



MICHAEL J. MADONNA
RONALD GOLDSTOCK
COMMISSIONERS

WATERFRONT COMMISSION OF NEW YORK HARBOR
39 BROADWAY
NEW YORK, N.Y. 10006-3003
(212) 742-9280
FAX (212) 480-0587

WALTER M. ARSENAULT
EXECUTIVE DIRECTOR

July 13, 2009

Honorable Joseph Fisch
New York State Inspector General
61 Broadway, 21st Floor
New York, New York 10006

Dear Inspector General Fisch:

I am pleased to respond on behalf of the Waterfront Commission of New York Harbor to the draft copy of the Inspector General's Report regarding the work of the Commission. As you are aware, with the exception of Commissioner Michael Madonna, who I understand has been given the opportunity to respond independently, virtually no one discussed in your draft report is still employed by the Commission. Thus, this letter will not directly address your factual findings but, instead will focus on what we found since the new administration's arrival a year ago and the changes that have been made since that time.

In short, the dysfunctional Waterfront Commission that was investigated by the New York State Inspector General's Office no longer exists today. Beginning in July of 2008, the Commission began to reform, reorganize and rededicate itself to its core missions – to investigate, deter, combat and remedy criminal activity and influence and to ensure fair hiring and employment practices in the Port of New York. To that end, not only has the personnel and physical structure of the Commission changed, but more importantly so has its sense of mission as the Commission re-establishes itself as a model regulatory and law enforcement agency.

Your report is limited to findings of specific instances of misconduct, misfeasance, malfeasance and nonfeasance. It cannot appropriately opine on the extent of the divisiveness, lack of accountability and failure of leadership that pervaded the Commission at the time you initiated your investigation. And yet, in order to understand the changes that have taken place, it is necessary to have a picture of the level of disarray that existed at that time.

By July of last year, the General Counsel had been suspended for several months and there was an Acting Director of Licensing, an Acting Chief of Police, and an Acting Executive Director. There was virtually no communication between divisions, and in fact

there were rules in place that discouraged inter-division cooperation. The Police Division operated without any written guide lines, and the Commission lacked a written procurement policy leading to some questionable decisions as to vendors and costs. The Commission had an Employee Manual that had not been updated for at least a decade. Basic tools of accountability such as employee time sheets were unheard of. Time and leave abuse was rampant throughout the agency. Most of the Audit Division and portions of the IT Division and even the Police Division “worked” from home. The Commission’s media policy was declared unconstitutional by the New Jersey Appellate Division. The Police and Licensing Division personnel were forced to operate in a Newark Field Office that should have been condemned years ago¹. There was a complete lack of analysis and intelligence about Organized Crime presence at the waterfront – the two Police Division Field Office Commanders, as well as the Acting Chief, had no updated intelligence on racketeering in the harbor. There were no sophisticated criminal investigations on-going or planned. The Commission had no informants – registered or otherwise. The Commission’s Police Division was not respected on the docks.

Additionally, the Commission’s hiring policy had been based upon who you knew and political patronage divided between New York and New Jersey. Staff from both states were often openly hostile to each other. Many employees were afraid to express their opinions on areas that were rightly of concern. The Audit Division was years behind on their assignments; the few audits that were completed were almost never shared with the rest of the office. Companies that underpaid their assessments or continuously paid them in a tardy fashion were allowed to escape fines and penalties simply by threatening litigation. Similarly, companies or individuals freely ignored Commission subpoenas without any attempt by the Commission to enforce them. The General Counsel had repeatedly ended promising investigations without explanation. The Commission paid outside consultants for intelligence analyses that were never shared with the rest of the office. The members of the Police Division and the Legal Staff were hired, for the most part, with no relevant experience and received no training. Administrative hearings were conducted in a perfunctory manner avoiding complex issues. Case reviews with the Legal, Police and Audit Divisions revealed matters that had languished for years (many already past the Statute of Limitations) and a pattern of avoiding making decisions.

