

WATERFRONT COMMISSION OF NEW YORK HARBOR



Handwritten signatures and initials, including a large signature at the top, a signature below it, and the text "(for Chief JH OTP)" written in the bottom right corner.

At a meeting of the Waterfront Commission of New York Harbor held in the City of New York, State of New York, on the 6th day of July 2010.

COMMISSIONERS PRESENT:

Ronald Goldstock
Barry Evenchick

**AMENDMENT TO
DETERMINATION 3**

In the Matter of Determining Pursuant to Section 5-p of the Waterfront Commission Act, Whether to Accept or Suspend the Acceptance of Applications for Inclusion in the Longshoremen's Register.

The Commission being empowered by Section 5-p of the Waterfront Commission Act, as amended, to determine to accept or suspend the acceptance of applications for inclusion in the Longshoremen's Register, and the Commission in Determination 3, by order dated October 27, 1966 and as amended by order dated August 8, 1973, having determined, until further order of the Commission, to accept a required number of applications for inclusion in the Longshoremen's Register where the Commission is satisfied that at least one waterfront employer has a need for persons having a specialized skill and has stated the number of such person needed, that the particular skill required is a specialized skill, that there are no persons available who are already included in the Longshoremen's Register and who possess such specialized skill and that the persons applying for inclusion in the Longshoremen's Register are proficient in such specialized skill and will be engaged in a permanent position by a particular

employer utilizing such skills; and the Commission, on its own initiative, and in consideration of the standards set forth in subsection 2 of Section 5-p, having duly determined that there is currently a sufficient number of persons having such skills who have already been included in the Longshoremen's Register pursuant to Determination 3, together with the number of individuals who have already been included, or could be included in the future, in the Longshoremen's Register pursuant to the 1969 Amendments to the Waterfront Commission Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128), shall suspend the acceptance pursuant to Determination 3 of applications for inclusion in the Longshoremen's Register; it is hereby

O R D E R E D:

That the Commission, on its own initiative, effective July 6, 2010, shall suspend the acceptance pursuant to Determination 3 of applications for inclusion in the Longshoremen's Register; and it is further hereby

O R D E R E D:

That suspension of the acceptance pursuant to Determination 3 of applications for inclusion in the Longshoremen's Register shall not effect the processing of applications received prior to July 6, 2010, and shall not effect, modify, or change in any manner the status, rights, or privileges under the Waterfront Commission Act of those previously included in the Longshoremen's Register pursuant to Determination 3.

By the Commission,



Cecilia Bastos
Secretary

WATERFRONT COMMISSION OF NEW YORK HARBOR

-----X
In the Matter of Determining, Pursuant to Section 5-p
of the Waterfront Commission Act, Whether to Accept
or Suspend the Acceptance of Applications for Inclusion
in the Longshoremen's Register.
-----X

MEMORANDUM
OF
DECISION

INTRODUCTION

On October 27, 1966, as amended on August 8, 1973, the Commission promulgated Determination 3, which pursuant to Section 5-p of the Waterfront Commission Act, allowed for the acceptance of a required number of applications for inclusion in the Longshoremen's Register where the Commission is satisfied that at least one waterfront employer has a need for persons having a specialized skill and has stated the number of such person needed, that the particular skill required is a specialized skill, that there are no persons available who are already included in the Longshoremen's Register and who possess such specialized skill and that the persons applying for inclusion in the Longshoremen's Register are proficient in such specialized skill and will be engaged in a permanent position by a particular employer utilizing such skills.

This Determination was in response to a joint recommendation of the New York Shipping Association, Inc. and the International Longshoremen's Association, requesting that the then closed Longshoremen's Register be subject to a "limited re-opening" to permit qualified craftsmen to enter the industry to fill vacancies requiring special skills. Prior to the closing of the register pursuant to Section 5-p, a waterfront employer requiring the services of an individual having specialized skills, such as crane mechanics, diesel mechanics, refrigeration mechanics, welders or electricians, were able to seek persons possessing these skills from outside the industry and then have these individuals included in the Longshoremen's Register. Once the Longshoremen's Register was closed, it became difficult for the industry to find such qualified individuals from amongst registered longshoremen. Determination 3 was promulgated for the purpose of allowing new individuals to be included in the Longshoremen's Register in the limited circumstances when particular skills were required and no individuals currently included in the Longshoremen's Register possessed such skills.

ANALYSIS

Determination 3 was promulgated prior to the 1969 Amendments to the Waterfront Commission Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128). These amendments expanded the definition of longshoremen to include individuals who perform services “incidental to the movement of waterborne freight”. These services include cargo repairmen, general maintenance men and mechanics. In response to the expanded definition of longshoremen, and thereby an expansion of individuals who could be included in the Longshoremen’s Register, the Commission promulgated Section 4.4 of the *Rules and Regulation of the Waterfront Commission*, entitled Longshoremen’s Register; division into sections; designation and sponsorship of “1969 amendment” longshoremen. This *Regulation* divided the Longshoremen’s Register into two parts: “Deep Sea” longshoremen, for whom the Commission would not accept applications without an “opening” of the Register pursuant to section 5-p of the Waterfront Commission Act, and, “A” or “1969 amendment” longshoremen for whom the Commission would accept application, so long as the individual is sponsored for employment within the meaning of the “1969 Amendments.” Thereby creating a “closed” “Deep Sea” division of the Longshoremen’s Register and an “open” “A” or “1969 amendment” division of the Longshoremen’s Register.

