

## **MINUTES OF THE MEETING**

### **BOARD OF PILOT COMMISSIONERS**

**Radisson Resort at the Port**

**5701 Astronaut Boulevard**

**Cape Canaveral, FL 32920**

**April 16, 2004 9:00 a.m.**

#### **CALL TO ORDER**

Commissioner Robas, Chair, called the meeting to order at 9:09 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

Ed Tellechea, Board Counsel

Drew Winters, Prosecuting Attorney

Robert Jackson, Port Everglades Pilots Association

Rick Hugins, Pilotage Rate Review Board Member

Richard Grimison, Canaveral Pilots Association

David Callan, Canaveral Pilots Association

Gretchen Rayborn, FSPA

Captain Weston Stow, Pilotage Rate Review Board Member

Tanya Robinson, Pilotage Rate Review Board Member

Joseph Sacks

Bob Swindell, Pilotage Rate Review Board Member

John Fernandez, Biscayne Pilots Association

Commissioner Robas thanked the Canaveral Pilots Association for the reception last night. Commissioner Robas thanked Mr. Spivey, Ms. Rice and the Department for their support for the joint meeting as it was time well spent.

#### **APPROVAL OF THE MINUTES OF THE MEETING**

**January 9, 2004**

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

SECOND: Commissioner Frudaker seconded the motion.

Commissioner McMillin stated that he had asked for more information to be included in the minutes on the sunshine law, however since Mr. Tellechea spoke on this yesterday there was no need for expansion. Commissioner McMillin questioned if staff made the requested corrections to the minutes from the October meeting. Mr. Spivey responded that the minutes had been corrected.

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

### **March 22, 2004 – Conference Call**

MOTION: Commissioner Buffington made a motion that this item be tabled until the next meeting so the revised minutes would be included in the agenda book.

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

### **DISCUSSION REGARDING THE PORT OF FT. PIERCE**

Commissioner Leech stated that the situation in Ft. Pierce had been going on for almost 2 years. He questioned if there was an update on the status of Captain Ergle. Mr. Tellechea responded that there could not be much discussed on this however the Department and the Board were moving forward on this issue and he expected a resolution in the near future. Mr. Tellechea informed the Board that he could not confirm or deny that Captain Ergle was in any type of program.

Commissioner Leech stated that he understood that Captain Ergle suffered serious injuries and was unable to pilot and also understands that he will not get better. Commissioner Leech stated that Captain Ergle told him that he would not get better.

Commissioner Leech stated that he thought at this point the Board would be remiss in not taking action at this meeting to offer relief for cross-licensed pilots. He stated that they had the authority and strongly recommended in order to prevent a serious lack of pilots that the Board proceed and declare a deputy pilot opening today for the Port of Ft. Pierce.

Commissioner Buffington commented that this would be an additional pilot for the port as Captain Ergle had not relinquished his license nor had the Department taken it away.

MOTION: Commissioner Leech made a motion that the Board declare a deputy opening for the Port of Ft. Pierce.

SECOND: Commissioner Buford seconded the motion.

Commissioner McMillin questioned if Captain Leech and the Palm Beach cross-licensed pilots were in the position to train the deputy. Commissioner Leech responded that they would continue the burden as long as they know action is going to be taken.

Commissioner Sweeney questioned if the State had done anything against Captain Ergle. Commissioner Buffington responded that at this time the State had not taken away the license. Commissioner Sweeney questioned the issue with the State not going after the

license. Mr. Tellechea responded that at this time they could not say if anything is going on at this time, they could neither confirm nor deny.

Commissioner Frudaker asked what the process was if they received a report that he was unable to practice.

Mr. Tellechea responded that they would ask him to relinquish his license and if he did not he could be charged with being unable to practice and would have to go through the disciplinary process. Mr. Tellechea stated that ideally he would relinquish his license so he would not have any disciplinary action against his license.

Commissioner Sweeney asked if the State had asked Captain Ergle to retire his license. Mr. Tellechea responded that he could not confirm or deny.

Commissioner Buffington stated that if the Department had not taken the license and he had not relinquished the license, they could assume that Captain Ergle still has a license it would be safe to assume that he had gone into the impaired program and he may in the distant future come back. Commissioner Buffington further stated that there was sufficient information submitted that Captain Ergle would not be coming back in the near future, they could assume possibly he would come back at a future date and they need to look at this as if adding a pilot to Ft. Pierce and the reason they are adding a pilot is because they have one that is incapacitated.

