

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS

Don Vicente de Ybor Historic Inn

1915 Republica de Cuba

Tampa, FL 33605

January 9, 2004 9:00 a.m.

CALL TO ORDER

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

Members Present

Victoria Robas, Chair

Michael Buffington

Rivers Buford

Richard Frudaker

John Hiers

David Leech

Earl McMillin

Donald Molitor

Cheryl Phipps, Vice-Chair

Eugene Sweeney

Others Present

Anthony Spivey, Executive Director

Elise Rice, Government Analyst

Drew Winters, Prosecuting Attorney

Ed Tellechea, Board Counsel

Galen Dunton, Consultant

Gretchen Rayborn, FSPA

David de la Parte, FSPA

Jorge Viso, FSPA

Joe Brown, SJBPA

Barrie Snyder, SJBPA

C. Efthimiadis, Miami

Captain Max Stovall, Jacksonville

Tony Hogg, Florida Docking Masters Assoc. Jacksonville

Tom Craighead, Moran Towing FL, Jacksonville

Mason L. Flint, Jacksonville Docking Masters Assoc, Inc

John Fernandez, Biscayne Bay Pilots

Ernie Voisin, Florida Docking Masters, Assoc, Jacksonville

Commissioner Robas thanked the Tampa Bay Pilots for the reception last night.

OVERVIEW OF FLORIDA'S SUNSHINE LAW – ED TELLECHEA

Mr. Tellechea provided detailed information regarding the Sunshine Law as to what members can or can't do. He stated that the members could communicate with staff without noticing however they could not use staff to pass information along to other members.

During discussion it was noted that the Board had not seen the Telephone Conference Call minutes and requested staff to research this.

Commissioner Molitor requested that the packet on the Sunshine Law be sent out to the members. Mr. Tellechea responded that he would send the information.

APPROVAL OF THE MINUTES OF THE MEETING

October 10, 2003

MOTION: Commissioner Sweeney made a motion that the Board approve the minutes.

SECOND: Commissioner Buffington seconded the motion.

Commissioner McMillin stated that the minutes did not reflect Commissioner Buffington's comments regarding returning to the pool of candidates. Staff was requested to review that section of the tape dealing with ports and deputies and amend the minutes.

Following discussion a vote was taken on the motion which passed unanimously.

REVIEW OF DEPUTY PILOT APPLICATIONS FOR PALM BEACH AND PORT EVERGLADES OPENINGS

Commander Dunton provided the Board with a document containing the names of all of the applicants for the examinations. Commander Dunton discussed the timeframes for the application process with the Board. He was to pick up the applications on December 2nd, however he was mailed an additional 35 application on December 18, which makes the time he has to review the applications very stressful. He informed the Board that there apparently was a three (3) week deadlock to get the applications to the proper individuals, and they have a mail backlog within the Department. Commander Dunton stated that his suggestion for the Board's consideration would be to consider moving the date for the ports' declaring of openings to the July meeting to give the Department more time to receive and review the applications.

Commissioner Leech questioned if they could bypass the Department and have the applications sent directly to Commander Dunton.

Mr. Spivey informed the Board that he did not think the backlog would be a regular occurrence and he had talked to the Bureau Chief of Central Intake about this.

Commissioner Robas stated that this merits a letter from the Chair to the Secretary regarding the backlog.

Commander Dunton stated that he had concern because the timeline is extremely tight. Commissioner Leech stated that these were unacceptable delays and he would like to investigate how to get the information sent to Commander Dunton directly.

Commissioner Robas stated that she did not think the Board could bypass the Department, however the Board needs to express to the Secretary that this is not an acceptable process and let the Department know that we are aware of this and there are time lines that have to be met.

Commissioner Frudaker suggested exploring a way that there could be some trigger with the pilot applications so that the Department will know to pull those applications.

Commissioner Robas stated that she will get with Commander Dunton and Ms. Rice to draft the letter based on the facts.