As a result, new entrants to the industry who performed services incidental to the movement of waterborne freight, such as repair work, general maintenance work and mechanics work, began to be included in the “open” “A” or “1969 amendment” division of the Longshoremen’s Register. Concurrently, new entrants to the industry who performed services incidental to the movement of waterborne freight, such as repair work, general maintenance work and mechanics work, also continued to be included “closed” “Deep Sea” division of the Longshoremen’s Register pursuant to Determination 3. The distinction between which method would be utilized to bring the new entrant into the industry, the “1969 Amendment” or Determination 3, was to some extent based upon whom the individual would be employed. To a larger extent the distinction was based upon the skills the individual possessed. Individuals lacking skills would enter the industry by way of the “1969 Amendment” and individuals

possessing the skills to meet the requirements of Determination 3, would enter the industry by way of Determination 3.

Overtime, it has become apparent that many of the individuals seeking inclusion in the “closed” “Deep Sea” division of the Longshoremen’s Register pursuant to Determination 3, in fact have already been included in the “open” “A” or “1969 amendment” division of the Longshoremen’s Register pursuant to the “1969 Amendment”. Companies include non-skilled new entrants in the Longshoremen’s Register by-way-of the “open” “A” or “1969 amendment” register. Then, overtime, as the new entrant gain the skills required under Determination 3, the company seeks to have the individual included on the “closed” “Deep Sea” register pursuant to Determination 3.

Indeed, today sixty-nine percent (69%) of individuals included in the Longshoremen’s Register pursuant to Determination 3 have once been included in the Longshoremen’s Register as “A” or “1969” type registrants. As demonstrated below, a clear trend has developed since 2004 wherein more-and-more registrants who sought inclusion pursuant to Determination 3, had already been included in the Longshoremen’s Register as “A” or “1969” type registrants:

<u>Year</u>	<u>Percentage of Determination 3 New Registrants Previously Registered as “A” or “1969” type</u>
2004	54%
2005	67%
2006	75%
2007	76%
2008	85%
2009	90%.

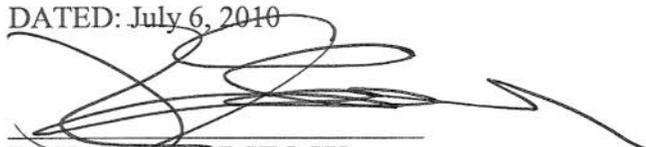
This evinces that as of 2009, nearly all individuals possessing the skills necessary to meet the requirements of Determination 3, have obtained these skill by already being included in the Longshoremen’s Register under the “1969 Amendments”. Because the “1969 Amendment” and Determination 3 operated concurrently, companies can transfer individuals from the “open” “A” or “1969” register to the “closed” “Deep Sea” Register.

CONCLUSION

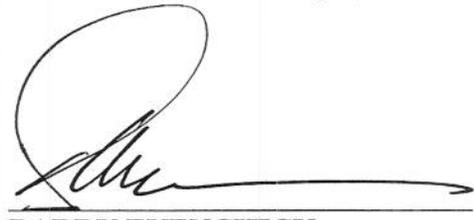
It is clear from the background and analysis set forth hereinabove that the labor needs for which Determination 3 was promulgated can now be, and are currently being, satisfied by the inclusion of individuals in the Longshoremen's Register pursuant to the "1969 Amendments" to the Waterfront Commission Act. Almost all individuals requested to be added to the "Deep Sea" division of the Longshoremen's Register pursuant to Determination 3 are already included in the "A" or "1969" division of the Longshoremen's Register. The concurrency of the "open" "A" or "1969" division of the Longshoremen's Register and the "limited opening" of the "Deep Sea" division of the Longshoremen's Register pursuant to Determination 3 is currently nothing more than a back-door into the "closed" "Deep Sea" register. There is currently a sufficient number of persons having the skills contemplated by Determination 3 who have already been included in the Longshoremen's Register pursuant to Determination 3, together with the number of individuals who have already been included, or could be included in the future, in the Longshoremen's Register pursuant to the "1969 Amendments" to the Waterfront Commission Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128) to meet the needs of the industry. As such, the Commission, on its own initiative, effective July 6, 2010, shall suspend the acceptance pursuant to Determination 3 of applications for inclusion in the Longshoremen's Register.

The Commission is of the opinion that the standards set forth in Paragraph 2 of Section 5-p of the Waterfront Commission Act have been observed by the foregoing and therefore, this memorandum of decision has been embodied in the Amendment to Determination 3, dated July 6, 2010.

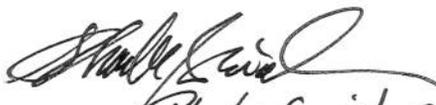
DATED: July 6, 2010



RONALD GOLDSTOCK
COMMISSIONER FOR NEW YORK



BARRY EVENCHICK
COMMISSIONER FOR NEW JERSEY


Phoebe Sorial, signing for Chief JH, ATP