Commissioner Buford commented that the worst case would be that some time in the future Captain Ergle would retain his license and they would have two (2) pilots in Ft. Pierce. He stated that currently the Board is not assuring that there are sufficient pilots in the port. Commissioner Phipps commented that this happened in January 2002.

Commissioner Frudaker stated that he was in favor of declaring an opening and a special examination for Ft. Pierce. He stated that the question he had dealt with training and compensation; who was going to pick up that burden?

Commissioner Molitor commented that he would support Commissioner Leech in his proposal and based on the consumer side a strict reading of the rule appears that his license should not be active. He stated that they do have safe piloting in Ft. Pierce because of the cross licensing however they need to take action promptly.

Commissioner Buffington stated that Commissioner Frudaker raised some valid points. He stated that there could be a problem for the pilot that goes into Ft. Pierce as they only have one (1) ship to work and wondered if it would be possible for training if the deputy could be cross licensed in Palm Beach. Commissioner Leech stated that if a larger vessel arrives in Ft. Pierce, the Palm Beach pilots and himself would assist.

Commissioner Buffington stated that they would always need a cross-licensed pilot since Ft. Pierce is a one-man port.

MOTION: Commissioner Buffington made a motion that the Board amend the motion and include that the opening was conditional on a training program being in place and have Commissioner Leech approve the training program. The Board would still have to approve the program but put the program in place.

Commissioner Leech responded that he would like to see the Board move on declaring an opening and would assure the Board that there will be a training program in place.

A vote was taken on the motion as proposed by Commissioner Leech and it passed unanimously.

MOTION: Commissioner Leech made a motion that the examination for the deputy pilot opening be given in September.

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

Commissioner Leech stated that there was nothing in the rules that required the examinations be conducted in March and September, therefore should there not be an applicant for the September examination, he would recommend that they give notification every 3 months until there are applicants.

Commander Dunton informed the Board that they would have to worry about notifying the public, they could set up the examination every 4 months.

MOTION: Commissioner Leech made a motion that the Board offer the examination in September and should there be no candidates, four (4) months later they would have another examination.

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

Commissioner Leech thanked the Board for this and felt it was an important step forward.

### **BISCAYNE BAY PILOTS ASSOCIATION - MODIFICATION TO DEPUTY TRAINING PROGRAM**

Captain John Fernandez was present from the Biscayne Bay Pilots Association. Captain Fernandez informed the Board that this request was for minor changes. He stated that the size of the ships was growing and there were certain ships that the deputy could handle. He stated that they also increased the drafts.

Following discussion, the following action was taken.

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

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

Captain Fernandez informed the Board that FSPA would be willing to contribute to the training cost for Ft. Pierce.

## **UPDATE ON STATUS OF CLOUD X (TEN)**

Commander Dunton stated that this was a special designed hydro ship that goes between Palm Beach and the Bahamas and has been an issue for more than year and a half. He stated that there was a push about a month and half ago and he was asked to become involved. He discovered that the ingress and egress was an issue and at this point he was waiting to see what the results are. Commander Dunton informed the Board that everyone is aware of the situation that needs to know.

## **REPORTS**

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

Commissioner Robas informed the Board that if they need the services of Commander Dunton they are to coordinate this with Mr. Spivey to ensure that Commander Dunton gets paid for the services he is providing. Commissioner Robas informed the Board that Mark Whitten had worked to get the contract combined into one. She stated that the main concern was that Commander Dunton gets paid. Mr. Spivey stated that the contract had been written and was combined. He stated that the contract was in Legal to be reviewed.

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

Commissioner Buffington reported that the Committee met yesterday, April 15. They discussed the 2nd quarter figures which were not totally reliable. He stated that there were some problems within the Department and he had been assured that these problems would not happen again. Commissioner Buffington informed the Board that with the changes that have taken place in the Department, he believed there was a sincere effort to correct the problems and they will have reliable figures next time.

Commissioner Buffington reported that the cash sweep was discussed and they are near a zero balance which the Department is encouraging. He reported that they discussed the gross pilotage assessment and decided they may or may not take action. The Finance Committee made a motion during the meeting to recommend to the Rules Committee to initiate the rule making process.

### **Rules Committee Report – Commissioner Phipps**

Commissioner Frudaker reported that the Rules Committee met yesterday and voted to table discussion regarding spouses of members of the armed forces and deputy compensation. He stated that the Committee voted to bring before the full Board a request to notice for rule development for Rule 61G14-19.001, Percentage of Gross Pilotage Assessed.

**MOTION:** Commissioner Frudaker motion that the Board authorize Board Counsel to notice Rule 61G14-19.001 for rule development.