Commissioner Buffington stated that it was not only the individuals they needed to be concerned about but the real problem is for the ports because if you add an additional three months to the process of acquiring new deputies, it could cause additional stress.

Commander Dunton informed the Board that most of the outstanding issues for the candidates were Department requirements and asked that the candidates be given until the 1st of February to submit the information.

Commander Dunton stated that the following applicants were fully qualified by Board rules to sit for the examination: Travis Bacon, West Palm Beach and Port Everglades; John Basel, West Palm Beach and Port Everglades; Robert Beauregard, West Palm Beach; Richard Boullion, Port Everglades; Juan Boullosa, West Palm Beach and Port Everglades; Jon Carlson, Port Everglades; John Chidester, West Palm Beach and Port Everglades; James Clifford, West Palm Beach and Port Everglades; Paul Coan, Port Everglades; Miriam Coddington, Port Everglades; Todd Cooper, West Palm Beach; Matthew Craven, West Palm Beach and Port Everglades; Kevin Dooney, Port Everglades; Michael Funk, West Palm Beach and Port Everglades; Reid Hansen, West Palm Beach and Port Everglades; Peter Hill, Port Everglades; Richard Horne, Port Everglades; John Humphreys, Port Everglades; William Kavanaugh, Jr, West Palm Beach and Port Everglades; Joseph Lachnicht, Port Everglades; Luis Lopez, West Palm Beach and Port Everglades; Klaus Luhta, Port Everglades; Greg MacLaren, Port Everglades; Anthony Mongiello, Port Everglades; Rickie Montoya, West Palm Beach and Port Everglades; John Morris, Port Everglades; Jeffrey Murray, West Palm Beach and Port Everglades; Michael Novak, Port Everglades; Erik Oberlin, West Palm Beach; James Pelland, Port Everglades; Martin Poole, West Palm Beach and Port Everglades; David Pouilot, Port Everglades; Jeffrey Ritter, Port Everglades; Jeff Robben, West Palm Beach and Port Everglades; Augusta Roth, West Palm Beach and Port Everglades; Donald Sacca, Port Everglades; Jonathan Samuell, West Palm Beach and Port Everglades; Michael Sands, West Palm Beach; Mark Saunders, West Palm Beach; Stephen Sottak, West Palm Beach and Port Everglades; Sam Stephenson, West Palm Beach and Port Everglades; Rehman Subeeh, West Palm Beach; Mitchell Tillyard, West Palm Beach; David Ulrich, West Palm Beach and Port Everglades; Randall Van Horn,

West Palm Beach; William Wetzel, West Palm Beach; Peter Whiting, West Palm Beach and Port Everglades; Edward Wiltze, West Palm Beach and Port Everglades; Dana Wirkala, Port Everglades.

MOTION: Commissioner Buffington made a motion that the Board accept the names as read into the record by Commander Dunton to sit for March 2004 examination with the exception of Juan Boullosa, John Chidester, Miriam Coddington, Jeffrey Ritter, Michael Sands, Stephen Sottak and Randall Van Horn.

SECOND: Commissioner Frudaker seconded the motion.

Discussion followed. Commander Dunton informed the Board that the notations by the names were offenses that the Board could not deny an applicant to sit for the examination.

Commissioner Buffington stated that the applicants he singled out was because he wanted to make sure the offenses were ones that would not cause them to be disqualified. Commissioner Buffington stated that some of the applicants had not submitted all of the required information and he wanted to establish a deadline for the applicants to submit the required information.

Commander Dunton stated that the deadline would be February 1st as has been done in the past.

Commissioner Robas called for further discussion, there being none, the motion passed unanimously.

Commander Dunton informed the Board of the offenses and outstanding information for the applicants.

MOTION: Commissioner Buffington made a motion that the Board approve the applications for Juan Boullosa, Jeffrey Ritter, Michael Sands, Stephen Sottak and Randall Van Horn for the March 2004 exam.