With the New York Senate confirmation of Commissioner Ronald Goldstock in July of 2008, the Commission began to change. Open positions in the Commission were advertised in legal journals, newspapers and appropriate web sites and trade sites. In a departure from the past, hiring was done based upon merit and merit alone. A number of employees were terminated upon my recommendation and a further number of employees opted to accept a retirement incentive plan. The Commission currently has a new General Counsel (Michele Meyer-Shipp); Chief of Police (John Hennelly); Director of Law, Licensing and EIC (Jeffrey Schoen); Director of Intelligence (Daniel Ramirez) and two new Police Division Field Office Commanders (Captains Jeffrey Heinssen and

¹ The Commission moved into its new N.J. Field Office in May of 2009.

William Brown). Hennelly, Schoen, Brown and Heinssen were promoted into their stated positions.²

The Commission, itself, was reorganized based upon strategic and tactical needs and now consists of five divisions: the Executive Division, the Division of Law, Licensing and EIC, the Division of Administration (which now encompasses the former Audit Division), the Division of Information Technology and the Division of Intelligence. Law and Licensing and EIC were combined in recognition of their overlapping missions and to provide a consistent approach throughout the office regarding licensees and registrants. The Audit Unit, plagued for years by mismanagement, was disbanded, and saw a number of its duties outsourced as detailed further in this response, and was placed under the able leadership of our Director of Administration. A new division – the Intelligence Division – was created staffed by a Director and four (4) highly qualified, trained and experienced analysts.

The way matters are handled in the Commission has also changed dramatically. No longer do divisions work in secret from each other but now investigations are undertaken by teams consisting of Assistant Counsels, Police Detectives, Forensic Auditors and Intelligence Analysts. Weekly Directors Meetings have become the norm, and are a primary means of ensuring that all Divisions within Commission are fully briefed and involved in every matter. Gone are the days when Assistant Counsels were forbidden from talking to the Detectives assigned to their cases without going through the long chain of command or even denied access to the very police reports they were working on. In a break from the past, the hiring of experienced personnel and the utilization of a robust training program³ has become the Commission's rule rather than exception. Careful attention has been paid in training to the procedural and substantive differences in criminal law and procedure between New York and New Jersey.

Policies and procedures were put in place from the most basic (time sheets) to a Police Division Operations Manual. Job descriptions were drawn up for each category of employee and yearly evaluations are being prepared for implementation. The Commission's unconstitutional Media Policy has been replaced. The Executive Director personally performs case reviews of each legal, police and audit matter. CompStat reviews were instituted and held for each Police Field Office. The Executive Director reviews the Police Division's weekly open case reports, every police report filed, as well as attends the weekly Police Supervisors Meeting. The Executive Director and the entire Legal Staff attends and critiques every administrative hearing that is conducted. In recent months, several of the Administrative Law Judges that hear the Commission's cases have commented favorably to me on the new enthusiasm and competence of the Assistant Counsels and the complexity of the cases and evidence presented before them.

² Each of these appointments and promotions and all subsequent hires required the agreement of Commissioners Madonna and Goldstock.

³ Training has included lectures on Using the Internet as an Investigative Tool; Trying an Administrative Case; Taking Statements and Confessions; Identification Procedures; Organized Crime; The Exportation of Stolen Vehicles; Handling Confidential Informants; Use of Force; Basic Prosecutors Course; Electronic Surveillance and Eavesdropping; Courtroom Testimony; Cross Examination; and Witness Preparation.

Discovering that the Commission had no written procurement policy, the Commission has operated for the past 10 months under the New York City Procurement Policy Board's Rules, which are among the strictest in the country. These rules have been used to procure the services of a number of outside consultants through Requests for Proposals⁴. RFP #1 was awarded to review the planning and construction of our new Newark Field Office which was years behind schedule and greatly over budget. The outside consultants are near completion of their investigation and the Commission will look to recover civilly if there were inappropriate billings.

The second RFP contract (RFP # 2) was awarded to review the Commission's internal finances, controls and policies. That review is almost completed and the outside consultants will shortly be making recommendations to the Commission about its financial transactions and records. The outside consultants are also preparing a written manual of operations for the Comptroller's Office.

