asked Mr. Buford to come up and she then presented him with a plaque.

Commissioner Buffington presented Mr. Buford with a plaque from the Tampa Bay Pilots Association.

APPROVAL OF THE MINUTES OF THE MEETING

April 25, 2003

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

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

APPROVAL OF APPLICANT FOR STATE PILOT EXAMINATION

James S. Ruoff, Port Everglades

Commander Dunton provided a memorandum regarding documentation that had been submitted for Captain Ruoff. Captain Ruoff was in the last level of training and there were no outstanding incidents and it was recommended that he take the State Pilot Examination in September.

MOTION: Commissioner Phipps made a motion that the Board approve James S. Ruoff to take the State Pilot Examination.

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

REVIEW OF CROSS LICENSE EXAMINATION CANDIDATE FOR FT. PIERCE

David Leech

Commander Dunton stated that at the last meeting the Board had approved an opening for an additional cross-licensed deputy for Ft. Pierce. Captain Leech has submitted all the required information, meets the requirements and it was recommended that he be approved.

MOTION: Commissioner Phipps made a motion that the Board approve David Leech for the Cross License examination for Ft. Pierce.

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

DISCUSSION OF DRAFT INCREASE FOR ST. JOHN'S BAR PILOTS' ASSOCIATION

Barrie Snyder, Vice-President of St. John's Bar Pilots' Association was present. Captain Snyder informed the Board that the Army Corps of Engineers had done an extensive dredging project to increase the depth from 38 feet to 40 feet. They expect the dredging to be completed and certified by next month. Captain Snyder stated that the Association had no intention to increase the lesser draft vessels and they want to hold out on any changes so they can address any issues they may have. Captain Snyder stated their only intention, once the change has been certified by the Corps of Engineers, was to increase the upper limit.

Commander Dunton questioned if this would have any impact on the deputy pilot training. Captain Snyder responded that the deputy is now in the final draft limit and he is required to have 12 ins and 12 outs and they have informed him that

they will increase his drafts. Captain Snyder stated that they would require him to have trips on vessels of 39 feet or more.

Commissioner Robas inquired if the Association was going to amend their training program to reflect this change. Captain Snyder stated that they were definitely going to make the changes and that they had discussed this.

Commissioner Sweeney stated that they would need to amend their operating guidelines. Commissioner Buffington stated that they would not have to rewrite the entire document and that he was satisfied with what has been said.

Commissioner Robas commented that they would need to specify the change to the Broward Point Turn in the guidelines

MOTION: Commissioner Buffington made a motion that the Board accept an amendment to the operational guidelines for St. Johns Bar Pilots Association once the project is complete in the depth from 38 feet to 40 feet up to buoy number 60.

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

Commissioner Robas stated that Johnnie Cobb had been asked to come before the Board to provide a breakdown of the board office staff percentages.

Mr. Spivey informed the Board that the percentage report was now down to 4 employees and he would provide the workload percentages to the Board in the future.

Johnnie Cobb informed the Board that this Board was in the 2nd phase of the release and they were charged 15% of the cost for 20 employees. When they implemented the release it was decided to go with the 15% until they had enough history to see how to charge the Boards after reengineering. Mr. Cobb stated that the costs were going down but the percentage may be going up.

Commissioner Sweeney stated that he wanted to see the allocation similar to what they have been given in the past.

Mr. Spivey informed the Board that the percentages would fluctuate depending on the work that is being done. He stated for example that Renese Jones does all the contracts, sets up the hotels for meetings and correspondence. Mr. Spivey informed the Board that Ms. Jones was his assistant and will assist where needed.

Mr. Spivey informed the Board that he would provide the report at each meeting as requested by Commissioner Sweeney. Commissioner Sweeney stated that he really wanted to know the dollars he did not really care about percentages.

OLD BUSINESS

Discussion Regarding the Port of Ft. Pierce

Commissioner Robas stated the Board would address the Port of Ft. Pierce at this time and they would call Captain Bill Messer from the Palm Beach Pilots Association for him to participate in the discussion.

J. Michael Pennekamp, Attorney, was also present at the meeting.

Captain Messer informed the Board that they were strapped and the partners in the Association were losing patience over the situation in Ft. Pierce and they would like to come to some resolve so they are not involved anymore with the Port of Ft. Pierce.

Mr. Pennekamp commented that he thought there would be discussion among the Board and brought issues to Rate Review Board during the Rate Hearing recently and some of the comments may have been taken out of context. He stated that the Board of Pilot Commissioners was in place to make sure there was a pilot in place. Mr. Pennekamp stated that Ft. Pierce had worked with Captain Messer, Captain Roden and Captain Ergle to obtain pilot services. He stated that the Port of Ft. Pierce had gone out of their way to help the situation along. Mr. Pennekamp informed the Board that the purpose for him being here today was to ensure that Ft. Pierce will have a pilot now and in the future so it does not close.