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

MOTION: Commissioner Buffington motion that the Board approve Miriam Coddington and John Chidester for the examination provided their applications are complete by February 1, 2004.

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

Commander Dunton stated that Jana Staron was short nine (9) days of sea time and has not been able to verify the time that she was going to fax in to him.

MOTION: Commissioner Buffington made a motion that the Board approve the application for Jana Staron for the March 2004 examination, provided that proof of sufficient sea time is submitted by February 1, 2004.

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

Commander Dunton informed the Board that there were two applicants that were ineligible: Kevin Beaudoin for the Port of West Palm Beach, his seetime would not qualify him and Cameron Kirkconnell for the Port of West Palm Beach was ineligible due to insufficient seetime.

MOTION: Commissioner Buford made a motion that the Board deny Kevin Beaudoin and Cameron Kirkconnell for failure to accumulate the necessary amount of sea time as required by law.

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

Commissioner Sweeney asked that the Board be informed of the selected candidates for the ports following the examination.

APPROVAL OF CANDIDATES FOR STATE PILOT EXAMINATION

Timothy McGill – Jacksonville

MOTION: Commissioner Buffington made a motion that Timothy McGill be approved for the state pilot examination to be given in March 2004.

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

Tobias Rose – Tampa

MOTION: Commissioner Leech made a motion that Tobias Rose be approved for the state pilot examination to be given in March 2004.

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

INFORMATION FROM EDWARD MAX STOVALL, III REGARDING THE PORT OF JACKSONVILLE

Commissioner Robas asked Mr. Tellechea if he could tell her if a complaint had been made against the St. Johns Bar Pilots in reference to this information. Mr. Tellechea responded to his knowledge there had not been any complaints filed at this time. Commissioner Robas asked Commander Dunton if the Board had jurisdiction over a Federal Pilot. Commander Dunton responded that they did not.

Commissioner Robas stated that as Chair she was disappointed that this information has been put before the Board and this is clearly a local situation of a “he said she said” nature. This Board would not become a venue for unsubstantiated issues involving pilots or pilot associations that are licensed in the State of Florida. Commissioner Robas stated that there was a legal process to complain about the professional performance of a licensed pilot and evidently the federal pilot is aware of this since he states that he has taken the pilot examination and has therefore read the laws and rules. She stated that instead of filing a complaint he chose to distribute information to many organizations and professions as possible in an attempt to embarrass the pilot association and in front of this Board without legal due process.

Commissioner Robas stated that this Board would not hear unsubstantiated issues and only unless they come through the legal process that is established by law will the Board hear it. There is a probable cause process that takes care of this kind of discussion and having

found probable cause against a licensee is the only time this Board should hear a public complaint against a pilot or pilot association. Commissioner Robas further stated that otherwise it is hearsay and does not believe it is the appropriate venue of the Board to deal with hearsay. She stated that there were many more pressing issues to come before the Board.

Commissioner Robas stated that in the future she has directed the Executive Director by this meeting that should he receive this type of letter or other information he will review same with Board Counsel and they will send a letter to the addressee explaining the complaint process. Further to avoid this situation in the future the Executive Director will meet, by telephone call, with the Chair to personally review the agenda prior to the final date of publication. Commissioner Robas stated that since the Board has no jurisdiction in this matter, it is the desire of the Chair to treat this issue as closed and move to the next agenda item with no further discussion.

MOTION: Commissioner Hiers made a motion that the letter be considered as information.

SECOND: Mr. Molitor seconded the motion and it passed unanimously.

ST ANDREWS BAY PILOTS UPDATED GUIDELINES

Commissioner Frudaker informed the Board that this was submitted as an update to go along with the letter increasing the draft at the last meeting where the maximum draft will be increased.

MOTION: Commissioner Buford made a motion that the Board approve the requested change.