The third RFP contract (RFP #3) was awarded to four (4) different companies outsourcing some of the Commission's assessment and compliance audits. These contracts were awarded in an attempt to bring the Commission's compliance and assessment audits up to date. Unfortunately, the Commission's audit records and history were even worse than expected and the project has proved more costly than anticipated. Those factors combined with the economic slow down in the port have reduced our hopes of bringing all audits up to current status by the next licensing cycle in 2010. However, we are prioritizing the audit process and hope to be in a position to evaluate the permanent licensing of some of the more problematic companies in the Port.

Finally, the outside review of the Commission's financial procedures included a recommendation that we consolidate all of our insurance policies under one broker rather than the four we currently engage. Such consolidation should result in price savings as well as the elimination of duplicative coverage as currently exists. An RFP by the Commission is currently being responded to by insurance brokers who are interested in brokering our policy coverages.

Numerous other major changes have been instituted in the past ten months. For example, a Travel Policy delineating allowable costs has been written, distributed and implemented. [In the past, reimbursement was done in an inconsistent and individual manner.] "Unofficial" holidays – for example Christmas Eve Day and New Years Eve Day have been ended. Employees are now prohibited from running for, and holding, elected office⁵. Every employee is required to submit a form requesting approval for

⁴ The RFP's were solicited on trade web sites, advertised on the Commission's web site and in appropriate news media. All proposals received were evaluated and rated numerically by reviewing committees of senior Commission personnel. The top proposers in each RFP were invited to the Commission to make oral presentations and answer the evaluating committees' questions. Each committee made a recommendation of the proposer to be selected. Commissioner Goldstock, because of his familiarity with many of the proposers, recused himself from voting, instead assigning his voting rights to the Executive Director. Commissioner Madonna and the Executive Director unanimously agreed on the three recommended selections of the reviewing committees.

⁵ The sole remaining office holder will serve out the remainder of his term but will not run for re election.

outside employment. While this requirement was in place under the former executive leadership, it was never enforced. (Indeed, the terminated General Counsel who was charged with enforcing the rule had unauthorized outside employment himself.) Each employee has completed a "Friends and Family" form on which they listed potential conflicts of interest with the industry and individuals that the Commission oversees. A new comprehensive Background Investigation Questionnaire has been utilized for every new employee hired since September of 2008. A new, updated Employee Manual has been written and is under review by our General Counsel. The General Counsel is also in the process of revising our Equal Employment Opportunity (EEO) Policy and related training program, our Ethics Code, and writing a formal Procurement Policy. An Individual Use Policy (IUP) for all Commission computers and equipment was written and distributed in September. The Executive Director receives monthly print outs of computer usage to prevent misuse of Commission resources. The Commission has aggressively pursued an outreach to other law enforcement agencies; administrative and regulatory agencies with an Organized Crime component (i.e.: the NYC Business Integrity Commission, the NJ AG's Division of Gaming Enforcement, the NYC School Construction Administration etc); ILA local monitors; and the ILA Ethics Officer.

The Commission was able to successfully persuade the New York legislature to reject an effort to repeal our Section 5 – p powers and hopes that one day New Jersey will reconsider its position on 5 – p.⁶ There has also been a concerted effort to reduce the amount of redundant and unnecessary paperwork involved in basic Commission tasks. The Commission will file an Annual Report as required by statute this year for the first time since 2005.

The Comptroller's Office has installed Quick Books to modernize the Commission's accounting system. The Office's petty cash system has been reformed to ensure accountability and reviewability. Separate bank accounts have been set up for forfeiture funds which will be audited and reconciled on a timely basis. The Comptroller has received training on the CFR sections pertaining to the handling of federal forfeiture funds. Separate bank and checking accounts will be set up for all future grant monies. A new system to track, record and reconcile overtime payments is being implemented. As related above, an outside consultant has been retained to review all Commission financial processes and make recommendations to improve policies, procedures and controls.