Commissioner Robas asked for an update on Captain Ergle. Commander Dunton responded that he talked with Captain Ergle's attorney on Wednesday and was told that within the next two (2) weeks he would have an evaluation by a doctor as to what his future will entail. Commander Dunton informed the Board that there was a letter on file that Captain Ergle is in rehab and his license is inactive at this stage.

Commissioner Leech informed the Board that he would be able to help out when he is off the schedule for Miami, however it will be on a part-time basis.

Commissioner Buffington questioned if any vessels had been delayed? Mr. Pennekamp responded that they have changed the vessel schedule so it allows the pilots to come to Ft. Pierce. The vessel is delayed in Freeport for 3 hours to allow the pilots time to arrive in order to handle the vessel.

Following discussion, Commissioner Robas stated that the Board needed to meet with Captain Ergle and they need some indication of his physical condition.

Commissioner Buffington commented that he spoke to Captain Ergle recently. He stated that Captain Ergle told him that he was scheduled in two (2) weeks for a physical, so they should have some information within couple of weeks.

Commissioner Frudaker suggested the Board may want to consider having a conference call after the physical information is received.

Commissioner Sweeney questioned where the state fit in since he was not taking a turn on duty.

Mr. Pennekamp commented that Chapter 310.073 requires a physical every 12 months and Captain Ergle's is over year and half. Mr. Pennekamp stated that he was here to suggest to the Board that perhaps something needs to be done quickly to make sure they have a pilot full or part time to handle vessels.

Commissioner Robas responded that because of the rules and regulations getting even a full time deputy is a lengthy process it can take up to 3 years. She stated that cross licensing was the avenue in order to meet the short-term immediate needs. Commissioner Robas asked the Palm Beach Pilots to continue in their capacity until Commissioner Leech is also cross-licensed for Ft. Pierce.

Commissioner Frudaker stated that even if the Board declared an opening and scheduled an emergency examination, there was no guarantee that anybody would apply because they would be making a commitment to the port and they don't have the volume of work to support a family. He further stated that he did not foresee a full time pilot going there anytime soon, the port was going to have to be flexible.

Commissioner Winegeart questioned what happened at the rate hearing. Mr. Spivey cautioned the Board about discussing the issues regarding the Rate Review Board.

Mr. Pennekamp stated that \$10 million had been invested by his clients at the port and there was a vessel that is taking 200 turns a year. He also stated that Captain Ergle had a lawsuit against his clients because of his injury. Mr. Pennekamp stated that his client purchased a pilot boat and charged \$75.00 to Captain Ergle and the Palm Beach Pilots to use the boat. He stated that the requested rate increase would have put them out of business. Mr. Pennekamp stated that the rate hearing went forward and there was discussion regarding an added fee to compensate Captain Roden and Captain Messer for their travel time; however at the end of the hearing his client agreed not to charge them at all for the use of the vessel to keep the rates as they were.

Mr. Pennekamp commented that Ft. Pierce is a port that can grow and they want to work with the Boards for them to give the port a chance. He informed the Board that they had a good working relationship with Captain Ergle and the lawsuit has nothing to do with this. Mr. Pennekamp stated that if Captain Ergle is found to be in good physical condition, then that comes into play. He also

suggested the idea of combining Ft. Pierce and Palm Beach so they don't run into this problem, it was a way to address the problem.

Commissioner Buffington commented that it was a difficult situation and small ports create unique problems. He stated that by the next meeting they may need to declare openings however the Board needed to have a conference call regarding Captain Ergle because the Board needed complete information in order to make any decision. Commissioner Buffington suggested scheduling a conference call in four (4) to five (5) weeks to allow Captain Ergle time to get his physical and have the results.

Commander Dunton informed the Board that Captain Ergle could fall under the impaired practitioner's act, however he has chosen not to do this.

Commissioner Phipps questioned if the suggestion was presented to Palm Beach regarding the combining of the two (2) ports? Captain Messer responded that he was not familiar with that process and they were not willing to combine the two ports. He further stated that based on rate hearing for Ft. Pierce, the company has no concept of the sacrifices they have made in order to assist the Port of Ft. Pierce. Captain Messer informed the Board that he had to leave and that Captain Ergle was standing by if need to talk to him.

Commissioner Robas stated that they were going to call Captain Ergle.

Commissioner Leech commented that the cross-licensed pilots have always been dedicated to providing services because the traffic was slow, however, cross licensing is not the permanent solution.

Mr. Pennekamp stated that they are worried that they have Captain Ergle as the pilot and he is unable to provide piloting services and Captain Roden is saying they don't want to assist anymore. Mr. Pennekamp expressed concern that they may have a vessel arriving and it can't come into port because they are required to have a pilot.

David de la Parte stated that the Boards' role was to make sure each port had the correct openings, it was not their responsibility to provide a pilot. Mr. de la Parte commented that the infrastructure was not there at the Ft. Pierce Port and that was the purpose of the rate hearing. He stated that the Pilots from Palm Beach were not getting a fair wage and they were being accused of using the rate increase to get the traffic to go to Palm Beach. Mr. de la Parte commented that the obligation of the Board was to determine how many pilots were needed and to ensure whom ever is appointed is qualified. He stated that he was concerned about the concept that the Board can force a pilot into a port.

