

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 4, 2005

Mr. Michael C. Axelrod
New York Commissioner
Waterfront Commission of New York Harbor
39 Broadway
New York, New York 10006

Re: Waterfront Commission of New York
Harbor's Division of Licensing and
Employment Information Centers
Registration of Dockworkers and
Employers
Report 2003-S-48

Dear Mr. Axelrod:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have audited the actions taken by the Waterfront Commission of New York Harbor's Division of Licensing and Employment Information Centers (Division), Registration of Dockworkers and Employers to review applications received for the period January 1, 2000 through March 31, 2004.

A. Background

Under statutory mandate, the mission of the Waterfront Commission of New York Harbor (Commission) is to investigate, deter, combat and remedy criminal activity and influence in the Port of New York-New Jersey (Port) and to ensure fair hiring and employment practices, so that the Port region can grow and prosper. According to the Commission's Annual Report for the fiscal year ended June 30, 2002, the Commission's revenues were \$8.2 million with expenditures of \$7.0 million that included the funding of 93 employees. The Commission's jurisdiction includes 1,500 square miles that encompasses piers and waterfront terminals within a 25 mile-radius of the Statue of Liberty. During calendar year 2001, the Port of New York-New Jersey, the Eastern seaboard's busiest port, handled 73.55 million long tons (2,240 pounds) of waterborne cargo valued at \$86 billion. In 2001, 1,915,306 container units passed through the Port as well as 549,496 vehicles that were either imported or exported. The Division currently has a total of 15 employees. Four of those employees are assigned to processing applications and issuing licenses and registrations filed in New York and New Jersey by individuals and firms. The Division supervises the hiring of

longshorepersons, checkers and pier guards in the Port; makes employment information available to these dockworkers; and administers the “decasualization program” which, according to law, removes from the longshorepersons’ register those dock employees who, without good cause, fail to work or apply for work on a regular basis.

As of June 30, 2002, registered and licensed dockworkers totaled 5,741: 2,050 “deep-sea” longshorepersons including 587 emergency temporary personnel; 729 checkers, including 170 emergency temporaries; 1,951 workers who perform services incidental to warehousing and maintenance work; 389 pier guards; 177 hiring agents; 436 pier superintendents; and 9 telecommunication system controllers. In addition, there were 74 companies licensed as stevedores to move waterborne freight or to perform incidental services. For the fiscal year ended June 30, 2002, the Division reviewed and processed 501 applications and reapplications for licensing or registration. Included were 376 applications for the registration of longshorepersons, checkers and persons performing ancillary warehouse and maintenance work; 81 for pier guard licenses; 36 and six, respectively, for licensing as pier superintendents and hiring agents and two for a stevedore’s license.

As a direct result of 9/11, the Commission immediately implemented a new tamperproof photo identification system (which can accommodate the “smart-chip”) for dockworkers under its jurisdiction. Except on an emergency basis, the Commission also decided not to issue any new temporary registrations or permits until fingerprint returns were received from appropriate authorities. The Commission introduced a “live-scan” fingerprint system in February 2003 in New Jersey and July 2003 in New York. The previous system was to manually take fingerprints and send them to the appropriate State police agency. The new “live-scan” system is intended to dramatically reduce waiting time for fingerprint returns.

B. Audit Scope, Objective and Methodology

We audited the actions taken by the Commission to review applications received for the period January 1, 2000 through March 31, 2004. We selected a random statistical sample of 137 case records of the total population of 3,052 applications received from January 1, 2000 to August 31, 2003 and reviewed whether they were properly processed including a background investigation.

The objective of our performance audit was to determine whether the Commission has established a comprehensive process (including background checks and confirming residency status) for handling applications (new and renewal) of each individual and company applying to work on the piers and marine terminals in New York Harbor.