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

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

Commissioner Robas reported that the Probable Cause Panel met yesterday and reviewed five (5) cases. She reported that probable cause was found in one case; a letter of guidance was issued in one case; two cases were closed and one case was tabled.

### **Board Counsel's Report – Ed Tellechea**

Mr. Tellechea reported that there were two (2) related cases in litigation. One of the cases was in Broward County in Circuit Court. It involved a deputy pilot from Port Everglades Pilots Association that was not recommended for renewal. The case is a petition for declaratory statement and the parties are the Board, the Department and Port Everglades Pilots Association. He stated that the complaint was recently amended to include a tort action, therefore the case has to go to risk management and it has not been assigned to a particular attorney yet. Mr. Tellechea stated that he discussed this matter with the Chair and has requested it be assigned to attorney within the Attorney Generals Office. He informed the Board that he was required to file response, which he had done. Mr. Tellechea informed the Board that in order for any tort action against the State, people are required by law to notify in advance the Department of Risk Management that they intend to bring an action involving monetary damages against the State of Florida. The party did not do so, therefore he has filed a motion to dismiss on those grounds and files a motion to dismiss on the improper venue and failing to state a cause of action.

Mr. Tellechea stated that the other case was the corresponding licensure case that is with the Division of Administrative Hearings (DOAH) and it was scheduled for April 26 & 27, however he did not think it would go to hearing. He stated that the Port Everglades Pilots Association filed a motion to intervene in that case, they want to be a party in the case and he has not objected but did not know if Captain Efthimiadis would oppose. Mr. Tellechea informed the Board that Ms. Margaret Mathews was going to ask for continuance because she has conflict.

Mr. Tellechea informed the Board that one issue that was raised was that the Board failed to evaluate the deputies' training when they did not make a recommendation that his temporary certificate be renewed. He stated that the rule states that they will make a recommendation to the Board. At the meeting in October the Board received a letter that said the deputy was not trainable and not progressing and the Board took no action; however the Board did not do an evaluation of the training as required by statute. Mr. Tellechea informed the Board that he had filed a motion to ask to bring the issue back to the Board. Port Everglades and Captain Efthimiadis could appear before the Board and explain why he is not trainable and the problems. He stated that then the Board would do an evaluation and then make the determination as to whether the certificate should be renewed or not. Mr. Tellechea stated that then it would proceed to DOAH. He stated that if the case went at this time he felt that it would come back to the Board to evaluate the training.

Commissioner Buffington commented that he believed that during the observation period, the local pilots approve the levels and that information goes to the Board's Deputy Pilot Advancement Committee; so the Board has done their part of the process. Commissioner Buffington stated that he felt the Board has not been delinquent in their job.

Mr. Tellechea stated that the letter came to the Board from Port Everglades and was not discussed at the meeting. The Board did not look into the evaluation.

Commissioner Frudaker stated that some precedent had been set with a similar situation in Fernandina. The deputy proceeded through the observation period and got the endorsement and was approved to go to Level 2 however they restricted the deputy and were able to see that they were not progressing.

**MOTION:** Commissioner Buford made a motion that the Board authorize Mr. Tellechea to seek remand of the case for Captain Efthimiadis.

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

Mr. Tellechea informed the Board that this would be based on information provided by the Port Everglades Pilots Association and Captain Efthimiadis. He would not allow any witnesses as this would be for preliminary action.

Commissioner Phipps commented that in Fernandina they waited for the certificate to expire and then they declared an opening.

Mr. Tellechea informed the Board that he wanted to bring this issue to the Board at the next meeting.

#### **Port Security – Commissioner Molitor**

Commissioner Molitor informed the Board that there was not a lot of information available and asked the members if they read a security article to clip it and mail it to the Board office. Commissioner Molitor informed the Board that every port was unique in their port security.

#### **RAYMOND M. POMM, M.D., PHYSICIANS RESOURCE NETWORK**

Dr. Pomm was present and provided information to the Board regarding the services provided by Physicians Resource Network. He discussed the types of treatments they provide. Dr. Pomm informed the Board that everything that goes on in their program is confidential.

Mr. Tellechea stated that they protect the health safety and welfare of the public and they assist the individuals.

During discussion, Commissioner Buford stated that would like for Dr. Pomm to ride on pilot boat to see what the pilots do.

Dr. Pomm stated to the Board that he was not sure how much alcohol was a problem with pilots if it was at all. He informed the Board that it was a lot easier to help someone before there is an accident rather than after.

The Board requested Dr. Pomm to provide the Board office with informational brochures for distribution to the members.