In addition to the merger of Law with Licensing and EIC and the appointment of a new Director, there have been a number of significant changes in this Division. All background forms for potential registrants (including stevedores) have been re-written so as to require comprehensive disclosures. In a development that would have been unthinkable 10 months ago, the Licensing Division complied with its mandate to ensure fair hiring by requiring the industry to reorder and reorganize a regular list based upon inequities observed by the Commission in the order, manner and timing of the list by a particular company. The Commission's Licensing files have been reorganized and stored

⁶ Section 5-p allows the Commission to control the size of the longshore work force in the Port. An oversupply of labor is exactly the environment that organized crime thrives upon. Additionally, the Commission's 5-p powers are our sole authority to ensure diversity in the longshore workforce.

in a different manner. This has led to more accountability and improved file tracking. The Division will have two paralegals to perform tasks currently performed by Assistant Counsel. Administrative tasks that will be performed by the paralegals currently take up to twenty five (25%) percent of an Assistant Counsel's time. A new Assistant Counsel has been hired; he is a former Assistant District Attorney with significant trial and investigative experience. The Legal Division was approved for membership in the New York Prosecutors Training Institute (NYPTI) Program. As such, members of the Division receive Continuing Legal Education free of charge to the Commission. The entire legal staff will be attending either the NYPTI Basic Prosecutor's Course or Advanced Appellate Practice this summer at Syracuse University.

The Division of Law has begun to employ legal approaches that have either never been used or have not been used for years. The Commission's first Association complaint⁷ was filed and served this week with many more to come. This regulation has never been used before by the Commission and prior attempts to do so were ended by the Commission's Executive staff. Additionally, the Commission's legal staff has just employed Section 8⁸ to compel the ILA to dismiss their General Vice President for its Atlantic Coast Division because of prior felony convictions including a federal racketeering conviction. Several members of the Commission were aware of the situation for at least 9 years but took no action until the open matter turned up in a case review. The Legal Division, acting in coordination with the Police Division, has begun investigating instances of Workmen's Compensation fraud by dock workers. The previous administration had, for unclear reasons, discouraged (if not forbidden) investigations in this area. This initiative is already producing results. Two Howland Hook longshoremen have been arrested and indicted on federal mail and wire fraud charges in connection with half million dollar scam. The Division of Law has established a Stevedore Review Unit that has begun examining members of the industry⁹. Rather than a cursory review of the company's executive staff as done in the past, the Unit closely looks at who the company voluntarily employs and does business with (i.e.: who picks up their trash, does their snow removal, cleaning, container repair etc.). Because organized criminal groups often extract payment from companies by compelling a company to hire uncovered employees or by over charging for basic services like trash removal, this is critically important. The unit is comprised of Assistant Counsels, Police Detectives, Auditors and Intelligence Analysts.

Numerous and important changes have also occurred in the Police Division under its new Chief. The entire division has been restructured with teams of detectives led by experienced sergeants and the civilianization of jobs that were occupied previously by sworn officers. Fourteen new detectives and sergeants have been added to the Division in the past few months. Their qualifications are numerous and outstanding. Included in this group are a retired New Jersey State Police Captain with a strong investigative

⁷ The Waterfront Rules and Regulations allow the Commission to revoke the license or registration of any covered employee who associates with a member of organized crime.

⁸ Section Eight forbids anyone with a felony conviction from holding an ILA union position that substantially affects the Port of New York.

⁹ Including ASA Apple.

background in Organized Crime; a retired NYPD Lieutenant who commanded an extremely busy Precinct Detective Unit before becoming a NY State Commission of Investigation Supervising Investigator; a former supervisor in the New York State Attorney General's Organized Crime Task Force who also served with the NYPD; two retired NYPD first grade detectives who served on the FBI's Genovese Family Task Force; Sergeants retired from the Jersey City Police and the NYPD; Organized Crime experts and undercover officers from the Manhattan and Kings County District Attorney's Offices as well experienced detectives from the NYPD and the NJ Transit Police. This cadre of experienced officers has meshed extremely well with the detectives already in the division. Together they have been instrumental in developing informants, identifying and prioritizing criminal targets, and beginning matters that have blossomed into major investigations with the New Jersey Attorney General's Organized Crime Unit, the US Department of Labor, and the Federal Bureau of Investigation, among others. The Police Division has begun the process of seeking national accreditation.