To accomplish our objective, we interviewed Commission officials, managers and staff. We also reviewed applications received and processed by the Division from individuals and companies applying to work on the piers and marine terminals in New York Harbor.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and do our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we understand the Commission’s internal control systems and compliance with those laws, rules and

regulations that are relevant to the Commission's procedures and operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We found that certain improvements are needed to strengthen the process followed by the Division to review the applications received from individuals and companies applying to work on the piers and marine terminals in New York Harbor. For example, the Commission needs to develop and issue a complete and updated set of licensing procedures. We also recommend that the Division create comprehensive procedures to verify the validity and the accuracy of the documents submitted with the applications. Documentation such as Social Security numbers, driver's license, etc., should be required. In addition, the Commission needs to take prompt action to finalize its training program for Pier Guards. We found that none of the Pier Guards in our sample have received required training due to the delays in incorporating new requirements due to the events of 9/11.

Review of Case Record Files

The Division receives and processes applications filed by individuals and firms required to be registered or licensed; supervises the hiring of longshorepersons, checkers and pier guards at the Port; and makes employment information available to these dock workers.

We selected a statistical sample of 137 case records of the total population of 3,052 applications received from January 1, 2000 to August 31, 2003 and reviewed whether they were properly processed including a background investigation. In addition, we selected the case records of all three stevedore companies which applied for approval during our audit period. We reviewed 134 case records provided by the Commission and all 3 case records for Stevedore companies. The Commission was unable to provide us with the case records for 3 of the regular files requested. Commission officials had no explanation as to why they could not find these folders. (Subsequent to the completion of our audit fieldwork the commission located two of the files.)

We noted that the Commission does not have a complete and current set of licensing procedures. There are applicable rules and regulations, but there is no current procedure manual.

The last Commission Manual was issued April 20, 1972 and updated through October 26, 1976. We were also provided with various other procedures issued from June 19, 1989 through October 28, 1993, but not incorporated in the Manual. Without a current manual with current procedures, Division's staff has no formal instructions on how to handle the licensing process from beginning to end. Any turnover of key personnel could create a situation where management is not aware of the current, detailed day-to-day procedures and how staff is applying them.

A memorandum dated March 25, 1992, dealt with "Authentication of Applicant Social Security Numbers." Effective March 30, 1992, the Commission decided to verify the applicant's Social Security number with the Social Security Administration. We found that for 13 of the 134 cases reviewed, the Social Security verification form was not in the case file. There was no evidence that the request was sent to the Social Security Administration. In response to our preliminary findings, Commission officials concluded that the verifications were filed with the Social Security Administration without any discrepancy. They added that "As a precaution, the Commission will resubmit..." those that were still active for verification. Despite their response that all of the Social Security verifications were sent, there was no evidence of this in 13 of the case files we reviewed.

To assist the Commission in ascertaining the character, integrity and identity of the applicant, the Commission performs a criminal background check of all applicants. This involves processing the applicant's fingerprints to ascertain whether the applicant has a criminal history (Commission Rules and Regulations, Section 2.4, 2.5, 4.8, 4.9, and 5.3). All fingerprints go to the Federal Bureau of Investigation (FBI) and the applicable State agency. In New York, the agency is the Division of Criminal Justice Services; in New Jersey, it is the State Police. We found one case with no evidence of any criminal background check performed with the applicable State agency. The Commission's response to our preliminary finding was that the background check for this applicant was submitted to the wrong state.

Pier Guards are required to comply with medical examination and physical fitness standards (Commission Rules and Regulations, Sections 5.5 and 5.6). The files for 9 Pier Guards in our sample did not contain the required medical and physical fitness information. We were advised this information was removed because it is the Commission's position that the medical examination and physical fitness standards information is confidential and not available for our review. However, in response to our preliminary findings, the Commission provided documentation showing that 7 of 9 sampled applicants received a medical examination. The Commission did not provide any physical fitness information for the 9 sampled applicants. As a result, there are limited assurances that applicants are meeting medical and physical fitness requirements.