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

DISCUSSION REGARDING THE PORT OF FT. PIERCE

Commissioner Robas stated that she asked that this be included on the agenda for discussion and asked Mr. Tellechea for update on Captain Ergle.

Mr. Tellechea stated that during the conference call one of the options for Captain Ergle was to enter the impaired practitioners program and they are in the process of contacting him to set up an evaluation. Commissioner Leech questioned who was monitoring this. Mr. Tellechea informed the Board that the Department had a contract with Physicians Resource Network (PRN) which is located in Fernandina Beach and they determine if the licensee is able to practice with skill and safety and if the licensee does not comply with the program they will report it to the Department.

Commissioner Leech questioned the timeframe in which Captain Ergle has to do everything and if there were not a length of time set for this to be done, he would like to set one.

Mr. Tellechea informed the Board that they should have the evaluation prior to the next meeting as it is normally done within 14 days of the initial contact. It will then be a couple of weeks for the report to be given to them.

Commissioner Robas questioned if someone from PRN could attend the next meeting? Mr. Tellechea responded that they have done this with other boards and felt sure they would attend, he would contact them. Mr. Tellechea informed the Board that if Captain Eagle refused to get the evaluation done, PRN would notify them.

Mr. Tellechea stated that Captain Ergles' license is inactive at this time. He stated that the Board should have a report at the April meeting and then the Board will know how to proceed either by declaring an opening at the Ft. Pierce port or demand that Captain Ergle renew his license immediately.

Commissioner Leech requested that Mr. Tellechea inform PRN of the importance of the examination. Mr. Tellechea informed the Board that he had discussed this issue with Dr. Palm and he knows the importance. Dr. Palm requested information on the Coast Guard physical which Mr. Tellechea is going to send to Dr. Palm.

Commissioner Robas informed the Board that she had asked for the Rate Review minutes to be brought back to the Board at this meeting. She stated that she was appalled at some of the comments made at the hearing regarding the Board by the terminal operator. She stated that she would like for Mr. Tellechea to go over some of the comments that the Board found to be objectional.

Mr. Tellechea stated that the Board has addressed the issues and have gone forward and obtained the information that was needed and getting Captain Ergle to let the Board know if he can practice. He stated that at this time they were in a wait and see mode and have done what is required by law to do. Mr. Tellechea stated that the Board has not neglected its statutory obligations for this port and the Board should treat this pilot as they would any other one and not take into consideration any comments made by the counsel at the hearing.

Commissioner Molitor stated that he would like to get the minutes prior to the meetings. Commissioner Robas responded that most of the members had received them a meeting ago, which was prior to him coming on the Board. Commissioner Sweeney commented that yesterday they got the financials from the State that were for the 1st quarter which ended in September and had hoped they were available earlier and would like to get them prior to the meeting. He stated that there had been a lot of handouts at this meeting and he would support the idea that they receive the information prior to the meeting.

Mr. Spivey responded that staff would send out the financial information prior to the meeting. He informed the Board that the Rate Review Board minutes were requested just before the meeting and that was the reason they were a handout. Mr. Spivey stated that Commissioner Buffington had questions on the financial information and that was why they were not sent out earlier. Commissioner Sweeney stated that even three or four days prior to the meeting would be fine.

DISCUSSION REGARDING COMMANDER DUNTON'S CONTRACT

Commissioner Robas stated that this was discussed in committee meetings yesterday and it has been recommended that the Department combine the contracts into one.

REQUEST FROM PORT EVERGLADES REGARDING DEPUTY PILOT REQUEST FOR MARCH 2004 EXAMINATION

Commissioner Robas stated that a letter had been received from Captain Cunningham that they want to declare an additional deputy.

Commissioner Buffington asked Captain Cunningham if they wanted both deputies to report at the same time. Captain Cunningham responded that they can only train two deputies at a time and that they will probably go over 14,000 movements this year.