A Police Division's Operations Manual defining policies and procedures has been written and disseminated. Included in the issued policies and procedures are regulations against sick leave abuse, new provisions for drug and psychiatric testing of detectives, and limiting the use of departmental vehicles, gas cards and EZ passes to official business. Gas and EZ pass use are subject to monthly audits and a system has been put in place to identify individual use. The Division has reinstated mandatory firearms, baton, and pepper spray training, as well training in such areas as statements and confessions, court room testimony, identification procedures, electronic surveillance and handling informants. A system to track Terry frisks has been implemented. Training and purchasing have been centralized at the Commission's Broadway location. The Police Division's officers' listing with the New York State DCJS Registry is currently up to date and accurate.

All evidence held by the Police Division was inventoried and the Executive Director has identified evidence that can be destroyed or returned. The Commission's three evidence rooms are now secured and entrance can only be gained by use of an electronic swipe card that records each entry. The Police Division has been diligent and successful in a project to recover the shields and identification cards of former Port Security Guards and members of the Commission's Civilian Emergency Response Team which has been disbanded. Controls are in place assuring that only one parking plaque is issued to each member of the Commission¹⁰ which is linked to a particular automobile.

The Police Division ended the use of the Arco Police exam and now has a standardized interview and promotion process. Like the other divisions in the office, no Commission members have been hired without first being interviewed and approved by the Executive Director. Backgrounding for police positions is more thorough than in the past. No promotions have been made in the Police Division without approval from the

¹⁰ Currently, no civilian Commission employees are assigned agency vehicles. The only non-police members issued parking plaques are the two Commissioners, the Executive Director and the General Counsel.

Inspector General's Office and the New Jersey State Police backgrounded the new Chief before his promotion.

The vestiges of the old Police Division have been ended. There are no more parking details, professional courtesies have been eliminated, the six machine guns purchased were sold, police offices no longer exhibit gratuities received from the shipping industry and officers are not permitted to, nor no longer accept, such gratuities¹¹. A long awaited project to bring computers into the police vehicles has been actualized. The Police Division completed its first Pier Surveys in years and a night shift will shortly go back into action. Surveillance equipment has been modernized and a state of the art training facility has been created in the Brooklyn Field Office. Job descriptions for each rank and performance appraisals forms have been created and are under review by the General Counsel.

The Police Division has been active in re-establishing its presence on the piers especially doing gang checks. These have led to numerous no show investigations and the arrest of the son of a notorious Genovese associate for violating the Waterfront Commission's Rules.

Since September, the IT Division engaged in a project to identify and discontinue recurring expenses that are duplicative or for non functioning instruments. This review has led to thousands of dollars in savings for telephone, blackberry and other equipment that were no longer being used or whose use could be consolidated at a lesser price. The IT Division has put many of the Commission's forms on line and is engaged in updating the Commission's web site.

The Division of Administration with the assistance of the General Counsel now oversees the Commission's audit functions – both by the retained consultants and the Commission's own auditors. The Administrative Director began by reviewing all of the former Audit Division's records and organizing these records into a spread sheet to determine the state of our audits. The results were even worse than anticipated. By comparing audit records with the Commission's WIS system, we have discovered an additional thirteen (13) companies that have never paid assessments but should have. Notices have been sent to those companies. The Administrative Division now sends out the WC 30's electronically and by mail. A spread sheet for payments is maintained and filled in as payments are received. All companies who remit after the fifteen (15th) day deadline receive a notice of interest and penalties, followed by a further notice after thirty (30) days if necessary. If there is no response after the thirty (30) day notice, the matter is turned over to the Law Division for hearing and collection of the monies. Several companies are being docketed now for hearings on delinquent payments. Unlike the past, the Commission is no longer waiving penalties and interest owed without a valid explanation.