Pier Guards are also required to comply with training standards (Commission Rules and Regulations, Section 5.10) which require completion of a training course within 90 days after issuance of the temporary permit. The course "shall include instruction with respect to protection of cargo, pilferage, pier security, fire prevention, safety, cooperation with law enforcement agencies, applicable law and such other topics as may be specified by the commission, and shall include such period of instruction by commission personnel as the commission shall require. In the absence of an extension of the 90-day period by the commission, the failure by an applicant to meet the requirements of this section shall result in the immediate expiration of any outstanding temporary permit and no further temporary permit shall be issued." In order to maintain the prescribed

standards of mental fitness “every licensed pier guard, or holder of a temporary permit, once every three years shall complete an additional course of training given or approved by the commission.” We found that the required mental fitness and training information was missing from the files for all nine Pier Guards in our sample. On February 10, 2004, Commission officials explained that they were in the process of developing new, longer course requirements and have not enforced the current, more lenient requirements. In effect, there has been no training for the pier guards since the events of 9/11 because the Commission has not finalized the new program. These officials advised us that the delays were caused by additional changes in the requirements that were received from other organizations such as the Coast Guard while they were updating the training program. We asked for written documentation to explain and support the Commission’s current position. We have not been provided with any such information. We note that all of the nine Pier Guards were issued temporary permits. Responding to our preliminary report on May 25, 2004, the Commission said that it was still in the process of formalizing the new training requirements and noted that the new training requirements are expected to be “available in approximately 60 days for public dissemination.”

The Commission also requires that certain personal identification information (e.g. driver’s license, birth or baptismal certificate, U.S Naturalization Certificate, Alien Registration Card) be provided by the applicant. We found that all 134 cases reviewed have documentation of personal identification information. Regarding the three stevedore companies listed as licensed by the Waterfront Commission during our audit period of January 1, 2000 through August 31, 2003 the Director of Licensing determines the criteria for what should be in the stevedores file. We were advised that each file should contain the application, supplementary information on corporate officers and shareholders, supplementary information on corporations, a decision as to the approval of the license, and a pre-audit of all applicants’ books and records as a prerequisite for obtaining a license. We found that one of the three files was missing the initial application and all three files had no evidence that the preliminary audit was performed. We met with the Audit Director and determined that no audit was performed for any of the three stevedore companies.

We believe that in these troubling times of terror alerts, it is particularly critical that the identity of all applicants be verified with the Social Security Administration. It is also critical that the training program for Pier Guards be finalized and implemented immediately. Finally, the Commission should perform the required audits for the stevedore companies to alert them to the existence of any possible problems and to allow them to take timely corrective actions.

Recommendations

1. *Develop and issue a complete and current set of licensing procedures.*

(Commission officials agree to take this recommendation under advisement.)

2. *Develop and implement an updated and comprehensive procedure to verify:*

- a) *The applicant’s Social Security number with the Social Security Administration.*

b) *The character, integrity and identity of the applicant. This involves processing the applicant's fingerprints to ascertain whether the applicant has a criminal history.*

(Commission officials agree to take this recommendation under advisement.)

3. *Ensure that documentation is maintained as evidence of compliance with medical and physical requirements.*

4. *Develop and implement the requirements for the pier guards' mental fitness and training standards.*

(Commission officials agree.)

5. *Perform the audits for the three stevedores companies.*

(In response to our draft report, Commission officials indicated that an audit is not required prior to the issuance of a stevedore's temporary permit. They added that an audit is done at the discretion of the Director of Licensing & E.I.C., on a case-by-case basis.)

Auditor's Comments: Despite the Commission's response that audits of stevedores are not required for temporary permits, this is new information that contradicts the process as described by the Director of Licensing during the field work. In addition, there were no written procedures as to what is required. As a result, the report reflects the information that was provided to the auditors. We recommend that the Commissioner formally document the procedures to avoid future misunderstandings.

A draft copy of this report was provided to Commission officials for their review and comment. Their comments have been considered in preparing this final audit report, and are included as Appendix A.