Mr. Pennekamp responded that no accusation was made that they were trying to diminish the Port of Ft. Pierce. He stated that he was convinced that the

situation will resolve itself and the cross licensed pilots were compensated for their time which was discussed at the rate hearing. Mr. Pennekamp stated that the pilots were making \$27,000 to \$30,000 for 800 hours a year of work.

Commissioner Robas commented that the critical issue at this point was to find out the status of Captain Ergle. Commissioner Robas attempted to reach Captain Ergle via telephone but was unsuccessful.

Commander Dunton stated that he would call Captain Ergle and let him know they want to set up a conference call. Commissioner Robas stated that the Board would need to make sure they have his verbal response regarding his health but would also need it in writing from the doctor.

Commander Dunton informed the Board that if they declared an emergency situation for a deputy, the earliest they could be tested would be March.

Mr. Spivey informed the Board that the Chair of the Rate Review Board asked for a letter to be sent to Captain Roden and Captain Messer for their support at the Port of Ft. Pierce and he would draft the letter for Commissioner Robas' signature.

Mr. de la Parte commented that the Rate Review Board and the Board of Pilot Commissioner affect each other and thought it would be helpful if they could educate each other. He suggested that they may want to consider a joint workshop to help them understand each other. Mr. Spivey agreed and stated that he tried to keep the conversation regarding the two boards general and not get into specifics.

Commissioner Robas requested that the Board members be provided with a copy of the Rate Review Board minutes from the Ft. Pierce hearing.

REPORTS

Chair's Report – Commissioner Robas

Commissioner Robas commented that she was grateful for chance to serve as Chair again. She stated that she was satisfied with the current committee assignments and they will stay the same.

Board Counsel's Report - Ed Tellechea

Commissioner Robas stated that the Board looked forward to working with Mr. Tellechea and welcomed him. Mr. Tellechea stated that he was looking forward to working with and did not have a report to give.

Finance Committee Report – Commissioner Buffington

Commissioner Buffington reported that the Workshop very successful, there were numerous questions and they got answers to most of them. He stated that he

dismissed some of the questions that would have created excessive work for the Department to create.

Commissioner Buffington stated that he looked forward to working with the Department and hopefully they are back to solid communication.

Commissioner Buffington stated that the Committee discussed how the new schedule regarding the financial basis will be 45 days after the closing of the books and perhaps the Board could establish meetings around that time.

Commissioner Buffington stated that he agreed that the Chair of the Board and the Chair of the Finance Committee should co-author a letter to the Secretary and staff thanking them.

Commissioner Leech thanked Commissioner Buffington for his efforts and stated that he felt he had put the Board on the right road and path.

Rules Committee Report – Commissioner Phipps

Commissioner Phipps reported that the Committee met and discussed the application that used to be provided for increasing rates and Mr. Tellechea will look into this. She stated that she wanted to make the Rate Review Board aware that the application is not being done now. Commissioner Phipps requested this be on the agenda for the October meeting.

Probable Cause Committee Report – Commissioner Robas

Commissioner Robas reported there were 12 cases considered. The results of the Panel was: 1 dismissed; 1 tabled; 7 closed and 3 probable cause found.

Prosecuting Attorney's Report – Charles Tunncliff

Mr. Tunncliff stated that there were two (2) cases that were old. One of them was set for hearing on August 26 & 27.

Mr. Tunncliff informed the Board that Letters of Guidance can be sent to individuals that are investigated. He stated that the Probable Cause Panel has the ability to find probable cause and they also have the authority to issue a letter of guidance. Mr. Tunncliff stated that when they close cases that are already public, sending a letter of guidance at that time is discipline and the respondent would have the opportunity to defend. He stated that the letters have no force and he treats them as confidential and would not use them if there was another case against a licensee.

Mr. Tunncliff informed the Board that the new prosecutor will take the bar next week and will attend the next meeting. He stated that the following meeting the new attorney would make the presentations and Mr. Tunncliff would be available if needed.

**Executive Director's Report – Anthony Spivey
Staff Percentages**

Mr. Spivey stated they have already discussed the percentages.

CORRESPONDENCE

MarineSafety News Release

This was provided for informational purposes.

Letter to Mr. Porter of the Port of Pensacola

This was requested by Commissioner Sweeney for informational purposes.

Letter to Secretary Diane Carr

This was provided for informational purposes.

NEW BUSINESS

Canaveral Pilots Association

Commissioner Buffington stated that Board Counsel should answer the questions posed by the Canaveral Pilots Association regarding their Operational Guidelines.

Mr. Tellechea responded that he would draft response and send it to the Chair for review.

EVALUATION OF EXECUTIVE DIRECTOR

Commissioner Robas stated that this item would be postponed until the next meeting.

NEXT MEETING DATE AND LOCATION

The next meeting would be held on October 9 & 10 in Key West. The Board also set January 8 & 9, 2004 in Pensacola.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:45 a.m.