¹¹ On my inspection of the police field offices in September 2008, I observed posters, pictures, baseball caps, pens, mouse pads, calendars etc received from regulated members of the industry or the shipping association on many police walls or desks.

The Administrative Division will be responsible for supervising our internal auditors. These auditors will be responsible for compliance audits, investigatory audits and supplementing the work of the outside auditors on assessment audits. As indicated previously, our Commission auditors will no longer routinely work from home, will be required to call in from their field assignments on a daily basis, will be subject to spot checking, and be responsible for delivering weekly progress reports at 39 Broadway. Our revised Travel Rules, referred to above, no longer credit travel time as work time for auditors thereby increasing their productive time by at least an hour a day. Auditors will be rotated from company to company to avoid developing relationships with those they audit and to provide peer review. Auditors will begin "sampling" in an effort to reduce audit times. The Administrative Division has been working with the Legal, Police and Executive Divisions to prioritize the order of our pending audits from both an investigative and financial prospective.

Finally, the Commission has established an Intelligence Division to collect, analyze and disseminate vital information throughout the agency. Incredibly, it would appear that an agency created in large part to combat organized crime never had a division dedicated to intelligence collection and analysis. In the past, interested police detectives would fulfill the role using their individual methods and systems which were often personalized and eclectic and usually became unsearchable or irretrievable when the officers left the Commission. The unit is headed by a Director who comes from a long and distinguished military intelligence background. Hired to staff the unit were a former FBI analyst; a former chief researcher from a law firm and insurance company; a former New Jersey Office of Homeland Security and Preparedness analyst with significant HIDTA experience, and a recent Masters graduate in intelligence analysis. Although small and newly formed, the Intelligence Division enjoys a wide range of experience and skill sets that encompass both breadth and depth.

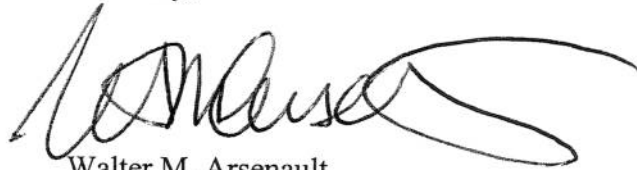
Upon inception two months ago, the Intelligence Division immediately began working with the Executive, Legal, Police and IT Divisions and initiated the arduous task of collecting, collating and classifying years of police reports, surveillance photographs, evidence etc. in a cohesive, coherent, retrievable format for use by the rest of the Commission. These documents are under continual analytic rigor to ensure Commission data bases are centralized, updated and consistent with best practices within the law enforcement community. This will ensure that subject matter expertise is readily available and not subject to loss through employee turnover. Furthermore, this constant review will identify gaps within our intelligence databases which will subsequently drive a collection plan to reduce those ambiguities. Finally, the Division is actively working with our law enforcement and intelligence partners to establish a legitimate presence within the greater intelligence community. This proactive networking will enable the Commission to leverage the analytical resources and expertise of external agencies and keep pace with state of the art analytical tools and methodologies.

In sum, with your help and that of the New Jersey Attorney General's Office, substantial progress has been achieved in reclaiming and revitalizing an important institution in the fight against organized crime and racketeering, and ensuring fair hiring

practices in the Port of New York. Perhaps, the best barometer of the Commission's rejuvenated position in the law enforcement community is that, after being virtually ignored or avoided by other local law enforcement agencies for the past decade, these very agencies are now seeking out the Commission as a partner in important and sensitive criminal investigations.

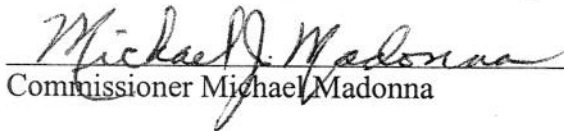
I am available to answer any questions you may have.

Sincerely,



Walter M. Arsenault
Executive Director

I have read the Executive Director's letter and concur in all respects. My concurrence is to be read in conjunction with and supplemented by my separate and individual response to the Inspector General's report to issues specifically related to me.



Commissioner Michael Madonna

I have read the Executive Director's letter and concur in all respects.



Commissioner Ronald Goldstock