Within 90 days after final release of this report, we request that the New York Commissioner of the Waterfront Commission of New York Harbor reports to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Abraham C. Markowitz, Santo Rendon, William Lichtenberg, James Pugliese, Richard Moriarty, and Gerald Vasquez.

We wish to thank the management and staff of the Commission for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Michael J. Madonna, New Jersey Commissioner
Thomas De Maria, Executive Director
Robert Barnes, Division of the Budget



MICHAEL C. AXELROD
MICHAEL J. MADONNA
COMMISSIONERS

WATERFRONT COMMISSION OF NEW YORK HARBOR

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

THOMAS DE MARIA
EXECUTIVE DIRECTOR

September 23, 2004

BY HAND

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division State Services
123 William Street – 21st Floor
New York, New York 10038

Dear Ms. Maldonado:

The Waterfront Commission of New York Harbor (“Commission”) is in receipt of your “Working Draft” report of your audit of the Commission and welcomes the opportunity to comment prior to the issuance of a final report. As was discussed with yourself and members of your staff prior to the commencement of this audit, the Commission’s position is that the State Comptroller has no statutory authority to audit the Commission. The Commission is a “bi-state” agency and there is no specific reference to the Commission under your authority. The Commission voluntarily submitted to your audit and your opening should reflect same.

The Commission has no comments or objections as to what is contained within the Background and Audit Scope/Objective/Methodology sections. As to your audit results, you will find the Commission’s comments outlined below.

Your audit makes the recommendation that “documentation such as social security numbers, driver’s license, etc. should be required”, to verify the validity and the accuracy of documents submitted with applications.

The Commission has always required that the applicant produce a valid social security card. This number is thereafter verified with the Social Security Administration (“SSA”) via United States mail. After speaking to officials at the SSA, it has been confirmed that the Commission may only seek verification at this present time by this method. Additionally, each applicant must present a certified birth certificate or baptismal certificate or a valid United States passport. If the applicant was not born in the United States, they must present their United States Naturalization certificate or a valid Alien Registration Card. A valid Driver’s License is only required where the applicant will operate a motor vehicle during the scope of his/her employment.

WATERFRONT COMMISSION OF NEW YORK HARBOR

Page 2

Your report also indicates that you were not provided with three case files that were requested. One file has been located and awaits your review. The Commission is actively searching for the remaining two files.

*
Note
1

As to your comments regarding missing social security verifications, the Commission has taken the steps that any file which did not contain a Social Security verification, will be resubmitted to the Social Security Administration for appropriate verification. As stated in the Commission's two previous replies (March 23, 2004 and May 25, 2004) if a negative response were returned from the Social Security Administration, appropriate action would have been taken on these files. Since no action was taken, I therefore must conclude that the verifications were returned without any discrepancy. Furthermore, the Commission's records reflect that there were only 12 files that did not contain the appropriate verifications, not 13.

*
Note
2

The audit of 137 files revealed one case in which the background fingerprint check was submitted to the wrong State. These prints were subsequently submitted to the correct State for processing and the results have been received.

Furthermore, your "working report" identifies two pier guard files in which there was no evidence of the required medical examination. As stated in the Commission's two previous replies, all pier guard examinations were satisfied or the physical was not required based upon either the applicant for employment being withdrawn by the sponsoring agency or the individual was being investigated by the Commission. The individual would not be required to take a physical until the investigation is completed. By September 30, 2004, there will be 100% compliance with the required physical examination for all pier guards.

Your "working report" also comments that the Commission did not perform a preliminary audit before the issuance of a stevedore's temporary permit. There is no requirement that an audit be performed prior to the issuance of such "temporary permit". It is within the discretion of the Director of Licensing & E.I.C., to be determined case by case, if an audit should be performed. Furthermore, no permanent license is issued without an audit being performed.