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

Mr. Spivey thanked everyone for their participation with the Pilots Commissioners and Rate Review Boards. He stated that there had been a lot of information provided and everyone needed to let the ports know that the Board is ready for their first rate review.

### **Examination Statistics**

This information was provided for informational purposes at the request of Commissioner Sweeney.

### **Correspondence**

This was provided for informational purposes.

### **Old Business**

There was no old business to come before the Board at this time.

### **New Business**

Commissioner Buford stated that there was an article in the newspaper regarding a cruise ship calling on the port in Carrabelle. He said it caused him some concern and he sent a copy to Commander Dunton. Commander Dunton had checked into it and the cruise ship was an American registered vessel and they are cruising from port to port in the Gulf Coast and giving tours in the towns they call on and the cost is \$1500 per person. Commissioner Buford stated that it rekindled a matter that was of interest a couple of years ago regarding what the Board would do if they had to open a new port and furnish a new pilot. He suggested they all review the rule regarding opening of ports and discuss it at the next Rules Committee meeting.

Commissioner Sweeney questioned why the Board had four (4) meetings a year instead of three (3) and if it was in the Statutes. Mr. Spivey responded that the Statute requires that the Board hold one (1) meeting annually or as required. He stated that the number of meetings was based on need. Commissioner Sweeney stated that it was just a thought for consideration.

Commissioner McMillin commented that years ago the Board chair would ask at the end of the meeting if the audience had anything to say to the Board and recommended that it be considered as a possibility again. Commissioner Robas responded that everyone is given an opportunity to notify the Board office if they want to address the Board and have had presentations from the audience before.

### **PROSECUTING ATTORNEY - DREW WINTERS**

Mr. Winters provided the Board with a copy of his report. He stated that Commissioner Leech had requested information on the five (5) oldest cases. Of the five (5), one (1) had been presented and resolved. Mr. Winters stated that the other four (4), three (3) are currently being worked on and the fourth one is awaiting the negotiation of a contract with a consultant for expert review.

During discussion Commissioner Sweeney informed Mr. Winters that he wanted the actual date of the incident included in the report as he thought the time frame is entirely too long.

Commissioner Leech commented that the time frame was not the fault of Commander Dunton, it was the Department that was taking so long. Commissioner Buffington commented that they had so many different prosecuting attorneys and that was one problem and another problem was that some of the cases were dependent on other agencies taking action first. Commissioner Buffington stated that these cases should be prosecuted as soon as possible in order to protect the public and to do right by the professional to clear his name if that was the case. If action was needed, the effectiveness of the action was lost if it takes too long.

Commissioner Leech stated that he was pleased to see Mr. Winters for the third meeting in a row. He wanted for the next meeting there be agenda item for everyone individually to come up with some ideas for creating a better timeline for the prosecution of these cases and present the ideas as a group and perhaps come up with one or two solutions.

Commissioner Molitor stated that one of the problems they were facing was the same as they faced earlier in procedural glitches.

Commissioner Buffington stated they have reports, they cannot follow a specific time line. He suggested that they continue asking the prosecuting attorney what is being done currently and if they get the same information every meeting, then find out why.

Mr. Winters stated that the change in prosecutors was a problem. He also stated that if there was information in the reports that the Board wanted, he would be happy to provide that information as long as it was not confidential.

Mr. Tellechea stated that with cases they were going to have issues come up and they are unpredictable. He stated that when you have turnover in attorneys you are going to have a slow down and suggested to the Board that they keep pressure on the Department to maintain the same prosecuting attorney. Mr. Tellechea commented that the Board could not become too involved in the cases.

Commissioner Sweeney stated that a sense of urgency needed to be developed in the matter of investigations and discipline. He also recommended that the prosecuting attorney report be moved up on the agenda.

Following further discussion, Mr. Winters informed the Board that he would provide as much information as possible to the Board.

Mr. Winters informed the Board that the probable cause case on Schaefer was a public case now. He stated that because of case law, that complaint had to be dismissed because DOAH does not have the authority to interpret contracts.

Mr. Tellechea informed the Board that he would research to see if there was a way for the Board to address the contractual issues regarding deputy compensation and would work with Mr. Winters.

**NEXT MEETING DATE AND LOCATION**

July 8 & 9, 2004 – Panama City Beach

**ELECTION OF OFFICERS**

Commissioner Robas offered her services again if it was the pleasure of the Board.

MOTION: Commissioner Sweeney made a motion that the Board re-elect the sitting officers.

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

**ADJOURNMENT**

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