Commissioner Sweeney thanked Captain Cunningham for complying with the requirement for more information on the request for deputies.

Commissioner Molitor questioned why it took so long to get the examination graded. Commander Dunton explained the process regarding the grading of the exam along with the timeframes.

MOTION: Commissioner Buffington made a motion for at least two deputy openings for Port Everglades for the March 2004 examination.

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

Commander Dunton reminded the Board that they would have to have a conference call at least 24 hours prior to the examination. Mr. Spivey stated that he had already made note of the need for the conference call.

REPORTS

Chair's Report – Commissioner Robas

Commissioner Robas made the following committee appointments:

Commissioner Buford – Rules Committee

Commissioner McMillin – Rules Committee

Commissioner Leech – Finance & Rules

Commissioner Frudaker - Rules

Commissioner Phipps – Finance & Rules & PCP

Commissioner Buffington – Finance

Commissioner Sweeney - Finance

Commissioner Hiers - Finance

Commissioner Molitor - Rules

Commissioner Sweeney asked about the Ad Hoc Committee on Port Security.

Commander Dunton informed the Board that he continues to send out security information to the members as he receives the information.

Commissioner McMillin stated that Commissioner Molitor would be an excellent person to be on this Committee due to his background with the Canaveral Port Authority and Commissioner Robas agreed.

Commissioner Robas stated that the Probable Cause Panel can now have a former Board member who is an active pilot serve on the Panel and she was requesting Jay Winegeart serve on the Panel with Commissioner Buffington as the alternate and thanked him for his service on the committee. Commissioner Robas stated that the Chair's and Vice-Chairs would stay the same.

Commissioner Robas informed Commissioner Molitor that the Port Security Committee was an informational committee to keep the Board informed on the Florida law and federal law. She stated that in the past they have had individuals make presentations to the Board regarding port security. Commissioner Molitor requested staff send him a copy of Chapter 311.12.

Finance Committee Report – Commissioner Buffington

Commissioner Buffington reported the Committee met yesterday and they adopted minutes and reviewed the 1st quarter results which showed they had an increase in revenues and decrease of expenses and show the net assets still in positive position. They reviewed and amended the 5-year budget, discussed contract of consultant/investigator and made recommendation that it be placed under one contract and then amended the 5-year budget. Commissioner Buffington reported that revenues were increased to reflect the revenue flow and changes were made where necessary. He provided the Board with the revised figures based on the changes made yesterday. Commissioner Buffington reported that the Committee adopted the changes to the 5-year budget.

MOTION: Commissioner Buffington recommended that the Board adopt the 5-year budget.

Following discussion, the entire Board voted against the motion then the following action was taken.

MOTION: Commissioner Sweeney made a motion that the Board accept the 5 year budget based on the sheet that has working draft in left corner (see attachment).

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

Rules Committee Report – Commissioner Phipps

Commissioner Phipps reported that the Committee met yesterday and tabled the issue on Chapter 455.02(2) to allow David de la Parte to meet with Commissioner Buford and Mr. Tellechea to draft language for consideration.

Commissioner Phipps stated that deputy compensation and temporary certificates for deputies would be included on the agenda for the next Rules Committee meeting.

Probable Cause Committee Report – Commissioner Robas

Commissioner Robas reported that the Probable Cause Panel met yesterday. They closed all three (3) cases, one of them with a letter of guidance.

Board Counsel's Report – Ed Tellechea

Mr. Tellechea reported that a declaratory judgement had been filed against the Board, the Department, and the Port Everglades Pilots by Andrew Efidimadis. Mr. Tellechea reported that he would try to get the case out of circuit court, as it should go to DOAH.

Prosecuting Attorney's Report – Drew Winters

Mr. Winters reported that there are 20 active cases. He informed the Board that there have been four (4) formal hearings requested and they will be sent to DOAH.

Commissioner Leech wanted to know the date on the oldest case. Mr. Winters stated that he did not have that information at this meeting, however he will provide this information to the Board at future meetings.