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Note
3

As to your comments on Pier Guard training, on July 15, 2004, the Commission revised and amended Part 5 of the *Rule and Regulations of the Waterfront Commission* concerning the licensure of Port Watchman. These revisions and amendments were necessary to provide the port with a more professional and competent staff of Port Watchman following the events of 9/11 and to comply with the Maritime Security Act of 2000 and its accompanying United States Coast Guard Regulations. The term "pier guard" as used in your report is no longer an applicable classification of a Port Watchman. Port Watchmen, are now classified as "security officers", "supervisory security officers", and "management security officers."

WATERFRONT COMMISSION OF NEW YORK HARBOR

Page 3

In addition changes have been made to Section 5.10, regarding "Training and fitness standard", which are discussed in your report. The new training requirements differ from those referenced in your report in that: 1) they require training once a year rather than once every three years, 2) they require training prior to the issuance on any temporary permit, and 3) they NO LONGER ALLOW for a six-month waiver of training for "inland" security officers.

Under these new stricter training requirements and the regulations of the U.S. Coast Guard, it is now necessary for all non-inland security officers to attend 2 eight hour sessions of training and all "inland" security officer to attend one 1 eight hour session of training. In anticipation of the passage of these new regulations, between April 17 and June 22, 2004, the Commission conducted a number of "first round" training session for the non-inland security officers. As a result of these "first round" sessions, 328 of the currently active 356 non-inland security officers have completed this training. The remaining 28 individuals, as well as any new applicants since June 22, 2004, are scheduled for "first round" training on October 23, 2004. In addition, the Commission has scheduled seven dates in the month of October to the completion of "second round" training for the entire population of non-inland active security officer and pending applicants. Moreover, following the passage of these new regulations the Commission conducted and completed training for all but 21 of the then 84 active inland security officers. Those who failed to attend training without valid excuse will lose their permits or licenses and those who have been excused will receive training during the October dates noted hereinabove.


As noted in your report, under the old regulation, pier guards were required to meet certain medical and physical requirements both upon initial application and upon renewal of their temporary permit or license every three years. Under the new regulations, all security officers and supervisory officers likewise must meet similar, although updated, medical and physical requirements prior to receiving their temporary permit/license from the Commission. They must also submit to a renewal physical every three years. Moreover, there is no longer a six-month waiver of the physical standards for "inland" security officers. Upon the passage of the revised and amended Part 5, the commission immediately implemented these new requirements. As of September 30, 2004, all active inland registrants will have completed either their initial physical exam (which may have been waived under the "old" regulations) or their renewal exam. Thus, all inland registrants will meet the new physical requirements. It is also noted that, since there was no waiver allowed for non-inland applicants, all of these individuals completed the physical examination and met the requirements thereof, prior to being issued under the old regulations. Moreover, the Commission has begun, and will complete by November 30, 2004, the renewal examinations under the new regulations for these non-inland security officers.

WATERFRONT COMMISSION OF NEW YORK HARBOR

Page 4

In conclusion, as previously stated, the Commission will undertake to develop an up-to-date policy manual for licensing procedures. As to pier guard standards, the Commission has already implemented new pier guard medical and physical training standards as discussed above. The Commission has proper safeguards in place for social security verification and background fingerprinting checks. The Commission will always explore new mechanisms that become available to carry out our mandate.

Very truly yours,


Jon S. Deutsch
General Counsel

JSD:amg

c. Thomas De Maria, Executive Director
Peter Goldfinger, Dir. of Licensing & E.I.C.

STATE COMPTROLLER'S NOTES

1. We reviewed the file referred to in the Commission's response. In addition, during our visit, Commission staff located another folder. We also reviewed that folder.
2. One file was for a former employee. The Commission took the position that evidence of SSN verification was not needed in this instance.
3. Our report reflects the information provided by the Director of Licensing during the audit fieldwork. There were no written procedures and, as such, we obtained the information from the appropriate official. The Commission should formally document the procedures to avoid any future misunderstanding.