

4636

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 7, 2013

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Introduced by M. of A. CUSICK, FARRELL, ROBERTS, WEPRIN, TITONE, WRIGHT,  
BORELLI -- Multi-Sponsored by -- M. of A. BOYLAND, CORWIN, MALLIOTAKIS  
-- read once and referred to the Committee on Corporations, Authori-  
ties and Commissions

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 5-p of chapter 882 of the laws of 1953, constitut-  
2     ing the waterfront commission act, as amended by chapter 431 of the laws  
3     of 1999, is amended to read as follows:  
4     S 5-p. [Suspension or acceptance of applications for inclusion in  
5     longshoremen's] LONGSHOREMEN'S register[; exceptions]. [1.] The commis-  
6     sion shall [suspend the acceptance of] ACCEPT applications for inclusion  
7     in the longshoremen's register [for a period of sixty days after the  
8     effective date of this act. Upon the termination of such sixty day peri-  
9     od the commission shall thereafter have the power to make determinations  
10    to suspend the acceptance of application for inclusion in the  
11    longshoremen's register for such periods of time as the commission may  
12    from time to time establish and, after any such period of suspension,  
13    the commission shall have the power to make determinations to accept  
14    applications for such period of time as the commission may establish or  
15    in such number as the commission may determine, or both. Such determi-  
16    nations to suspend or accept applications shall be made by the commis-  
17    sion]: (a) [on its own initiative or (b)] upon the joint recommendation  
18    in writing of stevedores and other employers of longshoremen in the port  
19    of New York district, acting through their representative for the  
20    [purpose] PURPOSES of collective bargaining with a labor organization  
21    representing such longshoremen in such district, and such labor organ-  
22    ization; 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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1 [another] OTHER employer of longshoremen in the port of New York  
2 district which does not have a representative for the [purpose] PURPOSES  
3 of collective bargaining with a labor organization representing such  
4 longshoremen. [The commission shall have the power to accept or reject  
5 such joint recommendation or petition.

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

9 (a) the number of employees requested;

10 (b) the category or categories of employees requested;

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

13 (d) in cases where a joint recommendation is made under this section,  
14 the collective bargaining representative of stevedores and other employ-  
15 ers of longshoremen in the port of New York district and the labor  
16 organization representing such longshoremen shall provide the allocation  
17 of the number of persons to be sponsored by each employer of longshore-  
18 men in the port of New York district; and

19 (e) any other information requested by the commission.

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

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

24 (b) To bring the number of eligible longshoremen into balance with the  
25 demand for longshoremen's services within the port of New York district  
26 without reducing the number of eligible longshoremen below that neces-  
27 sary to meet the requirements of longshoremen in the port of New York  
28 district;

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

31 (d) To protect the job security of the existing work force of long-  
32 shoremen by considering the wages and employment benefits of prospective  
33 registrants;

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

39 (f) To consider the effect of technological change and automation and  
40 such other economic data and facts as are relevant to a proper determi-  
41 nation;

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

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

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

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

1 five days after notice thereof to the collective bargaining represen-  
2 tative of stevedores and other employers of longshoremen in the port of  
3 New York district and to the labor organization representing such long-  
4 shoremen and/or the petitioning stevedore or other employer of long-  
5 shoremen in the port of New York district and shall be subject to judi-  
6 cial review for being arbitrary, capricious, and an abuse of discretion  
7 in a proceeding jointly instituted by such representative and such labor  
8 organization and/or by the petitioning stevedore or other employer of  
9 longshoremen in the port of New York district. Such judicial review  
10 proceeding may be instituted in either state in the manner provided by  
11 the law of such state for review of the final decision or action of  
12 administrative agencies of such state, provided, however, that such  
13 proceeding shall be decided directly by the appellate division as the  
14 court of first instance (to which the proceeding shall be transferred by  
15 order of transfer by the supreme court in the state of New York or in  
16 the state of New Jersey by notice of appeal from the commission's  
17 determination) and provided further that notwithstanding any other  
18 provision of law in either state no court shall have power to stay the  
19 commission's determination prior to final judicial decision for more  
20 than fifteen days. In the event that the court enters a final order  
21 setting aside the determination by the commission to accept applications  
22 for inclusion in the longshoremen's register, the registration of any  
23 longshoremen included in the longshoremen's register as a result of such  
24 determination by the commission shall be cancelled.

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

35 4. Upon the granting of any joint recommendation or petition under  
36 this section for the acceptance of applications for inclusion in the  
37 longshoremen's register, the commission shall accept applications upon  
38 written sponsorship from the prospective employer of longshoremen. The  
39 sponsoring employer] STEVEDORES AND OTHER EMPLOYERS OF LONGSHOREMEN IN  
40 THE PORT OF NEW YORK DISTRICT shall furnish the commission with the  
41 [name, address and such other identifying or category information as the  
42 commission may prescribe for any person so sponsored. The sponsoring  
43 employer] NAMES AND ADDRESSES OF THE PERSONS SELECTED FOR INCLUSION IN  
44 THE LONGSHOREMEN'S REGISTER AND shall certify that the selection of  
45 [the] THESE persons [so sponsored] was made in a fair and non-discrimi-  
46 natory basis in accordance with the requirements of the laws of the  
47 United States and the states of New York and New Jersey dealing with  
48 equal employment opportunities.

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

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

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

3 (b) a person defined as a longshoreman in subdivision six of section  
4 five-a of this act who is employed by a stevedore defined in paragraph  
5 (b) or (c) of subdivision one of said section five-a and whose employ-  
6 ment is not subject to the guaranteed annual income provisions of any  
7 collective bargaining agreement relating to longshoremen;

8 (c) no more than twenty persons issued registration limited to acting  
9 as scalemen pursuant to the provisions of chapter 953 of the laws of  
10 1969 and chapter 64 of the laws of 1982 who are still so registered by  
11 the commission and who are no longer employed as scalemen on the effec-  
12 tive date of this subdivision;

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

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

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

24 (g) a person issued registration on a temporary basis as a longshore-  
25 man to meet special or emergency needs in accordance with a waterfront  
26 commission resolution of September 4, 1996 and who is still so regis-  
27 tered by the commission.

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

33 S 2. If any part or provision of this act or the application thereof  
34 to any person or circumstances be adjudged invalid by any court of  
35 competent jurisdiction, such judgment shall be confined in its operation  
36 to the part, provision or application directly involved in the contro-  
37 versy in which such judgment shall have been rendered and shall not  
38 affect or impair the validity of the remainder of this act or the appli-  
39 cation thereof to other persons or circumstances and the two states  
40 hereby declare that they would have entered into this act or the remain-  
41 der thereof had the invalidity of such provisions or application thereof  
42 been apparent.

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

50 S 4. This act shall take effect upon the enactment into law by the  
51 state of New Jersey of legislation having an identical effect with this  
52 act, but if the state of New Jersey shall have already enacted such  
53 legislation, then it shall take effect immediately; and provided that  
54 the waterfront commission shall notify the legislative bill drafting  
55 commission upon the occurrence of the enactment of the legislation  
56 provided for in section one of this act in order that the commission may

1 maintain an accurate and timely effective data base of the official text  
2 of laws of the state of New York in furtherance of effecting the  
3 provisions of section 44 of the legislative law and section 70-b of the  
4 public officers law.