Executive Director's Report – Anthony Spivey

Mr. Spivey reported that the Board had requested the Rate Review Board attend this meeting, however this could not be done because of the Board having all but one new member. He stated that they wanted to avoid the situation where there was a rate review done with the Board not having knowledge about the proceedings. Mr. Spivey stated that he was putting information together for the Rate Review members.

Mr. Spivey stated that the Chair of the Rate Review Board wanted to bring the members to the Tallahassee for a meeting, however the Department did not want to bring them to Tallahassee and then also have them attend the April Pilot Commissioner meeting. He suggested that they meet with the Board in April and do training at that meeting also, they may have to extend the meeting in order to cover everything. Mr. Spivey advised the Board members not to speak on specifics of individual ports with the Rate Review members.

Commissioner Robas stated that they would need to have an agenda as to what will be discussed at the meeting.

Commissioner Sweeney requested the Board be provided with a list of the Rate Review members.

David de la Parte stated that he thought one of the reasons for the joint meeting was to have each Boards' counsel explain the role of each board, the jurisdiction of each and how they can impact each other.

Captain Viso offered the help of FSPA for the meeting and informed the Board that FSPA sent the Rate Review members some information on piloting.

Commissioner Robas stated that the Board would have to adjust their schedule for this meeting. Commissioner Hiers commented that he did not see the need for the joint meeting. Commissioner McMillin stated that the Rate Review members needed to know how difficult it is to get into the profession.

Commissioner Frudaker asked if they could they be supplied with the disc from Jacksonville and information from Miami so they can get some information prior to the meeting. Mr. Spivey requested that any information they had be sent to him.

Commissioner Buffington stated that he wanted to address Commissioner Hiers concerns. He stated that there are two duties, one is for the Pilot Commissioners Board to supply sufficient pilots for each port and the Rate Review Board to make sure there are adequate compensation for those pilots. It is an inter-relationship that they need to understand. Each other's decisions impact each other and need to make sure they understand that. People cannot be put in a port if the port's rates are not sufficient to sustain them.

Commissioner Robas stated that the meeting would start at 9:00 on Thursday till 12:00 for the workshop with the Rate Review Board, break for lunch and then go to Committee meetings. The pilots in Canaveral could work with FSPA for a tour of the port for the Rate Review members and then they can leave. Then the Pilot Commissioners Board would have their regular meeting at 9:00 on Friday.

Commissioner Sweeney expressed concern that the members don't have a background in piloting and asked if there was any marine expertise on the Board. Commissioner Frudaker stated that one of the members held an unlimited master's license which is required by statute and that is one reason to have information sent to the members prior to the meeting.

Commissioner Sweeney asked if there were any requests for a rate increase at this time. Mr. Spivey responded that there was no request at this time and if there was any being contemplated to let him know.

Commissioner Robas requested that Mr. Spivey e-mail the members and ask for agenda items.

CORRESPONDENCE

Commissioner McMillin provided correspondence for the Boards information.

OLD BUSINESS

Commissioner Sweeney stated that the report on minorities for the examination was not included and it should be reported as previously requested and he would like to be kept informed as to what the industry is doing in regards to minorities. Commissioner Robas stated that the Executive Director was reporting on the Departments effort to continue diversification of all professions and the State Pilot Association has prepared a minority program and also there was some advertising done regarding the examinations.

Commissioner Robas asked if the advertising was still being done. Mr. Spivey stated that it

was not done this time due to finances. Commissioner Robas stated that the advertising should be started again.

Mr. Spivey informed the Board that the minority statistics would be provided after the examination.

NEW BUSINESS

Frequently Asked Questions

This was provided for information purposes.

NEXT MEETING DATE AND LOCATION

April 15 & 16, 2004 – Canaveral

Commissioner McMillin suggested the Radisson Resort at port be contacted.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:40 a.m.