

3984

2013-2014 Regular Sessions

I N S E N A T E

March 4, 2013

Introduced by Sens. LANZA, GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities 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 ASSEMBLY, 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
23 [another] OTHER employer of longshoremen in the port of New York
24 district which does not have a representative for the [purpose] PURPOSES
25 of collective bargaining with a labor organization representing such

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

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1 longshoremen. [The commission shall have the power to accept or reject
2 such joint recommendation or petition.

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

6 (a) the number of employees requested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 3. Any determination by the commission pursuant to this section to
52 suspend or accept applications for inclusion in the longshoremen's
53 register shall be made upon a record, shall not become effective until
54 five days after notice thereof to the collective bargaining represen-
55 tative of stevedores and other employers of longshoremen in the port of
56 New York district and to the labor organization representing such long-

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

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

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

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

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

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

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

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

4 (c) no more than twenty persons issued registration limited to acting
5 as scalemen pursuant to the provisions of chapter 953 of the laws of
6 1969 and chapter 64 of the laws of 1982 who are still so registered by
7 the commission and who are no longer employed as scalemen on the effec-
8 tive date of this subdivision;

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

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

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

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

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

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

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

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