S T A T E O F N E W Y O R K

4630--A

2015-2016 Regular Sessions

I N S E N A T E

April 1, 2015

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the waterfront commission act, in relation to empowering the waterfront commission to accept applications in the longshoremen's register

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 5-p of chapter 882 of the laws of 1953, constituting the waterfront commission act, as amended by chapter 431 of the laws of 1999, is amended to read as follows:

S 5-p. [Suspension or acceptance of applications for inclusion in longshoremen's] LONGSHOREMEN'S register[; exceptions]. [1.] The commission shall [suspend the acceptance of] ACCEPT applications for inclusion in the longshoremen's register [for a period of sixty days after the effective date of this act. Upon the termination of such sixty day period the commission shall thereafter have the power to make determinations to suspend the acceptance of application for inclusion in the longshoremen's register for such periods of time as the commission may from time to time establish and, after any such period of suspension, the commission shall have the power to make determinations to accept applications for such period of time as the commission may establish or in such number as the commission may determine, or both. Such determinations to suspend or accept applications shall be made by the commission]: (a) [on its own initiative or (b)] upon the joint recommendation in writing of stevedores and other employers of longshoremen in the port of New York district, acting through their representative for the [purpose] PURPOSES of collective bargaining with a labor organization representing such longshoremen in such district, and such labor organization; or [(c)] (B) upon the petition in writing of a stevedore or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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[another] OTHER employer of longshoremen in the port of New York district which does not have a representative for the [purpose] PURPOSES of collective bargaining with a labor organization representing such longshoremen. [The commission shall have the power to accept or reject such joint recommendation or petition.

All joint recommendations or petitions filed for the acceptance of applications with the commission for inclusion in the longshoremen's register shall include:

(a) the number of employees requested;

(b) the category or categories of employees requested;

(c) a detailed statement setting forth the reasons for said joint recommendation or petition;

(d) in cases where a joint recommendation is made under this section, the collective bargaining representative of stevedores and other employers of longshoremen in the port of New York district and the labor organization representing such longshoremen shall provide the allocation of the number of persons to be sponsored by each employer of longshoremen in the port of New York district; and

(e) any other information requested by the commission.

2. In administering the provisions of this section, the commission shall observe the following standards:

(a) To encourage as far as practicable the regularization of the employment of longshoremen;

(b) To bring the number of eligible longshoremen into balance with the demand for longshoremen's services within the port of New York district without reducing the number of eligible longshoremen below that necessary to meet the requirements of longshoremen in the port of New York district;

(c) To encourage the mobility and full utilization of the existing work force of longshoremen;

(d) To protect the job security of the existing work force of longshoremen by considering the wages and employment benefits of prospective registrants;

(e) To eliminate oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the port of New York district, including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor;

(f) To consider the effect of technological change and automation and such other economic data and facts as are relevant to a proper determination;

(g) To protect the public interest of the port of New York district.

In observing the foregoing standards and before determining to suspend or accept applications for inclusion in the longshoremen's register, the commission shall consult with and consider the views of, including any statistical data or other factual information concerning the size of the longshoremen's register submitted by, carriers of freight by water, stevedores, waterfront terminal owners and operators, any labor organization representing employees registered by the commission, and any other person whose interests may be affected by the size of the longshoremen's register.

Any joint recommendation or petition granted hereunder shall be subject to such terms and conditions as the commission may prescribe.

3. Any determination by the commission pursuant to this section to suspend or accept applications for inclusion in the longshoremen's register shall be made upon a record, shall not become effective until

five days after notice thereof to the collective bargaining representative of stevedores and other employers of longshoremen in the port of New York district and to the labor organization representing such longshoremen and/or the petitioning stevedore or other employer of longshoremen in the port of New York district and shall be subject to judicial review for being arbitrary, capricious, and an abuse of discretion in a proceeding jointly instituted by such representative and such labor organization and/or by the petitioning stevedore or other employer of longshoremen in the port of New York district. Such judicial review proceeding may be instituted in either state in the manner provided by the law of such state for review of the final decision or action of administrative agencies of such state, provided, however, that such proceeding shall be decided directly by the appellate division as the court of first instance (to which the proceeding shall be transferred by order of transfer by the supreme court in the state of New York or in the state of New Jersey by notice of appeal from the commission's determination) and provided further that notwithstanding any other provision of law in either state no court shall have power to stay the commission's determination prior to final judicial decision for more than fifteen days. In the event that the court enters a final order setting aside the determination by the commission to accept applications for inclusion in the longshoremen's register, the registration of any longshoremen included in the longshoremen's register as a result of such determination by the commission shall be cancelled.

This section shall apply, notwithstanding any other provision of this act, provided however, such section shall not in any way limit or restrict the provisions of section five of article nine of this act empowering the commission to register longshoremen on a temporary basis to meet special or emergency needs or the provisions of section four of article nine of this act relating to the immediate reinstatement of persons removed from the longshoremen's register pursuant to article nine of this act. Nothing in this section shall be construed to modify, limit or restrict in any way any of the rights protected by article fifteen of this act.

4. Upon the granting of any joint recommendation or petition under this section for the acceptance of applications for inclusion in the longshoremen's register, the commission shall accept applications upon written sponsorship from the prospective employer of longshoremen. The sponsoring employer shall furnish the commission with the name, address and such other identifying or category information as the commission may prescribe for any person so sponsored. The sponsoring employer shall certify that the selection of the persons so sponsored was made in a fair and non-discriminatory basis in accordance with the requirements of the laws of the United States and the states of New York and New Jersey dealing with equal employment opportunities.

Notwithstanding any of the foregoing, where the commission determines to accept applications for inclusion in the longshoremen's register on its own initiative, such acceptance shall be accomplished in such manner deemed appropriate by the commission.

5. Notwithstanding any other provision of this act, the commission may include in the longshoremen's register under such terms and conditions as the commission may prescribe:

(a) a person issued registration on a temporary basis to meet special or emergency needs who is still so registered by the commission;

(b) a person defined as a longshoreman in subdivision six of section five-a of this act who is employed by a stevedore defined in paragraph

(b) or (c) of subdivision one of said section five-a and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen;

(c) no more than twenty persons issued registration limited to acting as scalemen pursuant to the provisions of chapter 953 of the laws of 1969 and chapter 64 of the laws of 1982 who are still so registered by the commission and who are no longer employed as scalemen on the effective date of this subdivision;

(d) a person issued registration on a temporary basis as a checker to meet special or emergency needs who applied for such registration prior to January 15, 1986 and who is still so registered by the commission;

(e) a person issued registration on a temporary basis as a checker to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission;

(f) a person issued registration on a temporary basis as a container equipment operator to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission; and

(g) a person issued registration on a temporary basis as a longshoreman to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission.

6. The commission may include in the longshoremen's register, under such terms and conditions as the commission may prescribe, persons issued registration on a temporary basis as a longshoreman or a checker to meet special or emergency needs and who are still so registered by the commission upon the enactment of this amendment.]

S 2. If any part or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances and the two states hereby declare that they would have entered into this act or the remainder thereof had the invalidity of such provisions or application thereof been apparent.

S 3. This act constitutes an agreement between the states of New York and New Jersey, supplementary to the waterfront commission compact and amendatory thereof, and shall be liberally construed to effectuate the purposes of that compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission.

S 4. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; and provided that the waterfront commission shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in order that the commission may maintain an accurate and timely effective data base of the official text of laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.